



# Instructions for Form CT-44

## Claim for Investment Tax Credit for the Financial Services Industry

Tax Law — Sections 210.12, 210.12-D, 1456(i), 1511(q)

# CT-44-I

**Important reminder to file a complete return:** You must complete all required schedules and forms that make up your return, and include **all pages** of those forms and schedules when you file. Returns that are missing required pages or that have pages with missing entries are considered incomplete and cannot be processed, and may subject taxpayers to penalty and interest.

## Changes for 2008

Chapter 637 of the Laws of 2008 amends the investment tax credit (ITC) for the financial services industry. These new amendments codify the previous employment tests (the 80% current-year test and the 95% three-year back-office test) and add a new employment test, the 90% end-of-year test. Also, for purposes of determining whether property is principally used in qualifying usage, the property used by brokers, dealers, and registered investment advisors may now be aggregated.

In addition, the ITC has been extended to include property placed in service before October 1, 2011.

## General information

General business corporations, banking corporations, and insurance corporations may claim an investment tax credit (ITC) under section 210.12, section 1456(i), or section 1511(q), respectively, against the tax imposed by Article 9-A, Article 32, or Article 33 for the tax year during which qualified property is placed in service. For Article 9-A or Article 32 filers the property must be placed in service on or after October 1, 1998, and before October 1, 2011. For Article 33 filers, the property must be placed in service on or after January 1, 2002, and before October 1, 2011.

To claim the credit, all or a substantial portion of the employees performing the administrative and support functions resulting from or related to the qualifying uses of the property must be located in New York State. See Schedule A, Parts 1, 2, and 3 for more information.

Compute the ITC on the investment credit base. The *investment credit base* is the cost, or other basis when placed in service in New York State for federal income tax purposes, of qualified tangible property, including buildings and structural components of buildings, less the amount of nonqualified nonrecourse financing for the property. Do not include in the investment credit base any amount that was expensed under Internal Revenue Code (IRC) section 179(a).

Section 210.12-D allows an **employment incentive credit** (EIC) for two years immediately succeeding the tax year in which an ITC is allowed. This credit is available to Article 9-A filers only. See the instructions for Schedule B for details.

The ITC and the EIC may not reduce the tax liability to less than the greater of the tax on minimum taxable income or the fixed dollar minimum tax for Article 9-A filers, or the fixed dollar minimum for Article 32 and Article 33 filers.

Any portion of these credits that cannot be used to reduce the current year tax liability may be carried forward for up to 15 tax years (10 tax years for a New York S corporation).

A corporation that qualifies as a new business may elect to receive a refund of the ITC or have the refund applied as an overpayment to the following year tax liability instead of carrying forward the unused portion. No interest is paid on the refund. For definition of a new business, see the instructions for lines 31, 32, and 33. You cannot claim the ITC if you elected to claim an empire zone (EZ) ITC for qualifying property placed in service in an EZ (Tax Law section 210.12-B).

### Qualified property

*Qualified property* for the ITC is tangible property, including buildings and structural components of buildings, that:

- was acquired, constructed, reconstructed, or erected by the taxpayer on or after October 1, 1998 (for Article 33 filers: on or after January 1, 2002), and before October 1, 2011;

- is depreciable under IRC section 167 or 168;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase under IRC section 179(d);
- is located in New York State; and
- is principally used in the ordinary course of the taxpayer's business:
  - as a broker or dealer in connection with the purchase or sale of stocks, bonds, other securities (IRC section 475(c)(2)), or of commodities (IRC section 475(e)), or in providing lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale of securities (IRC section 475(c)(2));
  - providing investment advisory services for a regulated investment company (IRC section 851);
  - as an exchange registered as a national securities exchange (sections 3(A)(1) and 6(A) of the Securities Exchange Act of 1934) (available to Article 9-A taxpayers only);
  - as a board of trade (Not-for-Profit Corporation Law section 1410(a)) (available to Article 9-A taxpayers only); or
  - as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides them with automation or technical services (available to Article 9-A taxpayers only).

Though the property must be located in New York State, it is not necessary for the users of the property to be located in New York State. For example, a computer system that is placed in service in New York State would qualify for the credit, even if the brokers accessing the system are located outside the state.

