New York State Department of Taxation and Finance

Instructions for Form IT-212

1985

Investment Credit and Retail Enterprise Credit

General Instructions

Who Must File

File Form IT-212 if you are an individual, a beneficiary or fiduciary of an estate or trust, a member of a partnership or a shareholder of an S corporation, and:

- ☐ You are claiming the investment credit.
- ☐ You are claiming the retail enterprise credit.
- ☐ You are claiming a carryover of unused investment credit and/or retail enterprise credit from a prior period.
- ☐ You had an early disposition of property for which the investment credit and/or retail enterprise credit was allowed in a prior year.

An estate or trust that divides the credit or tax on early dispositions among itself and its beneficiaries must attach Form IT-212 to Form IT-205 showing each beneficiary's share of the credit or tax on early dispositions.

A partnership must file Form IT-212 with Form IT-204 showing the partnership's total investment in qualified property or total early disposition of qualified property.

An S corporation does not have to file Form IT-212. It must file Form CT-46. If you are a shareholder in an S corporation that has made the election under Section 660 of the Tax Law, obtain your share of the corporation's credit and tax on early dispositions of qualified property from the corporation.

Credits Not Allowed

You cannot claim the investment credit and/or retail enterprise credit if:

- ☐ You are claiming the research and development credit. For information on the research and development credit, see Form IT-217 and instructions IT-217-I.
- ☐ You are claiming the deduction for research and development facilities (Section 612(g) of the Tax Law).

You cannot claim the investment credit if:

- ☐ You are claiming the deduction for air and water pollution control facilities, and acid deposition control equipment (Section 612(h) of the Tax Law).
- ☐ You are the lessor or lessee of qualifying property. If you made a safe harbor election (before January 1, 1984) under Section 168(f)(8) of the Internal Revenue Code you are not considered a lessee. **Exception:** If you are a lessee and in fact the beneficial owner of qualifying property, you may be able to claim the investment credit (Section 606(a)(4) of the Tax Law).

Qualifying Investment Credit Property

The credit is allowed for investment in new or used tangible personal property or other tangible property (including buildings and structural components of buildings) that:

- ☐ Was acquired, constructed, reconstructed or erected by the taxpayer after December 31, 1968;
- ☐ Is depreciable under Section 167 or Section 168 of the Internal Revenue Code;
- ☐ Has a useful life of 4 years or more;
- ☐ Was acquired by purchase as defined in Section 179(d) of the Internal Revenue Code;
- ☐ Is located in New York State; and
- ☐ Is 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.

  * For this purpose, manufacturing means the process of working raw materials into wares suitable for use or of giving new shapes, new quality or new combinations to matter which has already gone through some artificial process by the use of machinery, tools, appliances and other similar equipment.

Property used in the production of goods includes machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and includes all facilities used in the production operation, including storage of material to be used in production and of the products that are produced.

Retail Enterprise Credit

If your business is a retail enterprise* you may claim a credit for qualified rehabilitation expenditures, paid or incurred on or after June 1, 1981 for a qualified rehabilitated building if:

- ☐ You do not otherwise qualify for the investment credit under Section 606(a) of the New York State Tax Law;
- ☐ You are eligible to claim the federal investment credit solely by reason of Internal Revenue Code Section 48(a)(1)(E), which provides for a credit for that portion of the basis of a qualified rehabilitated building that relates to qualified rehabilitation expenditures;
- ☐ The qualified rehabilitated building is located in New York State;
- ☐ The expenditures are paid or incurred for the portion of the qualified rehabilitated building used by you in the retail sales activity of your retail enterprise.

  * For this purpose, retail enterprise means a taxpayer that is a registered vendor for New York State Sales Tax, is primarily engaged in the retail sale of tangible personal property, and is eligible for the federal investment credit under Internal Revenue Code Section 38. See Section 606(a)(11) of the Tax Law.

When Allowed

The credit is allowed only for the taxable year in which qualified property is placed in service. However, if all of the credit cannot be used in the year the property is placed in service, a carryover credit may be claimed in the subsequent year or years.

Cost or Other Basis

The investment credit and/or retail enterprise credit are figured on the cost or other basis of qualified property for federal income tax purposes. If you are required to reduce your federal basis by one-half of the federal investment credit, then you must use that reduced basis for computing your New York State investment credit and/or retail enterprise credit. Do not include any amount that was written off as an expense under Section 179(a) of the Internal Revenue Code. The basis of qualified property must include the remaining basis of other property exchanged or traded in for it. If a credit was previously allowed on the property exchanged or traded in, a disposition of property has occurred and you may have to figure a tax on early dispositions (see Part III instructions).

