



Instructions for Form CT-634

Empire State Jobs Retention Program Credit

CT-634-I

Temporary deferral of certain tax credits

For tax years beginning on or after January 1, 2010, and before January 1, 2013, if the total amount of certain credits that you may use to reduce your tax or have refunded to you is greater than \$2 million, the excess over \$2 million must be deferred to, and used or refunded in, tax years beginning on or after January 1, 2013. For more information about the credit deferral, see Form CT-500, *Corporation Tax Credit Deferral*.

If you are subject to the credit deferral, you must complete all credit forms without regard to the deferral. However, the credit amount that is transferred to your tax return to be applied against your tax due or to be refunded to you may be reduced. Follow the instructions for Form CT-500 to determine the amounts to enter on your tax return.

General information

The Tax Law provides a credit to taxpayers who are participants in the Empire State Jobs Retention Program and are subject to tax under Articles 9-A, 22, 32, or 33.

A business enterprise must submit a completed application to Empire State Development (ESD). If ESD determines that a business entity will be a participant in the program, it will issue the entity a certificate of eligibility, a preliminary schedule of benefits, and a certificate of tax credit for one tax year. To receive a certificate of tax credit for subsequent tax years, the participant must demonstrate to ESD that the entity continues to satisfy the eligibility criteria. For more information about the Empire State Jobs Retention Program application and approval process, visit ESD's Web site (at www.esd.ny.gov).

A taxpayer that has been issued a certificate of tax credit by ESD will be allowed to claim the credit. The certificate of tax credit will indicate the amount of the credit that may be claimed for the tax year. A taxpayer will be allowed to claim only the amount listed on the certificate of tax credit for that tax year. A copy of the certificate of tax credit must be attached to the taxpayer's return.

A business accepted into the Empire State Jobs Retention Program must agree to be permanently disqualified for Empire Zone benefits at any location that qualifies for Empire State Jobs Retention Program benefits.

Eligibility – To be eligible to participate in the program, a business entity must:

- operate predominantly in New York State in certain industries;
- be located in a county in which an emergency has been declared by the governor on or after January 1, 2011;
- demonstrate substantial physical damage and economic harm resulting from the event leading to the emergency declaration by the governor; and
- have had at least 100 full-time equivalent jobs in the county in which an emergency has been declared by the governor on the day immediately preceding the day the event leading to the declaration occurred, and must retain or exceed that number of jobs in New York State.

The following businesses are not eligible for the program:

- a not-for-profit entity;
- a business entity whose primary function is the provision of services, including personal services, business services, or the provision of utilities;

- a business entity engaged predominantly in the retail or entertainment industry;
- a business engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with generation of electricity;
- a business entity that is not in compliance with all worker protection and environmental laws and regulations;
- a business entity that owes past due state taxes; or
- a business entity that owes local property taxes for any year prior to the year the business applies to participate in the program.

The credit may be claimed for up to ten consecutive tax years provided the participant continues to meet the eligibility requirements. The benefit period begins in the first year the participant receives a certificate of tax credit from ESD, or the first tax year listed on the preliminary schedule of benefits, whichever is later. If the participant fails to satisfy the eligibility criteria for any one year, it will lose the ability to claim the credit for that year. The inability to claim the credit for any one year will not extend the original ten-year eligibility period.

The credit is equal to 6.85% of the gross wages paid for the impacted jobs. The participant will receive a certificate of tax credit from ESD annually specifying the amount of the credit allowed for that year.

The amount of the credit allowed cannot reduce the tax due to less than the minimum tax due under Article 32 or Article 33, or the fixed dollar minimum tax under Article 9-A.

Any unused amount of credit for the current tax year will be treated as a refund or overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

If a certificate of eligibility or a certificate of tax credit is revoked because you do not meet the eligibility requirements, you must recapture the amount of credit previously claimed prior to that revocation. The amount of credit to be recaptured must be added back to tax for the tax year in which the revocation becomes final.

Definitions

Certificate of eligibility means the document issued by ESD to an applicant that has completed an application to be admitted into the Empire State Jobs Retention Program and has been accepted into the program by ESD. Possession of a certificate of eligibility does not by itself guarantee eligibility to claim the tax credit.

Certificate of tax credit means the document issued to a participant by ESD, after ESD has verified that the participant has met all applicable credit eligibility criteria. The certificate will be issued annually if such criteria are met and will specify the exact amount of the credit that a participant may claim, and will specify the tax year for which the credit may be claimed.