Property leased to a broker, dealer, registered investment advisor, national securities exchange, board of trade, or any entity wholly owned by a national securities exchange or board of trade, as described above, that is an affiliate of the taxpayer and that principally uses the property in the qualifying activities listed above qualifies for the credit, provided it otherwise meets the criteria for qualified property. Any contract or agreement to lease or rent, or for a license to use the property, is considered a lease. In addition, property qualifies if it meets the criteria and is purchased by the taxpayer, but is principally used by a broker, dealer, registered investment advisor, national securities exchange, or board of trade that is an affiliate of the taxpayer in the qualifying activities listed above.

For the purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer, the affiliated broker, dealer, and registered investment advisor may be aggregated.

If qualified property is purchased using nonqualified nonrecourse financing, the investment credit base must be reduced by the amount of financing that would be excludable from the credit base pursuant to IRC section 49(a)(1). If at the close of a tax year following the tax year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to the property, the net decrease is to be treated as the cost or other basis of qualified property acquired, constructed, reconstructed, or erected during the year of the decrease.

If qualified property is acquired to replace other insured property that was stolen or was destroyed by fire, storm, shipwreck, or other casualty, the basis of the replacement property is its cost reduced by any amount of gain not recognized for federal income tax purposes because the insurance proceeds were invested in the replacement. If qualified property is acquired to replace property destroyed as a direct result of the terrorist attacks of September 11, 2001, and you did not elect to defer recapture, or escaped recapture because you met the employment test, you may compute the investment credit base of the replacement property without regard to any basis reduction required by IRC section 1033.

**Recapture of credit** – You must compute a recapture of ITC previously allowed if the property was stolen, destroyed, disposed of, or ceases to be in qualified use prior to the end of its useful life, or if there is

an increase in nonqualified nonrecourse financing. See Schedule C instructions.

### Definitions

*Affiliate* means the following:

- A partnership 80% or more of whose interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation 80% or more of whose voting stock is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.
- A corporation 80% or more of whose voting stock is owned or controlled, directly or indirectly, by the entity that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.

*Commodities*, as referred to in these instructions, are those defined in IRC section 475(e)(2).

*Cost* is the basis of property as defined in IRC section 1012.

*Life or useful life* (of property) is the depreciable life as provided by IRC section 167 or 168.

*Nonqualified nonrecourse financing* is any amount for which a taxpayer is protected against loss and, generally, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used, or from someone related to a person (other than the taxpayer) who has an interest in the activity. Nonrecourse financing is nonqualified if it is not qualified commercial financing as defined in IRC section 49(a)(1).

*Other basis* means the adjusted basis for determining gain or loss used as the basis for depreciation under IRC section 167(g).

*Principally used* means used more than 50%. A building or an addition to a building is principally used in qualifying activities if more than 50% of its usable business floor space is used in qualifying activities. Floor space used for bathrooms, cafeterias, and lounges is not usable business floor space. Equipment is principally used in qualifying activities when it is used in such activities more than 50% of its operating time. Operating time may be determined based on actual time, cost allocations to individual business units, or any other reasonable method that accurately reflects operating time.

*Purchase or sale* includes, but is not limited to, the issuance, entering into, assumption, offset, assignment, termination, or transfer of stocks, bonds, commodities, or other securities.

A *security* is defined in IRC section 475(c)(2).

All references to *current tax year* mean the tax year covered by this claim.

**Bank or insurance corporation as a dealer:** A bank or insurance corporation is acting as a dealer when the corporation does **either** of the following:

- Regularly purchases securities (as defined in IRC section 475(c)(2)) or commodities (as defined in IRC section 475(e)) from or sells securities or commodities to customers in the ordinary course of its trade or business.
- Regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities or commodities with customers in the ordinary course of its trade or business.

The credit is not allowed for property located in the bank or insurance corporation's trading department, unless the property is principally used by the taxpayer in the ordinary course of the taxpayer's business as a dealer. On audit, it will be necessary for the taxpayer to demonstrate that the qualified property is principally used in the ordinary course of the taxpayer's business as a dealer.

## Line instructions

### Schedule A — Eligibility and investment tax credit (ITC)

To claim this credit, taxpayers must meet one of the three eligibility tests described below. However, if this is your first tax year, do not complete Parts 1, 2, and 3. Begin with Part 4.

