



Instructions for Form IT-641

Manufacturer's Real Property Tax Credit

IT-641-I

General information

For tax years beginning on or after January 1, 2014, the manufacturer's real property tax credit is available to eligible taxpayers subject to tax under Articles 9-A and 22. Individuals (including sole proprietors), estates and trusts, shareholders of an S corporation, partners in a partnership (including a member of a limited liability company (LLC) that is treated as a partnership for federal income tax purposes), and beneficiaries of an estate or trust may claim the credit on Form IT-641.

Eligibility

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

- you are subject to tax under Tax Law Article 9-A or 22;
- you are a qualified New York manufacturer (you must meet the definition of a qualified New York manufacturer each year); and
- you paid real property taxes on property in New York State that is owned or leased by you, the manufacturer, and is principally used during the tax year for manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing.

Credit information

The credit is equal to the product of the following two factors:

- 20% and
- the eligible real property taxes paid during the tax year.

To qualify for the credit, the real property taxes must be paid by the taxpayer in the year such taxes become a lien on the real property and must be for real property:

- located in New York State, and
- principally used during the tax year for manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing.

The taxpayer must exclude property taxes that apply to areas of the property that are not involved in the production of goods by any of the above activities. Examples of areas that need to be excluded include common areas, vacant land, parking lots, etc. The amount of property taxes to be excluded may be allocated based upon square footage.

Any real property taxes used as the basis for computing this credit may not be used as the basis for any other credit under the Tax Law.

If you deducted real property taxes in computing federal taxable income, you must add back to federal adjusted gross income the amount of real property taxes deducted to the extent used as the basis for the calculation of this credit, on the appropriate form.

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.

Credit recapture

A portion of the credit must be recaptured if the amount of the real property taxes on which the credit was calculated is subsequently reduced by a final order in any proceeding under Real Property Tax Law Article 7 or any other provision of law. For more information, see *Schedule E – Computation of credit recapture*.

How to claim the credit

File Form IT-641 if you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in a partnership (including members of an LLC treated as a partnership for federal tax purposes),

or a shareholder of an S corporation, and you are claiming the manufacturer's real property tax credit.

An estate or trust that divides the credit among itself and its beneficiaries must submit Form IT-641 with Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit.

A partnership must submit Form IT-641 with Form IT-204, *Partnership Return*, showing the total credit.

A New York S corporation **does not** file Form IT-641. It must file Form CT-641, *Manufacturer's Real Property Tax Credit*. If you are a shareholder of an S corporation, obtain your share of the manufacturer's real property tax credit from the S corporation and follow the instructions on this form for claiming the credit on your personal income tax return.

Definitions

A *qualified New York manufacturer* is a manufacturer that either (1) has property in New York State of the type described for the investment tax credit under Tax Law section 210-B.1(b)(i)(A)* that has an adjusted basis for New York State tax purposes of at least \$1 million at the end of the tax year, or (2) has all its real and personal property in New York State.

*Tangible personal property and other tangible property, including buildings and structural components of buildings, which: are depreciable pursuant to Internal Revenue Code (IRC), section 167; have a useful life of four years or more; are acquired by purchase as defined in IRC section 179(d); have a situs in the state; and are principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing.

Adjusted basis of the property for New York State tax purposes: See TSB-M-19(5)C, (6)l, *New York State Adjusted Basis for Qualified New York Manufacturers*.

A taxpayer or in the case of a combined report, a combined group that does not satisfy the principally engaged test (see the definition of manufacturer below) may be a qualified New York manufacturer if the taxpayer or the combined group employs at least 2500 employees during the tax year in manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing in New York State and the taxpayer or combined group has property in the state used in these activities, the adjusted basis of which for New York State tax purposes at the close of the tax year is at least \$100 million.

Note: A qualified emerging technology company (QETC) is not considered a qualified New York manufacturer for purposes of this credit. A taxpayer is a QETC if it meets the definition of Public Authorities Law, section 3102-e(1)(c), except that the \$10 million limitation under section 3102-e(1)(c)(1) does not apply.

A *manufacturer* is a taxpayer or in the case of a combined report, a combined group that is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing during the tax year.

However, the generation and distribution of electricity, the distribution of natural gas, and the production of steam associated with the generation of electricity are not qualifying activities for a manufacturer.

