Department of Taxation and Finance

Important:

Article 32 of the Tax Law was repealed, effective for tax years beginning on or after January 1, 2015, by Part A of Chapter 59 of the Laws of 2014. As a result, this TSB-M is obsolete and cannot be relied upon for tax years on or after that date insofar as the TSB-M addresses matters relating to Article 32.

For additional information concerning the Article 32 repeal, see Transitional Filing Provisions for Taxpayers Affected By Corporate Tax Reform Legislation.

Insert added on July 15, 2022.

New York State Department of Taxation and Finance

Taxpayer Services Division
Technical Services Bureau

TSB-M-78(14)C
Corporation Tax
Instructions and Interpretations Section
September 8, 1978

This Technical Service Bureau Memorandum contains information about credits against New York State Franchise Tax under Article 9-A, 32 and 33.

For quick reference, the following index is provided:

1. Eligible Business Facility Credit (Article 9-A, Section 210.11, Article 32, Section 1456(b); Article 33, Section 151l(d))

This credit against tax is allowed for taxpayers which own or operate an eligible business facility. For a facility to qualify as an eligible business facility, it must meet the requirements of Section 115 of the Commerce Law. The New York Job Incentive Board of the Department of Commerce will determine whether a facility qualifies as an eligible business facility. In addition, the Job Incentive Board will issue a Certificate of Eligibility which must accompany the claim for tax credit.

The credit allowed is computed by multiplying the franchise tax by the average of the following percentages:

1. The percentage of the eligible property, as shown on the certificate of eligibility, to the total New York State Property, except for inventory.

2. The percentage of eligible wages, as shown on the certificate of eligibility, to tbe total New York State Wages. Wages from general executive officers should be excluded from the computation of the wage percentage.

The credit on the eligible business facility is allowable for up to ten years. The credit allowable for the applicable period may not reduce the franchise tax to less than the minimum tax for that period. Any unused credit may not be carried to another period.

Similar credits applicable to bank corporations and to insurance corporations were enacted. The credit under Article 32 (Bank Corporations) applies to the taxable periods beginning on or after July 1, 1976. The credit under Article 33 (Insurance Corporations) applies to taxable periods beginning on or after January 1, 1978 and shall expire on December 31, 1980.

THIS CREDIT SHOULD BE CLAIMED ON FORM CT-45 (Claim for Tax Credit - Eligible Business Facility).

2. Credit for Sales or Compensating Use Taxes on Catalytic Purifying or Bleaching Chemical Agents (Article 9-A, Section 210.15)

Credit is allowed for certain sales tax or compensating use tax due and paid after January 1, 1978 upon the purchase of any catalytic purifying or bleaching chemical agent used directly or predominantly in the production of goods.

The amount of the credit shall be the amount of the sales or compensating use tax paid pursuant to the provisions of Article 28, Section 1105 of the New York State Tax Law. Therefore, sales and compensating use taxes collected for counties and municipalities are not allowed. The amount of the credit that is allowed must be added back to entire net income on line 30 of Schedule B of form CT-3 (New York State Corporation Franchise Tax Report).

The credit allowable for the applicable period may not reduce the franchise tax to less than the minimum tax for that period. Any unused credit may not be carried over to any following year.

THIS CREDIT SHOULD BE CLAIMED ON FORM CT-44 (Claim for Sales and Use Tax Credit).

3. Credit for Sales or Compensating Use Taxes on Property Used in Waste Treatment or Air, Water, or Noise pollution Abatement Facilities (Article 9-A, Section 210.16)

Credit is allowed for certain sales tax or compensating use tax due and paid after January 1, 1978 and before January 1, 1981 upon the purchase of tangible personal property, including machinery and equipment, for use or consumption directly and predominantly in industrial waste treatment or air, water, or noise pollution abatement facilities and operations.

The amount of the credit shall be the amount of the sales or compensating use tax paid pursuant to the provisions of Article 28, Section 1105 of the New York State Tax Law. Therefore, sales and compensating use taxes collected for counties and municipalities are not allowed. The amount of the credit that is allowed must be added back to entire net income on line 30 of Schedule B of form CT-3 (New York State Corporation Franchise Tax Report).

The credit allowable for the applicable period may not reduce the franchise tax to less than the minimum tax for that period. Any unused credit may not be carried over to any following year.

THIS CREDIT SHOULD BE CLAIMED ON FORM CT-44 (Claim for Sales and Use Tax Credit).

4. Investment Tax Credit (Article 9-A, Section 210.12)

Section 210.12 provides for a credit to be allowed on the percentage of the cost or federal basis of certain tangible personal property and other tangible property, including building and structural components.

