



# Instructions for Form CT-633

## Economic Transformation and Facility Redevelopment Program Tax Credit

# CT-633-I

### General information

The Tax Law provides a credit to taxpayers who are participants in the Economic Transformation and Facility Redevelopment Program. The economic transformation and facility redevelopment program tax credit is available to taxpayers subject to tax under Articles 9-A, 22, and 33.

### Eligibility

To be eligible for this credit, **all** of the following requirements must be met:

- The taxpayer is a participant (see *Definitions*) or the owner of a participant in the Economic Transformation and Facility Redevelopment Program.
- The taxpayer or the entity in which the taxpayer is an owner (see *Definitions*) has received a certificate of eligibility (see *Definitions*) from Empire State Development (ESD). Attach a copy of the certificate of eligibility to Form CT-633.
- The taxpayer or the entity in which the taxpayer is an owner is a qualified new business (see *Definitions*). However, this requirement does **not** apply to a participant at a closed facility that was previously owned by New York State, operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the Metropolitan Commuter Transportation District (MCTD), but outside New York City.
- The taxpayer or the entity in which the taxpayer is an owner has created and maintained at least five net new jobs (see *Definitions*) in the economic transformation area.

For more information on becoming a participant in the program see ESD's website (at [www.esd.ny.gov](http://www.esd.ny.gov)).

### Credit information

The economic transformation and facility redevelopment program tax credit is equal to the sum of the following credit components:

- the jobs tax credit component,
- the investment tax credit (ITC) component,
- the training tax credit component, and
- the real property tax credit component.

The credit may be claimed for five consecutive tax years (the benefit period) beginning with the first tax year in which five net new jobs are created. However, in no event may the benefit period start later than two years after the certificate of eligibility is issued. If a participant does not start construction, or acquire a qualified investment (see *Definitions*) or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the tax credits. If, in any year of the benefit period, the business fails to maintain the required level of five net new jobs (measured quarterly), the business will not be allowed a credit for that year. Such failure to be allowed a credit will not extend the business's benefit period.

No cost or expense paid or incurred that is the basis for any of the components of this credit can be the basis for any other credit. If a business elects to claim an economic transformation and facility redevelopment program tax credit, the election is irrevocable.

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

The credit is not allowed against the metropolitan transportation business tax (MTA surcharge) under Article 9-A or 33.

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.

### Definitions

*Certificate of eligibility* means the document issued by ESD to an applicant that demonstrates that the applicant has been admitted as a participant into the Economic Transformation and Facility Redevelopment Program. Possession of a certificate of eligibility does not guarantee the eligibility of the participant to claim the economic transformation and facility redevelopment program tax credit.

*Closed facility* means:

- a correctional facility, as defined in paragraph (a) of subdivision four of section two of the Correction Law, that has been selected by the governor of the state of New York for closure after April 1, 2011, but no later than March 31, 2012; **or**
- a facility operated by the Office of Children and Family Services under Article 19-G of the Executive Law that is closed pursuant to authority granted to such office in a chapter of the laws of 2011; **or**
- which has been closed provided that the Commissioner of Correctional Services or the Commissioner of the Office of Children and Family Services has notified the Commissioner of ESD of such closure; **or**
- a facility that was previously owned by New York State, and when operated, was operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the MCTD, but outside New York City.

*Entity in which the taxpayer is an owner* means a limited liability company (LLC) in which the taxpayer is a member, a partnership in which the taxpayer is a partner, and a New York S corporation in which the taxpayer is a shareholder.

*Net new jobs* means jobs created in the economic transformation area that:

- are new to the area;
- have not been transferred from employment in this state with the participant or with a related person in this state, and are not replacing jobs with similar titles or job responsibilities;
- are either full-time wage paying jobs or equivalent to a full-time wage paying job requiring at least 35 hours per week;
- are filled for more than six months in a tax year;
- are not general executive officers of the participant; **and**
- may not be filled with individuals having the familial relationship defined in Internal Revenue Code (IRC) section 267(c)(4) with any owner of the participant. Section 267(c)(4) states, *The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.*

*Participant* means a business entity that:

- is a new business \*(see definition of *Qualified new business*);
- has completed an application to be admitted into the Economic Transformation and Facility Redevelopment Program;

- has demonstrated to ESD how it plans to meet the eligibility criteria in the program; **and**
- has been issued a certificate of eligibility by ESD.

