



Instructions for Form CT-44

Claim for Investment Tax Credit for the Financial Services Industry

Tax Law – Article 9-A, Sections 210-B.1 and 210-B.2; and Article 33, Section 1511(q)

CT-44-I

General information

The investment tax credit (ITC) for the financial services industry expired for property placed in service on or after October 1, 2015.

The employment incentive credit (EIC), allowed to business corporations taxable under Article 9-A for the two years immediately succeeding the tax year for which an ITC was allowed, has also expired.

Note: You may only claim ITC and EIC carry forward or recapture of credit on this form.

S corporations: File this form only to report the recapture of the ITC.

The ITC and the EIC may not reduce the tax liability to less than the fixed dollar minimum tax for Article 9-A filers or the minimum tax due for 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).

Recapture of ITC

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 B – Recapture of ITC*).

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, 2015;
- 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.

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.

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. Any amount that was expended under IRC section 179(a) or any amount for which you elected to claim an empire zone (EZ) ITC should **not** be included in the investment credit base.

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

Line A

If you are claiming a credit based on costs passed through to you from a partnership, mark an **X** in the box.

Schedule A – Summary of tax credit(s)

Line 3 – If the amount on line 1 is greater than the amount on line 2, subtract line 2 from line 1.

If the amount on line 2 is greater than line 1, you have a net recaptured tax credit. Continue with line 3 instructions, but do not complete lines 7 through 15.

C corporations: subtract line 1 from line 2 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 1 from line 2 and enter the result as a positive number on Form CT-34-SH.

Schedule B – 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).

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 5 – 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.

Schedule C – Computation of credit used or carried forward (New York S corporations do not complete this section)

Lines 7 and 10 entries table

If you filed	Enter on line 7 any net recapture of other tax credits plus the amount from	Enter on line 10 the minimum tax below
CT-3	Part 2, line 2	Part 2, line 1c
CT-3-A	Part 2, line 2	Part 2, line 1c
CT-33	Line 11	250
CT-33-A	Line 15	Line 4 plus line 12
CT-33-NL	Line 5	250

Line 7 – Enter your tax due before credits using the *Lines 7 and 10 entries table* above.

Line 8 – 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.

CT-33 and CT-33-A filers, including unauthorized 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.

Line 10 – Enter your minimum tax using the *Lines 7 and 10 entries table* above.

Line 12 – Enter the lesser of line 3 or line 11. Transfer this amount to your franchise tax return.

Line 14 – Any unused portion of the ITC and EIC that you earned in prior periods can be carried forward for up to 15 years. Enter on this line any unused tax credit included on line 13 that expired during this tax year and is no longer available.

Need help? and Privacy notification

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