If qualified property is acquired to replace insured property that was stolen or destroyed by fire, storm, shipwreck or other casualty, the basis of the replacement property is its cost reduced by any amount of gain not recognized for federal income tax purposes because the insurance proceeds were invested in the replacement property.

Carryover of Unused Investment Credit and/or Retail Enterprise Credit

If you cannot claim all of your credit because it is more than your New York State tax less other credits, you can carry over the unused amount to the following year or years until it is used up or if you are the owner of a new business, you may qualify for a refund (see below).

Refundable Unused Investment Credit and/or Retail Enterprise Credit

If you are a sole proprietor or a partner in a new business, you can claim a refund of your unused credit instead of carrying over the unused amount to next year.

You can make this election in only one of the first four years that you operate your new business.

You **cannot** claim a refund of unused credit if:

- ☐ You have previously claimed a refund of unused credit; or
- ☐ You have operated your new business in New York State for more than four years before the day your tax year began; or
- ☐ Your new business is substantially similar in operation and ownership to a business that:
  - a. Is (or was) subject to any of the following taxes:
    - — Franchise tax on transportation and transmission corporations and associations.
    - — Additional franchise tax on transportation and transmission corporations and associations.
    - — Franchise tax on farmers, fruit growers and other like agricultural corporations organized and operated on a cooperative basis.
    - — Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.
    - — Franchise tax on business corporations.
    - — Franchise tax on banking corporations.
    - — Franchise tax on insurance corporations.
  - b. Would have been subject to the New York State unincorporated business tax (as such tax was in effect on January 1, 1980).
  - c. The income or losses of which is (or was) included in computing your New York State personal income tax.

If you are a shareholder of an S corporation that has an election in effect under Section 660 of the Tax Law, and the S corporation qualifies as a new business, as defined in Section 210.12(j) of the Franchise Tax Law, you may qualify to have the excess credit which relates to your pro rata share of the corporation's credit refunded, provided you have not previously received a refund of any investment credit or retail enterprise credit.

Early Disposition of Property— Tax on Early Dispositions

If property on which the investment credit and/or retail enterprise credit was taken is disposed of or removed from qualified use before its useful life or specified holding period ends (see instructions for Part III), the difference between the credit taken and the credit allowed for actual use must be added to your income tax in the year of disposition. However, if the property was in qualified use for more than 12 consecutive years, the add-back is not required.

Disposition of property also includes:

- ☐ The contribution of property to a partnership or corporation unless a substantial interest in the ownership of the trade or business is retained by the transferor;
- ☐ The sale by a partner of his interest in a partnership;
- ☐ A reduction in the proportionate stock interest of an electing New York S corporation shareholder;
- ☐ Conversion of property to personal use;
- ☐ A change in use whereby the property is not used in the production of goods or as an air pollution control facility, a water pollution control facility, acid deposition control equipment or a research or development facility;
- ☐ A change in the location of the property to a situs outside New York State;
- ☐ An exchange of property for other property of like kind (including a trade-in of property); and
- ☐ The theft or destruction of property.

Ordinarily, transfers by reason of death are **not** dispositions of property.

Use Part III of Form IT-212 to figure your tax on early dispositions.

Line-by-Line Instructions

Individuals: Complete Parts I, II and III
Fiduciaries: Complete Parts I, II, III and IV
Partnerships: Complete Parts II and III
Shareholders of S Corporation: Complete Parts I, II and III

Part I — Computation of Investment Credit and/or Retail Enterprise Credit

Line 1a — Individual or Fiduciary — Enter your credit from Part II, column G. See Part II instructions below.

Line 1b — Beneficiary — Enter your share of the credit on qualified investments made by estates and trusts (from fiduciary's Form IT-212, Part IV, column C).

Line 1c — Partner — Enter your share of the credit on qualified investments made by partnerships (from partnership's Form IT-204, Schedule C, Part III).

Line 1d — S Corporation Shareholder — Enter your share of the credit on qualified investments made by S corporations (from S corporation's Form CT-3S, Schedule C, Part II).

Line 2 — Fiduciary — Enter the amount of credit that was allocated to beneficiaries in Part IV, column C.

Line 6a — Individual or Fiduciary — Enter your tax on early dispositions from Part III, column H. See Part III instructions below.

Line 6b — Beneficiary — Enter your share of tax on early dispositions made by estates and trusts (from fiduciary's Form IT-212, Part IV, column D).

Line 6c — Partner — Enter your share of tax on early dispositions made by partnerships (from partnership's Form IT-204, Schedule C, Part III).

Line 6d — S Corporation Shareholder — Enter your share of the tax on early dispositions made by S corporations (from S corporation's Form CT-3S, Schedule C, Part II).