Participant means a business entity that has completed an application to be admitted into the Empire State Jobs Retention Program, has been issued a certificate of eligibility by ESD, has demonstrated that it meets the eligibility requirements of the Empire State Jobs Retention Program, and has been certified as a participant by ESD.

Line instructions

Line A – Year of eligibility

You may claim the credit for 10 consecutive tax years starting with the first tax year for which you receive a certificate of tax credit or the first tax year listed on your preliminary schedule of benefits, whichever is later. Enter a number from 1 to 10. Failure to qualify for credits for any of those years does not extend the 10-year benefit period.

Line B – If you are claiming a credit passed through to you from a partnership, mark an **X** in the box.

Schedule A – Computation of credit

The amount you are eligible to claim for this tax year is shown on your certificate of tax credit.

Line 1 – Enter the amount of your credit, which can be obtained from your certificate of tax credit issued by ESD. Attach a copy of your certificate.

Line 2 – Enter the amount from line 15.

Line 3 – New York S corporations: Transfer this amount to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*, and provide your shareholders with their pro rata share of line 3. The shareholder will enter that amount on Form IT-634, *Empire State Jobs Retention Program Credit*.

Line 4 – If a certificate of eligibility or a certificate of tax credit issued by ESD is revoked because you do not meet the eligibility requirements of the credit, the amount of all credits previously allowed and claimed by you under Tax Law section 36 prior to that revocation, must be added back to your tax for the tax year in which the revocation becomes final. **New York S corporations:** Only complete this line if reporting a recapture.

Enter a recapture with a minus (-) sign.

If you are a corporate partner, include your share of the partnership recapture here.

New York S corporations: Report the recapture on Form CT-34-SH and provide your shareholders with their pro rata share of recapture. The shareholder will enter that amount on Form IT-634. Do not complete lines 5 through 14.

Line 5 – New York C corporations: If the amount on line 3 is greater than the amount on line 4, subtract line 4 from line 3. This is the amount of your credit; continue with the rest of this form.

If the amount on line 4 is greater than the amount on line 3, you have a net recapture amount; subtract line 3 from line 4 and enter the result with a minus sign (-). Transfer the line 5 amount (with the minus sign) to the appropriate line of the tax credits section on your franchise tax return. Do not complete lines 6 through 14.

Schedule B – Computation of Empire State jobs retention program credit used, refunded, or credited as an overpayment to the next year (New York S corporations do not complete this schedule)

Line 6 – Enter your tax due before credits using the *Lines 6 and 9 entries table* below.

Line 7 – If you are claiming more than one tax credit for this year, enter the total amount of credits claimed before applying this credit. Otherwise, enter 0. You must apply certain credits before the Empire State jobs retention program credit. Refer to the instructions for your franchise tax return to determine the order of credits that applies.

Article 9-A filers: Refer to Form CT-600-I, *Instructions for Form CT-600, Ordering of Corporation Tax Credits*, for the correct order of credits.

If you are included in a combined return, include any amount of tax credit(s) being claimed by other members of the combined group, including the Empire State jobs retention program credit, that you wish to apply before your Empire State jobs retention program credit claimed on this form.

CT-33 and CT-33-A filers, including unauthorized insurance corporations: Do not enter on this line any empire zone (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.

Line 9 – Enter your minimum tax using the *Lines 6 and 9 entries table* below.

Lines 6 and 9 entries table

If you filed	Enter on line 6 any net recapture of other tax credits plus the amount from	Enter on line 9 the minimum tax below
Form CT-3	Line 78	Line 74b amount
Form CT-3-A	Line 77	Line 74b amount
Form CT-32	Line 5	250
Form CT-32-A	Line 5	250
Form CT-33	Line 11	250
Form CT-33-A	Line 15	Line 4 plus line 12
Form CT-33-NL	Line 5	250

Lines 11, 13 and 14 – Enter on line 11 the lesser of line 5 or line 10.

If your total credits from all sources are **\$2 million or less**, enter the amounts from lines 11, 13, and 14 on your franchise tax return.

If your total credits from all sources are **more than \$2 million**, you may be subject to the temporary credit deferral. Complete lines 11, 13, and 14 but do not enter the amounts from lines 11, 13, and 14 on your franchise tax return. See Form CT-500 to determine the proper amount to enter on your franchise tax return.

Partnership information

Only complete this section if you were a partner in a partnership and received a share of the credit from that entity. Enter the name, employer identification number (EIN), and amount passed through to you from each partnership. Obtain this amount from the partnership.

You must attach a copy of the partnership(s) certificate of tax credit issued by ESD to Form CT-634.

Line 15 – Total the credit amount and enter the total on line 15. Also, enter this amount on line 2.

Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.