1. **80% current-year test** – 80% or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of the property must be located in New York State. For example, if you have a quarterly average of 1,000 employees performing the administrative and support functions during your tax year, then a quarterly average of at least 800 (1,000 x 80%) of the employees must be located in New York State. (If the property is used by an affiliate in qualifying activities, it is the affiliate that must meet the eligibility test.) If you are claiming credit based on having met the 80% current-year test, then you must complete Part 1. For more information on this eligibility test, see TSB-A-03(10)C, *Morgan Stanley & Co. Incorporated*.
2. **95% three-year back-office test** – The average number of employees located in New York State performing administrative and support functions resulting from or related to the qualifying uses of such equipment during the tax year in which the property is placed in service and the credit is claimed is equal to or greater than 95% of the average number of employees performing these functions during the 36 months immediately preceding the year in which the credit is claimed. The average number of employees must be computed on a quarterly basis. (If the property is used by an affiliate in qualifying activities, it is the affiliate that must meet the eligibility test.) If you are claiming credit based on the 95% three-year back-office test, complete Part 2. For more information on this eligibility test, see TSB-M-98(8)C, *Tax Credits for the Financial Services Industry*.
3. **90% end-of-year test** – The number of New York State employees employed during the current tax year must be equal to or greater than 90% of your New York State employees on
  - a) December 31, 1998 (if you were a calendar year filer taxable in New York in 1998); or
  - b) the last day of your first tax year ending after December 31, 1998.

If a taxpayer aggregates its uses of property for the purpose of the principally used test, each affiliate may satisfy the employment test individually, or the test may be satisfied by the aggregation of the taxpayer and its affiliates.

*Employees performing administrative and support functions* include all employees other than brokers, dealers, or investment advisors to regulated investment companies. Generally, any employee whose compensation for the tax year is based more than 50% on commissions is presumed to be a broker, dealer, or investment advisor. However, if you do not compensate those employees who are employed as brokers, dealers, or investment advisors on a commission basis, you must specifically identify the employees performing those functions and exclude those employees from the employment percentage calculation.

**Article 32 or Article 33** — To determine eligibility, include only those employees employed in the department or departments of the bank or insurance corporation that perform the broker, dealer, or investment advisory functions.

**National securities exchange, board of trade, or their wholly owned entities** — Identify those employees who are performing the administrative and support functions resulting from or related to the activities of the securities exchange, board of trade, or other entity, and calculate eligibility using those employees.

**Combined filers under Articles 9-A, 32, and 33** — To determine eligibility, apply the appropriate method on an individual entity basis for each company claiming a credit.

If your corporation **does not meet the eligibility requirements** as stated above, **do not complete Part 4**. You are **not eligible** for the ITC. However, you must complete Schedule B if you are eligible for the EIC (Article 9-A only). You must complete Schedule C if you need to recapture a credit previously taken. You must also complete the *Summary of tax credit(s)* and the *Computation of ITC used, refunded, or carried forward* sections if you are claiming an ITC, an EIC, or both.

## Part 1 — 80% current-year test

Use Part 1 if you wish to claim the credit using the 80% current-year test eligibility method.

**Line 1a** — Enter the number of employees who perform administrative and support functions in New York State for each date specified for the current tax year. Add columns A through D (include zero dates), then divide by four to obtain the average number of employees in New York State for the current tax year.

**Line 1b** — Enter the number of employees who perform administrative and support functions everywhere for each date specified for the current tax year. Add columns A through D (include zero dates), then divide by four to obtain the average number of employees everywhere for the current tax year.

## Part 2 — 95% three-year back-office test

Use Part 2 if you wish to claim the credit using the 95% three-year back-office test eligibility method.

**Line 3a** — Enter the number of employees who perform administrative and support functions in New York State for each date specified for the current tax year. Add columns A through D (include zero dates), then divide by four to obtain the average number of employees in New York State for the current tax year.

**Lines A through C** — Enter the number of employees who performed administrative and support functions in New York State, on each of the dates listed for the three tax years immediately preceding the year in which you claimed the ITC. Add columns A through D, and enter the total in column E for each line.

If your corporation provided employment in New York State for only part of the three-year test period, enter the number of employees in each quarter in which you had employment in New York State. If your corporation did not provide employment in New York State at any time during the three-year test period, skip lines 3a and 3b and enter **100** on line 4.

## Part 3 — 90% end-of-year test

Use Part 3 if you wish to claim the credit using the 90% end-of-year test eligibility method.

**Line 5a** — Enter the number of employees in New York State for each date specified for the current tax year. Add columns A through D (include zero dates) then divide column E by four to obtain the average number of employees in New York State for the current tax year.

