



Instructions for Form CT-640

START-UP NY Telecommunication Services

Excise Tax Credit

Tax Law — Article 1, Section 39 and Article 9-A, Section 210-B.44

CT-640-I

General information

For tax years beginning on or after January 1, 2014, the telecommunication services excise tax credit is available to taxpayers who are approved to participate in the SUNY Tax-Free Areas to Revitalize and Transform Upstate New York (START-UP NY) Program. This program provides tax benefits to approved businesses that locate in vacant space or land of approved public and private colleges and universities, approved strategic state assets, and New York incubators affiliated with private universities or colleges that are designated as tax-free NY areas. The program is administered by Empire State Development (ESD). Approved businesses will be issued a Form DTF-74, *Certificate of Eligibility*, by the sponsoring campus, university, or college. For additional information about the START-UP NY Program, visit ESD's website at www.esd.ny.gov and the Tax Department's website (see *Need help?*).

The credit is equal to the amount of excise tax on telecommunication services imposed under Tax Law, Article 9, section 186-e that is passed through to and paid by approved businesses for such services rendered within a tax-free NY area during the tax year, to the extent not otherwise deducted in computing entire net income. The tax must be separately stated on a bill from the telecommunications service provider to qualify for the credit.

Unless the taxpayer's tax-free NY allocation factor is 100%, the credit may not reduce the tax liability below the fixed dollar minimum tax. The credit may not be applied against the metropolitan transportation business tax (MTA surcharge) 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.

Eligibility

A taxpayer that is a business, or an owner of a business in the case of a business taxed as a sole proprietorship, partnership (including a limited liability company taxed as a partnership), or New York S corporation, that is subject to tax under Tax Law Article 9-A (corporation franchise tax) or Article 22 (personal income tax), is eligible for the credit if the business:

- is approved to participate in the START-UP NY program under Economic Development Law (EDL) Article 21 by ESD;
- operates in a tax-free NY area at a location approved under EDL Article 21;
- creates and maintains net new jobs as required by EDL section 433.1(b); and
- meets an annual employment test beginning with the first year of operation as required by EDL section 433.1(b).

The net new jobs requirement and annual employment test under EDL section 433.1(b) must be met by the business on the annual performance report submitted to ESD. For more information about eligibility and net new job requirements, visit ESD's website at www.esd.ny.gov.

Failure to meet these eligibility requirements under EDL section 433.1(b) disqualifies the business from claiming tax benefits and may result in an assessment for previous benefits claimed.

Note: A business that has successfully completed residency in a New York State incubator pursuant to Urban Development Corporation Act section 16-v is **not** required to create or maintain net new jobs as required by EDL section 433.1(b) to claim the tax benefits under the START-UP NY program. However, to qualify for the credit, the business must at least maintain the number of employees of the business in New York State as shown on their application for entry into the program. For more information on New York State incubators, see ESD's website.

An eligible taxpayer subject to tax under Tax Law Article 9-A may claim the credit for 10 consecutive tax years beginning with the tax year during which the business locates in a tax-free NY area. These taxpayers should complete Form CT-640. Eligible taxpayers subject to tax under Tax Law Article 22 should complete Form IT-640, *START-UP NY Telecommunication Services Excise Tax Credit*. An approved business may not claim any other tax credit allowed under the tax law other than those under Tax Law section 39, with respect to its activities or employees in a tax-free NY area.

If the approved START-UP NY business is notified by ESD that it is subject to a recovery of tax benefits due to not meeting its performance benchmarks outlined in its application, the business must reduce the credit by the percentage reduction in net new jobs as set by the performance benchmarks. For more information, see Form CT-645, *Recapture of START-UP NY Tax Benefits*.

Penalties for fraud

If the Commissioner of Economic Development makes a final determination that an approved business participating in the START-UP NY program has acted fraudulently in connection with its participation in the program, the business will be:

- immediately terminated from the program;
- subject to criminal penalties, including but not limited to the felony crime of offering a false instrument for filing in the first degree in accordance with Penal Law section 175.35; and
- required in that year to add back to tax the total value of all of the tax benefits provided under the START-UP program that the business and the employees of the business have received up to the date of the final determination. The amount required to be added back is reported on the business's corporation franchise tax return if the business is taxed as a corporation or is a corporate partner of a partnership. If the owner of the business is a sole proprietor, an individual partner in a partnership, or a shareholder of a New York S corporation, the amount required to be added back is reported on their personal income tax return. For more information, see Form CT-645.

Definitions

Approved START-UP NY business is a taxpayer who is a business or owner of a business that operates within a tax-free NY area and who is approved to participate in the START-UP NY program pursuant to EDL Article 21.