\*The requirement that a participant be a new business does **not** apply to a closed facility that was previously owned by New York State, operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the MCTD, but outside New York City.

*Qualified investment* means an investment in tangible property (including a building or a structural component of a building) that is owned by a business entity and:

- is depreciable under IRC section 167;
- has a useful life of four years or more;
- is acquired by purchase as defined in IRC section 179(d);
- has a situs in an economic transformation area in New York State in which the business is certified; **and**
- is placed in service in an economic transformation area in New York State on or after the date the certificate of eligibility is issued to the business entity.

*Qualified new business* means a business entity that satisfies all of the following tests:

- it must not be currently operating or located within the economic transformation area in which it is applying for certification;
- it must not be moving existing jobs into the economic transformation area in which it is applying for certification from another area of the state;
- it must not be substantially similar in ownership and operation to another taxpayer taxable or previously taxable under Article 9 section 183, 184, former section 185, or former section 186; former Article 32; or Article 9-A, 22, or 33, or the income or losses of which is or was includable under Article 22;
- it must not have caused individuals to transfer from existing employment in New York State with another business entity with similar ownership to similar employment with the business entity;
- it must not have acquired, purchased, leased, or had transferred to it real property located in the economic transformation area in which it is applying for certification if that real property was previously owned by an entity with similar ownership (regardless of form of incorporation or organization); **and**
- it must not be substantially similar in operation to a business entity from which it has acquired real or tangible personal property that is located in the economic transformation area in which it is applying for certification.

*Qualified training* includes a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited degree-granting, post-secondary college or university in New York State. The course must:

- directly relate to the duties that the employee performs for the taxpayer within the economic transformation area; **and**
- be intended to upgrade, retrain, or improve the productivity or theoretical awareness of the employee.

Classes in the disciplines of management, accounting, or the law, or any class designed to fulfill the discipline-specific requirements of a degree program at the associate, baccalaureate, graduate, or professional level of these disciplines do not qualify. Satisfactory completion of a course or courses means the earning and granting of credit or an equivalent unit, with the attainment of a grade of *B* or higher in a graduate level course or courses, a grade of *C* or higher in an

undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

*Qualified training expenditures* include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any related person (see *Definitions*), that are paid or reimbursed by the taxpayer. Qualified training expenditures do not include room and board, computer hardware or software not specifically assigned for the qualifying course or courses, late charges, fines, or membership dues and similar expenses. Qualified training expenditures are not eligible for the credit unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a site in an economic transformation area during the period of the coursework and lasting through at least 180 days after the satisfactory completion of the qualified course work. Qualified training expenditures do not include expenses for in house or shared training outside of a New York State higher education institution or the use of consultants outside of credit granting courses, whether the consultants function inside the higher education institution or not.

*Real property taxes* are charges imposed upon real property by or on behalf of a county, city, town, village, or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to Article 18 or Article 19 of the Real Property Tax Law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by Article 18 or 19, whichever applies.

The term real property taxes does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when:

- the property subject to the charge is limited to the property that benefits from the charge; or
- the amount of the charge is determined by the benefit to the property assessed; or
- the improvement for which the charge is assessed tends to increase the property value.

