



# Instructions for Form CT-645

## Recapture of START-UP NY Tax Benefits

Tax Law – Article 1, Sections 39 and 39-a

# CT-645-I

### General information

The SUNY Tax-Free Areas to Revitalize and Transform Upstate New York (START-UP NY) 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 are issued a certificate of eligibility by the sponsoring campus, university, or college. For additional information about the START-UP NY Program, visit [www.esd.ny.gov](http://www.esd.ny.gov) and the Tax Department's website (see *Need help?*). Also see TSB-M-13(7)C, (6)I, *SUNY Tax-Free Areas to Revitalize and Transform Upstate New York Program (START-UP NY program)*.

### Who must file

Complete Form CT-645 to report a recapture of START-UP NY tax benefits due to proportional recovery or fraud. You must file Form CT-645 with your corporate franchise tax return.

Do **not** use this form if:

- you are terminated from the program under Economic Development Law (EDL) section 436.4(b) because you no longer satisfy the eligibility criteria. You are not subject to recapture. However, upon termination you may not claim any tax benefits under Tax Law section 39 for that or any future tax year, calendar quarter, or sales tax quarter;
- you chose suspension from the program as a consequence of not meeting your performance benchmarks; or
- you chose proportional recovery as a consequence of not meeting your performance benchmarks and you are suspended from the START-UP NY program for not meeting the 75% net new jobs threshold.

**Note:** You are not eligible for any tax benefits during any tax years that you are suspended from the START-UP NY Program.

### Proportional recovery of tax benefits

If the approved START-UP NY business is notified by ESD that they are subject to a recovery of tax benefits due to not meeting their performance benchmarks outlined in their START-UP NY Program application, the business must reduce the total amount of START-UP NY tax benefits that were claimed or refunded for that measurement year by the percentage reduction in the number of net new jobs as set by the performance benchmarks. The percentage is calculated by dividing the difference between the number of net new jobs promised by the performance benchmark and actual number of net new jobs created, by the number of net new jobs promised in the performance benchmark.

ESD will perform an annual review on a calendar-year basis and notify you if you have not reached your performance benchmark. If you are notified that you are subject to proportional recovery, you must file Form CT-645 to report your recapture with your next corporate franchise tax return due after the date of notification. The recovery of tax benefits amount is computed in Schedule A.

### 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 for that year to add back to tax the total value of all of the tax benefits provided under the START-UP NY 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. The add back of tax benefits is computed in Schedule B.

### 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.

*A net new job* means a job created by a business participating in the START-UP NY Program in a tax-free NY area that satisfies all of the following criteria:

- the job is new to the state;
- the job has not been transferred from employment with another business located in this state through an acquisition, merger, consolidation, or other reorganization of businesses, or through the acquisition of assets of another business, or transferred from existing employment with a related person (as defined in Internal Revenue Code (IRC) section 465(b)(3)(C)) located in the state, to similar employment with the business, unless the business has received approval for such transfers from the Commissioner of Economic Development;
- the job is not filled by an individual employed within the state within the preceding 60 months by a related person;
- the job is either a full-time wage-paying job or two or more part-time jobs which together constitute the equivalent of a full-time wage-paying job (a full-time wage-paying job requires at least 35 hours of work per week); and
- the job is filled for more than six months during each year for which the tax benefits are being granted.

The information below represents the Internal Revenue Service (IRS) interpretation of the definition of *related person* in IRC section 465(b)(3)(C) as contained in IRS Publication 925, *Passive Activity and At-Risk Rules*. When preparing your tax return, you should refer to section 465(b)(3)(C) to see if the definition of related person has been amended.