Line 7 — Fiduciary — Enter the amount of tax on early dispositions that was allocated to beneficiaries in Part IV, column D.

Line 9 — If line 8 is more than line 5, subtract line 5 from line 8. Individuals — enter the difference on line 9 and also enter it on Form IT-201-ATT, Schedule OT, line 12, or Form IT-203-ATT, Schedule OT, line 11. Fiduciaries — enter the difference on line 9 and also add it to any amount shown on Form IT-205, page 1, line 14. If line 5 is more than line 8, enter difference on line 9 and continue to line 10.

Line 10 — Do **not** include any amount of minimum income tax, separate tax on lump sum distributions or separate tax on PASS funds on line 10.

Line 11 — Individuals — Enter the total amount of other credits from worksheet, line 5, below.

Worksheet:

1. Household credit *(from IT-201, line 54, or IT-203, line 54)*	1.________
2. Resident credit *(from IT-201-ATT, Schedule OC, line 1)*	2.________
3. Accumulation distribution credit *(from Schedule OC of IT-201-ATT, line 2, or IT-203-ATT, line 1)*	3.________
4. NY State child and dependent care credit *(from Schedule OC of IT-201-ATT, line 3, or IT-203-ATT, line 2)*	4.________
5. **Total Other Credits** *(add lines 1 through 4; enter here and on Form IT-212, line 11)*	5.________

Fiduciaries — Enter the total of resident credit and accumulation distribution credit.

Line 13 — Enter the smaller of line 9 or line 12. Transfer this amount to Form IT-201-ATT, Schedule OC, line 4; Form IT-203-ATT, Schedule OC, line 3, or Form IT-205, page 1, line 12.

Line 14a — If line 9 is larger than line 12, enter the difference on this line. This is your investment credit and/or retail enterprise credit carryover.

Line 14b — If you own a new business and want to claim a refund for the amount of your unused credit instead of carrying it over to the next year, enter the amount from line 14a here and enter on Form IT-201-ATT, line 20; Form IT-203-ATT, line 14; or Form IT-205 page 1, line 25. Do not include a carryover from a previous year; you cannot have a refund of that portion. If you claim a refund of the credit, you cannot carry the credit over to 1986.

Line 14c — Subtract line 14b from line 14a and enter here and enter on Form IT-201-ATT, line 21 or Form IT-203-ATT, line 15. This is your investment credit and/or retail enterprise credit carryover available for 1986.

Part II — Schedule of Investments in Qualified Property and Investment Credit and/or Retail Enterprise Credit

Fill in columns A through G for qualified property that was placed in service during 1985. Enter in column D the property's useful life under Section 167 of the Internal Revenue Code even if you claim the deduction for recovery property (Section 168 of the Internal Revenue Code) on your federal return.

In column F, enter the credit rate from Table A. Use the rate that was in effect when the qualified property was acquired, constructed, reconstructed or erected. If acquisition of property began in one rate period and ended in another, apply to the cost or other basis of the property acquired in each rate period the rate in effect for that period. Show your computations on an attached schedule.

If qualifying property was disposed of or was not in qualified use at the end of the taxable year it was placed in service, figure the amount of credit to claim as follows:

- ☐ For depreciable property under Section 167 of the Internal Revenue Code, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is the number of months of useful life of the property.
- ☐ For recovery property under Section 168 of the Internal Revenue Code, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is:
  - — 36 for 3-year property.
  - — 60 for 5-year property, 10-year property and 15-year real property.
  - — The number of months you chose for buildings or structural components of buildings.

Part III — Schedule of Early Dispositions of Qualified Property and Tax on Early Dispositions

Fill in columns A through H if you have claimed the credit on property that was disposed of or was removed from qualified use (a) during 1985, and (b) prior to the end of its useful life or specified holding period. Do *not* include property that has been in qualified use for more than 12 consecutive years.

Enter in column D:

- ☐ For depreciable property under Section 167 of the Internal Revenue Code, the number of months of useful life of the property.
- ☐ For recovery property under Section 168 of the Internal Revenue Code:
  - — 36 for 3-year property.
  - — 60 for 5-year property, 10-year property or 15-year real property.
  - — The number of months you chose for buildings or structural components of buildings.

Enter in column E the number of months that the property was not in qualified use.

Part IV — Beneficiary's and Fiduciary's Share of Investment Credit, Retail Enterprise Credit and Tax on Early Dispositions

If an estate or trust allocates or assigns the credit or tax on early dispositions to its beneficiaries, base the division on each beneficiary's proportionate share of qualified investments made by the estate or trust.