The term real property taxes includes payments in lieu of taxes (PILOT) made by the participant that is the beneficial owner of the real property to the state, a municipal corporation, or a public benefit corporation pursuant to a written agreement entered into between the participant and the state, municipal corporation, or public benefit corporation. A PILOT made by the participant pursuant to a written agreement does not constitute real property taxes in any tax year to the extent that the payment exceeds:

- the basis for federal income tax purposes of the real property located in the economic transformation area and subject to that agreement, calculated without regard to depreciation, on the last day of the tax year;
- multiplied by the county's full value tax rate (For these rates, see the Tax Department's website (at [www.tax.ny.gov](http://www.tax.ny.gov)). Use the full-value tax rates by county for the local fiscal year ending in the tax year immediately preceding this tax year.);
- divided by 1,000.

*Related person* means a related person as defined under IRC section 465(b)(3)(C).

The information below represents the Internal Revenue Service (IRS) interpretation of the definition of related persons 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 persons has been amended.

Related persons include 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.
- 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.

## Line instructions

### Schedule A – Eligibility

**Line 1b** – If you are a participant at a closed facility that was previously owned by New York State, operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the MCTD, but outside New York City, mark an **X** in the Yes box and continue with Part 2.

### Part 2 – Net new jobs

For each date specified of the current tax year, enter the number of net new jobs.

**Line 2** – Divide the total number of net new jobs for the current tax year by the number of the dates occurring during the current tax year (even if you had no net new jobs on those dates) to obtain the average number of net new jobs for the current tax year. Do not make entries for any dates that did not occur during your tax year. Do not include those dates in the calculation.

### Schedule B – Computation of credit component amounts

#### Part 1 – Jobs tax credit component

Complete columns A through F for each net new job created and maintained in the economic transformation area.

**Column D** – To meet the definition of net new job, the job must have been filled for more than six months of the tax year. For each person still employed at the end of the year, enter the last day of the tax year.

**Line 6 – S corporations:** Transfer this amount to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*, economic transformation and facility redevelopment program jobs tax credit component line, and provide your shareholders with their pro rata share of line 6. The shareholder will enter that amount on Form IT-633.

#### Part 2 – Investment tax credit (ITC) component

Costs incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the ITC component. A participant in the Economic Transformation and Facility Redevelopment Program or an owner of an entity that is a participant is not eligible for any other ITCs.

**Qualified investment at a closed facility** – An ITC of 10% of the cost or other basis for federal income tax purposes is allowed for a qualified investment at a closed facility (see *Definitions*).

A taxpayer who is the owner of a closed facility that was previously owned by New York State, operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the MCTD, but outside New York City, is allowed to include in its costs, or other basis of the qualified investment at the closed facility, any demolition costs incurred at that closed facility.

Demolition costs include:

- asbestos removal;
- rental of demolition equipment;
- personnel costs to operate demolition equipment;
- removal and disposal of demolition debris; and
- permits, licenses, and insurance necessary for demolition.

**Line 8** – The total amount of ITCs allowed for all eligible participants located at each closed facility cannot exceed \$8 million. The maximum credit amount allowed to you at the closed

facility will be provided to you by ESD. Enter the lesser of that amount or line 7 on line 8.

**All other qualified investments** – The economic transformation and facility redevelopment program ITC allows a taxpayer that meets the requirements of the statute to claim a credit in the amount of 6% (.06) of the federal basis for qualified investments at all locations other than at a closed facility within the economic transformation area.

**Line 10** – The amount of tax credit for all other qualified investments may not exceed \$4 million. This limit is imposed at the entity level so that the aggregate credit allowed to all partners, members, or shareholders of each entity does not exceed the \$4 million limitation.

**Line 14 – S corporations:** Transfer this amount to Form CT-34-SH, economic transformation and facility redevelopment program investment tax credit component line, and provide your shareholders with their pro rata share of line 14. The shareholder will enter that amount on Form IT-633.

**Part 3 – Training tax credit component**

A credit is allowed for qualified training expenditures (see *Definitions*) paid with respect to the project for which the certificate of eligibility is issued. The amount of the credit is the lesser of 50% of the qualified training expenses paid during the tax year or \$4,000 per employee. This credit applies only to qualified training (see *Definitions*) provided to employees who were hired after they lost their jobs at a closed facility as a result of the closure of that facility.