**Related person** includes the following:

- members of a family, but only an individual's brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.);
- two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test;

- the fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts;
- a tax-exempt educational or charitable organization and a person who directly or indirectly controls it (or a member of whose family controls it);
- a corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation;
- a trust fiduciary and a corporation of which more than 10% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust;
- the grantor and fiduciary, or the fiduciary and beneficiary, of any trust;
- a corporation and a partnership if the same persons own over 10% in value of the outstanding stock of the corporation and more than 10% of the capital interest or the profits interest in the partnership;
- two S corporations if the same persons own more than 10% in value of the outstanding stock of each corporation;
- an S corporation and a regular corporation if the same persons own more than 10% in value of the outstanding stock of each corporation;
- a partnership and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership;
- two partnerships if the same persons directly or indirectly own more than 10% of the capital or profits of each;
- two persons who are engaged in business under common control; and
- an executor of an estate and a beneficiary of that estate.

To determine the direct or indirect ownership of the outstanding stock of a corporation, apply the following rules:

1. Stock owned directly or indirectly by or for a corporation, partnership, estate or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries.
2. Stock owned directly or indirectly by or for an individual's family is considered owned by the individual. The family of an individual includes only brothers and sisters, half-brothers and half-sisters, a spouse, ancestors, and lineal descendants.
3. Any stock in a corporation owned by an individual (other than by applying rule 2) is considered owned directly or indirectly by the individual's partner.

When applying rule 1, 2, or 3, stock considered owned by a person under rule 1 is treated as actually owned by that person. However, if a person constructively owns stock because of rule 2 or 3, he or she does not own the stock for purposes of applying either rule 2 or 3 to make another person the constructive owner of the same stock.

## New York S corporations

New York S corporations will calculate a recapture. However, the S corporation does not report the recapture in addition to its own tax liability. Instead the recapture is passed through to the shareholders to report on their New York State personal income tax returns. New York S corporations complete lines A and B, and Schedule A or B, and Schedule D. Include the line 35 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-645 to your return.

Provide all shareholders with the amount of their pro rata share of the recapture. The shareholders will file Form IT-645 to report

the recapture on their New York State personal income tax returns.

## Line instructions

**Additional sheets** – If you have more entries than will fit on the lines provided in Schedule C, attach additional sheets in the same format as the schedule. Include your name and taxpayer identification number on each sheet and attach them and Form CT-645 with your return.

**Line A** – Enter the number from the *Certificate of Eligibility* issued to the approved START-UP NY business. Partners should receive this information from the partnership.

**Line B** – Enter the employer identification number (EIN) of the certified START-UP NY business.

### Complete either Schedule A or B

Complete Schedule A if you are notified by ESD that the business is subject to recovery of tax benefits due to **not** meeting its performance benchmarks outlined in its application.

Complete Schedule B if ESD has made a final determination that the business is required to add back the total value of all tax benefits provided under the START-UP NY Program due to fraud.

### Schedule A – Proportional recovery of tax benefits

**Line C** – Enter the beginning and ending dates for the year subject to proportional recovery as shown on the notification letter received from ESD. This is the year subject to ESD's annual review to determine if you met your performance benchmark.

**Line D** – Enter a number (1 through 10) representing the period for which you are reporting a proportional recovery of tax benefits.

### Proportional recovery percentage

**Line 1** – Enter the number of net new jobs benchmark provided for in the business's START-UP NY application.

**Line 4** – Divide line 3 by line 1 and round to four decimal places. This is your *proportional recovery percentage*. This should match the proportional recovery percentage shown on the notification letter received from ESD. Enter this percentage on this line and on lines 6, 9, 12, 15, 18, and 21 as those tax benefits are applicable to the year that is subject to proportional recovery.

**Lines 5 through 22** – Complete all applicable lines that represent the tax benefits received for the year that is subject to proportional recovery.

### START-UP NY tax elimination credit

**Line 5** – Enter the total credit amount from Form CT-638, *START-UP NY Tax Elimination Credit*, for the tax year ending within the measurement year entered on line C.

### START-UP NY telecommunication service excise tax credit

**Line 8** – Enter the total credit amount from Form CT-640, *START-UP NY Telecommunication Services Excise Tax Credit*, for the tax year ending within the measurement year entered on line C.

### Metropolitan commuter transportation mobility tax (MCTMT)

**Line 11** – Multiply the amount of payroll expense excluded in computing your MCTMT for each quarter ending within the year

entered on line C by the applicable MCTMT rate for the quarter. Enter the total MCTMT on payroll expenses excluded on line 11. See the instructions for Form MTA-305, *Employer's Quarterly Metropolitan Commuter Transportation Mobility Tax Return*.