In order for the property to qualify, it must meet the following requirements:

A. acquired, constructed, reconstructed or erected by the taxpayer after December 31, 1968.

B. acquired by the taxpayer by purchase pursuant to section 179(d) of the Internal Revenue Code.

C. depreciable pursuant to Section 167 of the Internal Revenue Code.

D. have situs in New York State.

E. are principally used by the taxpayer in the production of goods by manufacturing, processing, assemblying, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing.

The percentage to be used to compute the investment tax credit will depend upon the period during which the property was acquired, constructed, reconstructed or erected. The percentages and the periods are shown below:

Property Acquired During	Percentage
1969-1973	1%
1974-1977	2%
1978	3%
after 1978	4%

The total investment credit allowable may not reduce the franchise tax to less than the minimum tax for that period. However, any excess investment tax credit may be carried forward to the next taxable period. THIS CREDIT SHOULD BE CLAIMED ON FORM CT-46 (Claim for Investment Tax Credit).

5. Employment Incentive Tax Credit (Article 9-A, Section 210.12-A)

A taxpayer who is allowed an investment tax credit on property acquired on or after January 1, 1976 may be eligible for the employment incentive tax credit equal to 50% of the investment tax credit in any of the three years succeeding the year in which the investment tax credit is allowed. For any taxable year, this credit will be allowed if the average number of employees in New York State during a taxable year is at least 101% of the average number of employees in New York State in the year immediately preceding the year in which the investment credit was allowed.

Corporations not subject to franchise tax in the year preceding the year in which the investment tax credit was allowed are ineligible for this additional credit.

This credit may not reduce the franchise tax to less than the minimum tax for the taxable year. Any unused credit may be carried forward to the next taxable period.

THIS CREDIT SHOULD BE CLAIMED ON FORM CT-46 (Claim for Investment Tax Credit).

6. DISC Export Credit (Article 9-A, Section 210.13)

Corporate stockholders in a tax-exempt DISC (a DISC receiving more than 5% of its receipts from the sale or rental of goods obtained from a stockholder) are allowed a DISC export credit where the goods obtained from the stockholder are shipped to customers from a place of business of the stockholder in New York State.

The credit is equal to 70% of the tax on the DISC income which is deferred for federal tax purposes. This credit may not reduce the franchise tax to less than the minimum tax for the taxable year. Any unused DISC export credit may not be carried over.

THIS CREDIT SHOULD BE CLAIMED ON SCHEDULE N OF FORM CT-3C (Consolidated Franchise Tax Report)

7. Credit for Tax on Certain Fire Insurance Premiums (Article 33, Section 1511(a))

This credit is allowed to insurance corporations for the amount of taxes paid or accrued during the taxable period covered by the report on premiums for any insurance against loss or damage by fire under Section 553 or 554 of the Insurance Laws or under the charters of the cities of Buffalo or New York.

This credit is limited to the tax shown on line 10 of Schedule A of form CT-33. The unused credit cannot be carried over to another taxable year.

THIS CREDIT SHOULD BE CLAIMED ON LINE 11 OF SCHEDULE A OF FORM CT-33 (Franchise Tax Return on Insurance Corporations).

8. Retaliatory Tax Credit (Article 33, Section 1511(b))

This credit is allowed to insurance corporations organized or domiciled in this state for 90% of the retaliatory taxes paid to other states for the privilege of doing business in such other states. The credit may be claimed only for a retaliatory tax paid on business after December 31, 1973. The credit should be claimed on the return for the taxable period during which the retaliatory taxes were paid.

The credit may not exceed the tax payable under Article 33 for the taxable period for which the retaliatory taxes were imposed or assessed. If the credit exceeds the tax payable on the return for which the credit is claimed, the taxpayer may elect to have the excess credited to the next taxable period or refunded without interest.

THIS CREDIT SHOULD BE CLAIMED ON LINE 13 OF SCHEDULE A OF FORM CT-33 (Franchise Tax Return on Insurance Corporation).

9. Credit for Servicing Mortgages (Article 32, Section 1456(a))

A bank, as defined by Section 2402 of the Public Authorities Law, may claim a credit for servicing mortgages acquired by the State of New York Mortgage Agency.

The credit for servicing mortgages on dwellings of four families or less is 2.93% of total principal (exclusive of curtailment and discharge payments) and interest collected. The credit for servicing mortgages of less than $1 million on dwellings of more than four families is 0.125% of the interest collected divided by the mortgage interest rate. The credit for servicing mortgages of $1 million or more on dwellings of more than four families is 0.1% of the interest collected divided by the mortgage interest rate.

THIS CREDIT SHOULD BE CLAIMED ON LINE 6 OF SCHEDULE A OF FORM CT-32 (Franchise Tax Return for Financial Corporations). In addition, a rider should be attached to the return showing the computation of this tax credit.