**Line 17 – S corporations:** Transfer this amount to Form CT-34-SH, economic transformation and facility redevelopment program training tax credit component line, and provide your shareholders with their pro rata share of line 17. The shareholder will enter that amount on Form IT-633.

**Part 4 – Real property tax credit component**

A credit is allowed for the real property taxes (see *Definitions*) on the real property located in the economic transformation area with respect to the project for which the certificate of eligibility is issued. Attach copies of your real property tax bills or your PILOT agreement.

**Property located entirely within a closed facility**

For property that is located entirely within the grounds of a closed facility, the credit for the first year of the benefit period is 50% of the real property taxes assessed and paid by the participant during that year on that property. For the following years of the benefit period, the percentage decreases by 10% each year.

**Property located outside a closed facility**

For property that is located outside of the closed facility, the credit for the first year of the benefit period is 25% of the real property taxes assessed and paid by the participant during that year on that property. For the following years of the benefit period, the percentage decreases by 5% each year.

**Line 22 – S corporations:** Transfer this amount to Form CT-34-SH, economic transformation and facility redevelopment program real property tax credit component line, and provide your shareholders with their pro rata share of line 22. The shareholder will enter that amount on Form IT-633.

**Schedule C – Credit summary**

**S corporations:** Complete this schedule only if reporting a recapture. Complete line 24 only. 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-633. Do not complete the rest of this form.

**Line 24** – If at the end of the benefit period the participant has not created sufficient net new jobs and made sufficient qualified investments to achieve a benefit to cost ratio of at least 10:1, the taxpayer is required to add back as tax for the last year of its benefit period the portion of the economic transformation and facility redevelopment program tax credits claimed for the years of its benefit period necessary to achieve a cost benefit ratio of 10:1.

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

**Line 25 – C corporations:** If the amount on line 23 is greater than the amount on line 24, subtract line 24 from line 23. This is the amount of your credit; continue with the rest of this form. If the amount on line 24 is greater than the amount on line 23, you have a net recapture amount; subtract line 23 from line 24 and enter the result with a minus sign (-). Transfer the line 25 amount (with the minus sign if a recapture) to the appropriate line of the tax credits section on your franchise tax return. Do not complete Schedule D.

**Schedule D – Computation of tax credit used, refunded, or credited as an overpayment in the next year**

**S corporations:** Do not complete this schedule.

**Lines 26 and 29 entries table**

If you filed	Enter on line 26 any net recapture of other tax credits plus the amount from	Enter on line 29 the minimum tax below
Form CT-3	Part 2, line 2	Part 2, line 1c
Form CT-3-A	Part 2, line 2	Part 2, line 1c
Form CT-33	Line 11	<b>250</b>
Form CT-33-A	Line 15	Line 4 plus line 12
Form CT-33-NL	Line 5	<b>250</b>

**Line 26** – Enter your tax due before credits using the *Lines 26 and 29 entries table* above.

**Line 27** – 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 economic transformation and facility redevelopment program tax credit. Refer to the instructions of 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 economic transformation and facility redevelopment program tax credit, that you want to apply before the 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 29** – Enter your minimum tax using the *Lines 26 and 29 entries table* above.

**Lines 31, 33, and 34** – Enter on line 31 the lesser of line 25 or line 30.

Transfer the amounts from lines 31, 33, and 34 to your franchise tax return.

### **Schedule E – Partnership information**

Complete this section only if you were a partner in a partnership and received a share of the economic transformation and facility redevelopment program tax credit from that entity. Enter the name, employer identification number (EIN), and credit component(s) amount passed through to you from each partnership.

Obtain these amounts from the partnership(s) allocating this credit to you. Attach a copy of the partnership(s) certificate of eligibility issued by ESD.

**Line 35** – Total the credit component amounts for each column and enter the total for each column on line 35. Enter these amounts on lines 5, 13, 16, and 21.

### **Need help? and Privacy notification**

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

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