

**Transfer of certified capital company (CAPCO) credits
for Article 33 (Insurance Corporations)**

Chapter 61 of the Laws of 2005 amended Article 33 of the Tax Law to allow an insurance corporation that is a certified investor in a certified capital company (CAPCO) to transfer or sell unused CAPCO tax credits, in whole or in part, to any affiliate within an affiliated group of taxpayers that is subject to tax under Article 33. The term "affiliated group" has the same meaning as described in section 1504 of the Internal Revenue Code except that the exclusion described in section 1504(b)(2) of the Internal Revenue Code does not apply and the references to "at least eighty percent" in section 1504 shall be read as "more than fifty percent".

The transfer or sale of the credit will not affect the time schedule for claiming the credit transferred or sold. Any credit required to be recaptured will be the responsibility of the taxpayer who actually claimed the credit against their tax due. A transferee may claim the credit in the same manner and subject to the same provisions and limitations of Article 1, section 11 of the Tax Law, as the taxpayer to whom the credit was originally allowed.

The insurance corporation making the transfer or sale must notify the Department of Taxation and Finance and the Insurance Department of the transfer or sale of the credit within forty-five days of the date of the transfer. There is no specific form for this purpose. The insurance corporation that transfers or sells some or all of the credit must send a letter stating the name of each transferee corporation, the employer identification number of each transferee corporation, the date of transfer or sale, the program number under which the credit was allocated, and the amount of unused credit being transferred or sold to each transferee corporation. The information must be sent to the following addresses:

New York State Department of Taxation and Finance
Income / Franchise Desk Audit Bureau
W.A. Harriman Campus
Building 9, Room 380
Audit Group 9
Albany, NY 12227

Christopher Rulon
Assistant Director of Administration and Operations
New York State Insurance Department
Taxes and Accounts Bureau
One Commerce Plaza
Albany, NY 12257

Once the insurance corporation has properly notified the Department of Taxation and Finance and the Insurance Department of the transfer, the affiliate may claim a credit or refund of the CAPCO credit transferred. The transferee corporation claims the CAPCO credit by filing Form CT-33.1, *Claim for CAPCO Credit*.

This provision is retroactive and applies to any CAPCO credits transferred on or after August 1, 2003. If a transferee corporation has already filed its return for a tax year beginning in 2003, 2004 or 2005, for which it is entitled to claim a CAPCO credit, it may claim the CAPCO credit for such year by filing Form CT-8, *Claim for Credit or Refund of Corporation Tax Paid* and attaching the 2005 version of Form CT-33.1. A claim for credit or refund of tax must be filed within three years from the date the return was filed, or within two years from the date the tax was paid, whichever is later.