A taxpayer or in the case of a combined report, a combined group is *principally engaged* in manufacturing if more than 50% of the gross receipts of the taxpayer or the combined group during the tax year are derived from the sale of goods produced by the above activities.

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In computing a combined group's gross receipts, intercorporate receipts are eliminated.

Real property tax means a charge 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 over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to Real Property Tax Law, Articles 18 or 19, the property must have been taxed at the rate determined for the class in which it is contained, as provided by such article, whichever is applicable.

The term real property tax includes taxes paid by the taxpayer on real property principally used during the tax year by the taxpayer in manufacturing where the taxpayer leases such real property from an unrelated third party if the following conditions are satisfied:

- the tax must be paid by the taxpayer as lessee pursuant to explicit requirements in a written lease, and
- the taxpayer as lessee has paid such taxes directly to the taxing authority and has received a written receipt for payment of taxes from the taxing authority.

A taxpayer principally engaged in the production of goods by farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing that satisfies the above conditions, is eligible if the taxpayer leases such real property from a related or unrelated third party.

The term real property tax does not include a payment made by the taxpayer in connection with an agreement for the payment in lieu of taxes (PILOT) on real property, whether such property is owned or leased by the taxpayer.

The term real property tax 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;
- 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.

An *unrelated third party* is any individual or entity who does not meet the definition of a related person under IRC, section 465(b)(3)(C). The Internal Revenue Service (IRS) interpretation of the definition of a related person is contained in IRS Publication 925, *Passive Activity and At-Risk Rules*.

Specific instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Line A – Mark an **X** in the appropriate box to determine the parts of this form you need to complete.

Individual (sole proprietor) and partnership: Complete Schedules A and D. If applicable, also complete Schedule E.

A married couple in a business enterprise that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Complete Schedules A and D. If applicable, also complete Schedule E.

Fiduciary: Complete Schedules A, C, and D. If applicable, also complete Schedule E.

Partner in a partnership, shareholder of a New York S corporation, and beneficiary of an estate or trust: Complete Schedules B and D. If applicable, also complete Schedule E.

Note: If more than one of the instructions above applies to you, complete all appropriate schedules on one Form IT-641.

Schedule A – Individual (sole proprietor), partnership, and fiduciary

Columns A and B – In column A, enter the physical address of the real property. Do **not** enter a PO Box or the mailing address of the company, if different. In column B, enter the eligible real property taxes paid during the tax year for each property listed in column A.

Schedule B – Partner's, shareholder's, or beneficiary's share of credit and credit recapture

Enter the appropriate information for each partnership, New York S corporation, or estate or trust from which you received a share of the credit or recapture of credit. Obtain your share of the credit or recapture of credit from your partnership(s), S corporation, estate or trust. If you need more space, submit a separate schedule (be sure to include your name and taxpayer identification number).

Schedule C – Beneficiary's and fiduciary's share of credit and credit recapture

An estate or trust must complete Schedule C. If an estate or trust allocates or assigns the credit or recapture of credit to its beneficiaries, it must base the division on each beneficiary's proportionate share of the income of the estate or trust. Provide the beneficiaries with their share of the credit and recapture.

Line 5

Column A – Enter the amount from line 3 **plus** the amount from line 4, column D.

Column B – Enter the amount from line 12 **plus** the amount from line 4, column E.

Line 7 – Enter the amount from line 7, column C, on line 10. Enter the amount from line 7, column D, on line 14.

Schedule E – Computation of credit recapture

The recapture amount is equal to the amount of credit originally allowed less the amount of the credit recalculated using the reduced real property taxes. The recapture amount must be added back for the tax year in which the final order is issued (see *Credit recapture*).

If the final order reduced real property taxes for more than one year, you must determine how much of the reduction is attributable to each year covered by the final order and calculate the recapture amount for each year based on the reduction.

Column A – Enter the tax year the credit was originally allowed.

Column B – Enter the credit amount originally allowed for the tax year entered in column A.

Line 13

Fiduciary: Do **not** enter an amount on this line.

All others: Enter your share of the credit recapture (line 4, column E amount) from a partnership, New York S corporation or an estate or trust. This information can be obtained from the partnership, New York S corporation, or the estate or trust. If you belong to more than one partnership, New York S corporation, or estate or trust enter the total amount of all your shares of the credit recapture.