Eligible telecommunication services excise tax is an excise tax on telecommunication services imposed under Tax Law section 186-e that is separately stated on a bill from the telecommunications provider and that has been paid by an approved START-UP NY business with respect to such services rendered within a tax-free NY area during the tax year.

New York S corporations

New York S corporations will calculate a credit, however the S corporation may not use the credit against its own tax liability. Instead the credit is passed through to the shareholders to use against their personal income tax liabilities on their New York State tax returns. Include the line 9 amount on Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*, which is filed with your New York State corporation tax return. Attach a copy of Form CT-640 to your return.

Provide all shareholders with the amount of their pro rata share of the credit calculated. The shareholders will file Form IT-640 to claim the credit on their New York State personal income tax returns.

Combined filers

A taxpayer filing as a member of a combined group is allowed to claim the credit, which is computed on a separate basis, but is applied against the combined tax.

Line instructions

Line A – Mark an **X** in the appropriate box to determine the parts of this form you need to complete. If you are claiming this credit **both** as a corporation that earned the credit and as a corporate partner receiving a share of the credit, mark an **X** in the Yes box and complete all appropriate schedules on one Form CT-640.

Line B – Enter the number from the *Certificate of Eligibility* issued to the approved START-UP NY business. Partners should receive this information from the partnership. Attach a copy of the *Certificate of Eligibility* to Form CT-640.

Line C – You may claim the credit for 10 consecutive tax years, starting with the first tax year the approved business that was issued the *Certificate of Eligibility* locates in a tax-free NY area. Enter a number 1 through 10 representing the tax year of the START-UP NY business tax benefit period for which you are claiming credit on this form.

Schedule A – Allocation factor

The *tax-free NY area allocation factor* is the percentage of the business's economic presence in the tax-free NY area where the business was approved to locate under EDL Article 21. The tax-free area allocation factor is a percentage computed using two factors: a property factor and a wage factor. The percentage is calculated by adding the two percentages determined on lines 2 and line 4 and then dividing the result by two.

The tax-free NY area property factor is determined by dividing:

- the average value of the business's real and tangible personal property, whether owned or rented to it, in the tax-free NY area in which the business was located, during the period covered by the taxpayer's return, by
- the average value of all the business's real and tangible personal property, whether owned or rented to it, within New York State during the period covered by the taxpayer's return.

Value of the business's real and tangible personal property means the adjusted basis of the properties for federal income tax purposes, except in the case of rented property, where the value is eight times the gross rents payable for the rental of the property during the tax year.

The tax-free NY area wage factor is determined by dividing:

- the total wages, salaries, and other personal service compensation paid during the tax year to employees (except general executive officers) employed at the business's location in the tax-free NY area, by

- the total wages, salaries, and other personal service compensation paid during the tax year to all of the business's employees within New York State (except general executive officers).

Line 1, column A – Enter the average value of real and tangible personal property, whether owned or rented, that is located within the tax-free NY area in which the business was located, during the current tax year.

Line 1, column B – Enter the average value of real and tangible personal property whether owned or rented, that is located within New York State during the current tax year.

Line 3, column A – Enter the total wages, salaries, and other personal service compensation paid during the tax year to all of employees (except general executive officers) employed at the business's location in the tax-free NY area.

Line 3, column B – Enter the total wages, salaries, and other personal service compensation paid during the tax year to all of the business's employees within New York State, except general executive officers.

Schedule B – Computation of credit

Line 7 – Enter the total eligible telecommunication services excise tax imposed and paid during the tax year. The tax must be separately stated on a bill from the telecommunication services provider to qualify for the credit.

Schedule C – Computation of credit used

Line 10 – Enter the amount from Form CT-3 or Form CT-3-A, Part 2, line 2, **plus** any net recaptured tax credits.

Line 11 – 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**. Tax credits must be applied in a certain order. Refer to Form CT-600-I, *Instructions for Form CT-600*, for the correct order of credits.

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

Line 13 – If the allocation factor on line 6 is 1.0, enter **0**. Otherwise, enter the fixed dollar minimum tax from Form CT-3, or the designated agent's fixed dollar minimum tax from Form CT-3-A.

Schedule D – Partnership information

If you were a partner in a partnership and received a share of the credit from that entity, complete this schedule. Enter the name, EIN, certificate number, year of business tax benefit period, and the credit amount passed through to you from the partnership. If you need more space, attach additional sheets using the same format. Enter the total from additional sheets (if applicable) on the appropriate line. Write the name and EIN of your corporation on each sheet.

Need help? and Privacy notification

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