#### Sales and use tax

**Line 14** – Enter the amount of all credit or refunds of sales or use tax claimed on Form AU-11, *Application for Credit or Refund of Sales or Use Tax*, as a result of participation in the START-UP NY Program for the year shown on line C.

#### Real estate transfer tax

**Line 17** – If you filed Form TP-584-SNY, *Real Estate Transfer Tax Return for START-UP NY Leases*, during the year entered on line C to claim exemption from the New York State real estate transfer tax, complete Form TP-584, *Combined Real Estate Transfer Tax Return, Credit Line Mortgage Certificate, and Certification of Exemption from the Payment of Estimated Personal Income Tax*, as if the exemption had not applied and enter the total tax due.

**Organization tax** (Tax Law, Article 9, former section 180) **and license and maintenance fees** (Tax Law, Article 9, former section 181)

**Line 20** – If Form CT-240 and/or Form CT-245 would have been required to be filed if the business was not a START-UP NY eligible taxpayer, complete Form CT-240 and/or Form CT-245 for the year entered on line C. Enter the total of the amount from Form CT-240, line 7 and the amount from Form CT-245, line 1. Do **not** file Form CT-240 or Form CT-245.

**Note:** The organization tax and license and maintenance fees were repealed for tax years beginning on or after January 1, 2015.

#### Schedule B – Recapture of tax benefits due to fraud

**Lines 24 through 30** – Complete all applicable lines that represent the tax benefits received for all tax years that the business participated in the START-UP NY Program. If you were subject to proportional recovery during a tax year, report the tax benefits received for all tax years minus any proportional recovery amount.

**Line 24** – For each year that the business participated in the START-UP NY Program, enter the total amount of credits claimed on Form CT-638.

**Line 25** – For each year that the business participated in the START-UP NY Program, enter the total amount of credits claimed on Form CT-640.

**Line 26** – For each year that the business participated in the START-UP NY program and would have been required to complete Form CT-240 and/or Form CT-245, if the business was not a START-UP NY eligible taxpayer, complete Form CT-240 and/or Form CT-245. Enter the total amounts from Form CT-240, line 7 and Form CT-245, line 1 and any organizational tax that would have been paid to the Department of State.

**Note:** The organization tax and license and maintenance fees were repealed for tax years beginning on or after January 1, 2015.

**Line 27** – For each year that the business participated in the START-UP NY Program and excluded payroll expenses in computing the MCTMT, recompute the MCTMT without the exclusion. From this recomputed MCTMT subtract the actual MCTMT paid for the year and enter the result on this line.

**Line 28** – Enter the total amount of refunds and credits of sales and use tax paid claimed by the START-UP NY business on Form AU-11.

**Line 29** – For each year that the business participated in the START-UP NY Program and filed Form TP-584-SNY, complete Form TP-584 as if the exemption did not apply and enter the total amounts from Form TP-584, line 6.

**Line 30** – For each year that the business participated in the START-UP NY Program and had eligible employees who claimed a START-UP NY wage exclusion from NYS personal income taxes, NYC personal income taxes, the Yonkers city income tax and the Yonkers nonresident earnings tax, the tax benefits received by those employees must be recaptured by the business. You must use one of the methods below:

- recompute each employee's tax without the exclusion and subtract the actual tax paid by each employee; **or**
- multiply the amount of wages excluded for each year by the highest personal income tax rate in effect for that year.

#### Schedule C – Partnership information

If you were a partner in a partnership and received a share of the recapture from that entity, complete this schedule. Enter the name, EIN, certificate number, year of START-UP NY business tax benefit period, and the recapture amount passed through to you from the partnership.

#### Schedule D – Computation of recapture

##### Line 35

**C corporations:** Enter this amount as a negative number with a minus sign (-) in the credits section of your franchise tax return.

**New York S corporations:** Enter this amount on Form CT-34-SH.

#### Need help? and Privacy notification

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

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