**Line 5b** — If you were subject to tax in New York State for tax year 1998, enter one of the following two numbers:

- Calendar year filer — enter the number of employees in New York State on December 31, 1998.
- Fiscal year filer — enter the number of employees in New York State on the last day of your fiscal year ending after December 31, 1998.

## Part 4 — Computation of ITC

**Columns A and B** — Describe the qualified property placed in service during this tax period. You must list individual items separately and you may not show them as one general category. Attach additional pages if necessary.

**Column D** — Enter the useful life of each item claimed. Do not use the recovery period of depreciation under the Accelerated Cost Recovery System (ACRS) or the Modified Accelerated Cost Recovery System (MACRS).

**Column E** — Enter your cost or other basis (see *Definitions*). Corporate partners: enter your allocable share of the cost or other basis in the partnership's property listed in column A.

## Schedule B — Employment incentive credit

### Part 1 — Eligibility for EIC

This credit is for Article 9-A filers only. **Do not complete Schedule B** if your corporation is not subject to tax under Article 9-A.

When a corporation is allowed an ITC, the corporation may be eligible for an EIC for the next two immediately succeeding tax years. However, the credit is not allowed for those years if the corporation's average number of employees in New York State during the current tax year is not at least 101% of the average number of employees in New York State during the employment base year.

A corporation that has claimed an ITC for property it purchased that is principally used by an affiliate of the corporation may also be eligible for an EIC. In this case, the credit is allowed based on the corporation's average number of employees in New York State. The number of the affiliate's employees are not taken into consideration.

*Employment base year* means the calendar tax year or fiscal tax year immediately preceding the ITC year, or, if the corporation was not taxable in New York State in the preceding year, the year in which the ITC was allowed. Complete Part 1 to see if your corporation qualifies for the EIC.

Section 210.12-D(b) defines *the average number of employees* as the total number of employees that are employed within New York State on March 31, June 30, September 30, and December 31 of the current tax year divided by the number of these dates occurring during the tax period. Employees must be located in New York State. **Do not include general executive officers.**

### Example:

*A corporation filing a report for a fiscal period beginning September 1, 2007, and ending August 31, 2008, would use the following dates to compute the number of New York State employees for that fiscal year: September 30, 2007, December 31, 2007, March 31, 2008, and June 30, 2008.*

Complete Part 1 for each tax year listed in Part 2 for which you claimed an EIC. Exclude any employee for whom you claimed a zone equivalent area (ZEA) wage tax credit based on employment within a ZEA. However, include these employees for the employment base year on lines 9 and 11.

**Column A** — Enter the current tax year and the base year. The *current tax year* is the tax year covered by this claim.

**Columns B through E** — Enter the total number of employees employed in New York State on each of the dates listed that occurred during your tax year.

**Column G** — Unless you have a short tax year (less than 12 months), divide the amount in column F by four. If you have a short tax year, divide the amount in column F by the number of dates shown in columns B through E that occur during the short year.

**Column H** — Divide the average number of employees in the current tax year by the average number of employees in the base year. Carry the result to two decimal places. If the percentage in column H is at least 101%, (1.01), complete Schedule B, Part 2. If the percentage in column H is **less than 101%** for both tax periods, **do not complete Schedule B, Part 2. You do not qualify** for the EIC.

## Part 2 — Computation of EIC

### General

The amount of EIC is a percentage of the original investment credit base on which the ITC was allowed for each of the two years immediately following the year the ITC was allowed. The percentage used to compute this credit depends on the level of employment (see *Rate schedule 2* on Form CT-44).

**New York C corporations** — The EIC may not reduce the tax liability to an amount less than the higher of the tax on minimum taxable income or the fixed dollar minimum.

You may carry the credit forward for up to 15 tax years. A New York C corporation cannot claim a refund of the EIC.

**New York S corporations** — For shareholders of a New York S corporation who claim an EIC, any excess EIC that cannot be used to reduce their current tax liability can be carried forward for up to **ten** tax years. However, a shareholder that qualifies as an owner of a new business may elect to have the excess EIC refunded. (See definition of *new business* under lines 31, 32, and 33.)

## Schedule C — Recapture of ITC

If property on which an ITC has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the original credit allowed and the credit allowed for actual use must be added back to the tax otherwise due in the year of disposition.

There are different formulas for computing the amount of recaptured ITC for property depreciated under IRC sections 167 and 168.

