

Amendments to the Investment Tax Credit for the Financial Services Industry and the Empire Zone Investment Tax Credit for the Financial Services Industry

Chapter 637 of the Laws of 2008 amended certain provisions of the investment tax credit for the financial services industry and the empire zone investment tax credit for the financial services industry (financial services investment tax credits) allowed under Article 9-A (franchise tax on business corporations), Article 22 (personal income tax), Article 32 (franchise tax on banking corporations), and Article 33 (franchise tax on insurance corporations) of the Tax Law. The amendments apply to taxable years ending on or after January 1, 2008.

The financial services investment tax credits are available for qualified property that is *principally used* in the ordinary course of a taxpayer's business:

- as a broker or dealer in connection with the purchase or sale of stocks, bonds, other securities, or commodities or in providing lending, loan arrangement, or loan origination services to its customers in connection with the purchase or sale of securities;
- as a provider of investment advisory services for a regulated investment company (as defined in Internal Revenue Code (IRC) section 851); or
- for Article 9-A taxpayers, as an exchange registered as a national securities exchange within the meaning of sections 3(A)(1) and 6(A) of the Securities Exchange Act of 1934, as a board of trade as defined in section 1410(a)(1) of the Not-for-Profit Corporation Law, or as an entity that is wholly owned by and that provides automation or technical services to one or more such national securities exchanges or boards of trade.

Property purchased by a taxpayer affiliated with a regulated broker, dealer, national securities exchange, or board of trade or property leased by a taxpayer to an affiliated broker, dealer, national securities exchange, or board of trade is eligible for a financial services investment tax credit if the property is principally used by the affiliate in a qualifying activity as described above. The amendments provide that property purchased by a taxpayer affiliated with a registered investment advisor or property leased by a taxpayer to an affiliated registered investment advisor is also eligible for the credit(s) if the property is principally used by the affiliate in a qualifying activity described above.

The amendments also provide that for purposes of determining if the property is principally used by the taxpayer in a qualifying activity as described above, the taxpayer may aggregate its uses as (1) a broker or dealer and (2) a provider of investment advisory services. In addition, the taxpayer may aggregate its uses for either or both of those activities with its affiliated regulated broker, dealer, and registered investment advisor.

Under prior law, taxpayers were allowed the financial services investment tax credits if all or a substantial portion of the employees performing the administrative and support functions resulting from or relating to the qualifying uses of such property were located in New York State.

Under the amendments, a taxpayer will be allowed the credits if **one** of the eligibility tests described below is met. However, if the taxpayer first becomes subject to tax in New York State after the taxable year beginning in 1998, then the taxpayer is not required to satisfy any of these eligibility tests for its first taxable year. The eligibility tests are:

- 80% or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of the property are located in New York State.
- The average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of the property and are located in New York State during the taxable year the credit is claimed is equal to or greater than 95% of the average number of employees that perform these functions and are located in New York State during the 36 months immediately preceding the taxable year for which the credit is claimed.
- The number of New York State employees employed during the current taxable year must be equal to or greater than 90% of the New York State employees on
 - December 31, 1998 (if the taxpayer was a calendar year filer taxable in New York State in 1998); or
 - the last day of its first taxable year ending after December 31, 1998, if the taxpayer was not a calendar year filer in 1998, or was not subject to tax in New York State for 1998.

If the uses of the property must be aggregated to determine whether the property is principally used in a qualifying activity as previously described, then either each affiliate using the property must satisfy one of the eligibility tests individually or one of the eligibility tests must be satisfied through the aggregation of the employees of the taxpayer and those of its affiliated regulated broker, dealer, and registered investment advisor using the property.

The amendments apply to taxable years ending on or after January 1, 2008. Taxpayers who did not originally claim the financial services investment tax credits or who were unable to claim the credits may be entitled to file for a refund by filing the appropriate amended tax return. Generally, any corporate or personal income tax claim for credit or refund that is filed within

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three years from the time the return was filed or two years from the time the tax was paid, whichever is later, will be considered timely.

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