



Instructions for Form CT-640

START-UP NY Telecommunication Services Excise Tax Credit

CT-640-I

General information

This 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).

You may be eligible for this credit if you or your business:

- is subject to tax under Tax Law Article 9-A (franchise tax on general business corporations);
- is approved to participate in the START-UP NY Program under Economic Development Law (EDL) by ESD;
- received a Form DTF-74, *Certificate of Eligibility*, by the sponsoring campus, university, or college;
- operates in a tax-free NY area;
- creates and maintains net new jobs; **and**
- meets an annual employment test beginning with the first year of operation.

For additional information about eligibility and the application process, visit *Empire State Development: START-UP NY Program*.

Credit calculation

- The credit is equal to the amount of excise tax on telecommunication services that is passed through to and paid by the approved businesses for such services rendered within a tax-free NY area during the tax year, to the extent not otherwise deducted in calculating entire net income.
- The excise tax must be separately stated on a bill from the telecommunications service provider.
- If eligible, you may claim the credit for ten consecutive tax years beginning with the tax year during which the business locates in a tax-free NY area.
- The credit may not reduce the tax liability below the fixed dollar minimum tax unless the taxpayer's tax-free NY allocation factor is 100%.
- You may not apply the credit against the metropolitan transportation business tax (MTA surcharge).
- If you do not use the full amount of the credit against your tax liability this year, you may request a refund or apply the overpayment to next year's tax. However, the Tax Department will not pay interest on the refund or overpayment.
- You may not claim any tax credit with respect to activities or employees in a tax-free NY area other than START-UP NY credits.
- If you fail to meet the eligibility requirement, you or your business are disqualified from claiming tax benefits and may receive an assessment for previous benefits claimed.

Note: A business that has successfully completed residency in a New York State incubator is **not** required to create or maintain net new jobs to claim the tax benefits under the START-UP NY Program. However, to qualify for the credit, the business must

maintain at least the number of employees of the business in New York State as shown on their application for entry into the program.

If ESD notifies the approved START-UP NY business that it is subject to a recovery of tax benefits due to not meeting its performance benchmarks outlined in its application, you 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*, and its instructions.

Penalties for fraud

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

- immediately terminate the business from the program;
- subject the business to criminal penalties; and
- require the business in 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. You must report any amount required to be added back on 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.

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.

Line instructions

New York S corporations: New York S corporations will calculate an amount of the START-UP NY Telecommunication Services Excise Tax 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 personal income tax returns. Include the line 9 amount on Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*, which you file with your New York State corporation tax return.

Combined filers: A taxpayer filing as a member of a combined group may claim the credit, which is calculated on a separate basis, but is applied against the combined tax.

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 Form DTF-74, *Certificate of Eligibility*, issued to the approved START-UP NY business.

Partners should receive this information from the partnership. Submit a copy of the *Certificate of Eligibility* with 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.

Additional forms: If you have more entries than will fit on the lines provided in Schedule D, submit additional Forms CT-640, completing only the necessary schedule. Include your name and taxpayer identification number on each form. On the indicated lines of the first Form CT-640, include the totals from all additional Forms CT-640. Place the extra forms behind the first Form CT-640 and submit them with your return.

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. The tax-free area allocation factor is a percentage calculated using two factors:

- a *property factor*, and
- a *wage factor*.

To calculate the percentage, add the two percentages determined on lines 2 and 4 and then divide the result by two.

To determine the tax-free NY area *property factor*, divide:

- 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.

To determine the tax-free NY area *wage factor*, divide:

- 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.

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.

Line 3, column A: Enter the total wages, salaries, and other personal service compensation paid to 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 to all of the business's employees within New York State (except general executive officers).

Schedule B: Calculation of credit

Line 7: Enter the total eligible telecommunication services excise tax imposed and paid during the tax year. To qualify for the credit, the telecommunications service provider must separately state the excise tax on the bill for services they provide you.

Schedule C: Calculation 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**. You must apply tax credits in a specific order.

Article 9-A taxpayers: Refer to Form CT-600-I, *Instructions for Form CT-600, Ordering of Corporation Tax Credits*, for the proper ordering of your credits.

If you are filing as a member of a combined group, include the total amount of all tax credits you **and** other members of the combined group are claiming - including the telecommunication services excise tax credit - 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

Obtain this information from all partnerships allocating the credit to you. If needed, see *Additional forms*.