### Column H

(1) For property depreciated solely under IRC section 167, the recapture formula is as follows:

$$\frac{\text{months of unused life}}{\text{months of useful life}} \times \text{original ITC allowed}$$

(2) For three-year property depreciated under IRC section 168, the recapture formula is as follows:

$$\frac{36 \text{ minus the number of months of qualified use}}{36} \times \text{original ITC allowed}$$

Recapture is only required if the property is disposed of or ceases to be in qualified use prior to the end of 36 months.

(3) For property depreciated under IRC section 168, other than three-year property, or buildings, or structural components of buildings, the formula is as follows:

$$\frac{60 \text{ minus the number of months of qualified use}}{60} \times \text{original ITC allowed}$$

Recapture is only required if the property is disposed of or ceases to be in qualified use prior to the end of 60 months.

(4) For buildings or structural components of buildings depreciated under IRC section 168, the formula is as follows:

$$\frac{\text{months of unused life}}{\text{number of months allowed by the IRC and used by the taxpayer}} \times \text{ITC allowed}$$

Property that is depreciated under IRC section 168 for federal tax purposes, but is required to be depreciated under IRC section 167 for New York State tax purposes (decoupled property), is subject to formula (1) above.

If qualified property has a useful life of more than 12 years, and it has been in use for more than 12 years, no recapture is necessary.

If there is a net increase in nonqualified nonrecourse financing at the end of the tax year, the decrease in the ITC that would have resulted from the net increase in nonqualified nonrecourse financing must be recaptured.

**Line 16 — Additional recapture** — You must also compute an additional recapture amount equal to the original recapture amount multiplied by the underpayment interest rate in effect on the last day of the tax year.

## Summary of tax credit(s)

**Line 23** — If the amount on line 21 is greater than the amount on line 22, subtract line 22 from line 21.

New York S corporations: transfer this amount to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*.

New York C corporations: continue with line 24.

If the amount on line 22 is greater than line 21, you have a net recaptured tax credit; continue with line 23 instructions.

New York C corporations: subtract line 21 from line 22 and enter the result as a negative number with a minus (-) sign in the appropriate box of the tax credits section of your franchise tax return.

New York S corporations: subtract line 21 from line 22 and enter the result as a positive number on Form CT-34-SH.

## Computation of ITC used, refunded, or carried forward (New York S corporations do not complete this section)

**Line 25** — If you are claiming more than one credit, enter the amount of the credits claimed before this credit. Otherwise, enter 0.

If filing as a member of a combined group, include any amount of tax credit(s), including ITC(s), being claimed by other members of the combined group that you wish to apply before this credit.

Life insurance corporations: do not enter on this line any amount of EZ wage tax credit, zone equivalent area (ZEA) wage tax credit, or EZ capital tax credit you may be claiming. If you are included in a combined return, do not include any amount of these credits being claimed by other members of the combined group.

See the instructions for your franchise tax return for a listing of credits and the order in which the credits are applied. Article 9-A taxpayers: Refer to Form CT-600-I, *Instructions for Form CT-600*, to determine proper ordering of multiple credits.

**Lines 31, 32, and 33** — If you are not a new business, skip lines 31, 32, and 33; enter your line 30 amount on line 34. A corporation that is eligible to claim an ITC and is also a new business as defined in section 210.12(j) 1456(i), or 1511(q) may elect to receive a refund of its unused ITC, or have the refund applied to the following year's tax instead of carrying the credit forward. No interest will be paid on this refund. A *new business* is defined as any business **except** the following:

- A corporation in which more than 50% of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned by a taxpayer subject to tax under Tax Law, Article 9, sections 183, 184, 185, or 186; Article 9-A; Article 32; or Article 33.
- A corporation substantially similar in operation and in ownership to a business entity or entities taxable or previously taxable under Article 9, sections 183, 184, 185, or 186, Article 9-A, Article 32, or Article 33; or that would have been subject to the tax under Article 23, as it was in effect on January 1, 1980; or the income (or losses) of which is (or was) includable under Article 22.
- A corporation that has been subject to tax under Article 9-A, 32, or 33 for more than five years (excluding short tax years).

**Line 32** — Enter any amount of line 31 you want refunded.

Transfer this amount to your franchise tax return. To avoid the unnecessary exchange of funds, we will apply this refund against the minimum tax due and refund any balance.

**Line 34** — Qualified new businesses: subtract line 31 from line 30. All other businesses: enter the amount from line 30 on line 34.

### Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

## Need help?



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**Text Telephone (TTY) Hotline** (for persons with  
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If you do not own a TTY, check with independent  
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