New York State Department of Taxation and Finance

CT-46-I Instructions for Form CT-46

Claim for Investment Tax Credit, Additional Investment Tax Credit or Employment Incentive Credit

Tax Law sections 210.12, 210.12-A, 210.12-D

General Instructions

General business corporations may take an investment tax credit under section 210.12 against the tax imposed by Article 9-A, for the taxable year which qualified property is placed in service. For taxable years beginning in 1987, 1988 and 1989 the investment tax credit is computed on the investment credit base. The investment credit base is the cost or other basis for federal income tax purposes of tangible property, including buildings and structural components of buildings, less the amount of nonqualified nonrecourse financing with respect to such property. Before 1987 all taxpayers were permitted to include the amount of nonqualified nonrecourse financing. The investment credit base has been expanded to include research and development property and pollution control property (before 1987, inclusion was optional).

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. Periods and the applicable rates are listed below:

Property acquired during	Percentage
January 1, 1974, through December 31, 1977	2%
January 1, 1978, through December 31, 1978	3%
January 1, 1979, through May 31, 1981	4%
June 1, 1981, through June 30, 1982	5%
July 1, 1982, through December 31, 1986	6%
Taxable periods beginning in 1987, 1988 and 1989	5% on first $500,000,000 and 4% on excess over $500,000,000 9% on research and development property*

* A taxpayer may compute the investment tax credit on research and development property at either the 5%/4% rate applied to qualified property or a 9% rate. However, only research and development property on which the investment tax credit was computed at the 5%/4% rate may be included in the investment credit base when computing the employment incentive credit under section 210.12-D (see Schedule D).

An electing New York S Corporation must compute its investment tax credit at the rate of 4% on property other than research and development property and at 7% on research and development property. The pro rata share of the investment tax credit, computed at these rates will be allowed to each individual shareholder on Form CT-3-S.

If an acquisition, construction, reconstruction or erection, was started in one taxable period and was completed in another period, the applicable rate must be applied to the investment credit base attributable to each period. The method that must be used to compute the investment tax credit in this situation may be found in Article 9-A, Franchise Tax Regulations, section 5-2.5.

Section 210.12-A allows an additional investment tax credit with respect to property, the acquisition, construction, reconstruction or erection of which began on or after January 1, 1976, and ended before January 1, 1987. A new employment incentive tax credit has been added under section 210.12-D for property where the acquisition, construction, reconstruction or erection began on or after January 1, 1987. For details see instructions for completing Schedules C and D of Form CT-46.

These credits may not reduce the tax liability to less than the greater of the tax on minimum taxable income or the fixed dollar minimum tax.

Any portion of these credits that cannot be used to reduce current year tax liability may be carried over to following years. An investment tax credit or additional investment tax credit allowed for taxable years beginning before January 1, 1987, may be carried forward to any taxable year beginning before January 1, 1994. An investment tax credit or employment incentive credit allowed for taxable years beginning on or after January 1, 1987, may be carried forward 7 taxable years.

Qualified property for the investment tax credit is tangible property, including buildings and structural components of buildings, that:

(a) was acquired, constructed, reconstructed or erected by the taxpayer after December 31, 1968;
(b) is depreciable pursuant to section 167 of the Internal Revenue Code;
(c) has a useful life of 4 years or more;
(d) was acquired by the taxpayer by purchase pursuant to section 179(d) of the Internal Revenue Code;
(e) has a situs in New York State; and
  (1) is principally used by the taxpayer in: producing goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing; or
  (2) is an industrial waste treatment facility or air pollution control facility, used in the taxpayer's trade or business; or
  (3) is research and development property.

Effective for taxable years beginning after December 31, 1981, an investment tax credit will be allowed to the lessee/user of qualified property in a "safe harbor" lease.

If qualified property is acquired to replace other 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.

Recapture of investment tax credit previously allowed must be computed if the property was stolen, destroyed or disposed of prior to the end of its useful life or where there is an increase in nonqualified nonrecourse financing.

Types of property that do not qualify for the investment tax credit are:
(a) property leased to others (except qualified property in a "safe harbor" lease);
(b) retail equipment, office furniture and office equipment;
(c) excavating and road building equipment;
(d) public warehouses used to store the taxpayer's goods.

A taxpayer may treat air and water pollution control facilities that qualify for elective deductions for taxable years prior to January 1, 1987, under section 208.9(g), eligible business facilities for which a credit is allowable under section 210.11 or research and development facilities that qualify for elective deductions for taxable years prior to January 1, 1987, under section 210.3(e)(2) as property eligible for investment tax credit in lieu of other elections.

Definitions

Nonqualified nonrecourse financing is any amount for which the taxpayer is protected against loss and, generally, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or someone related to a person (other than the taxpayer) who has an interest in the activity. Nonrecourse financing is nonqualified where it is not qualified commercial financing, as defined in section 46(c)(8) of the Internal Revenue Code. The reduction in computing the investment credit base, in the amount of nonqualified nonrecourse financing, is required only to the extent that such an exclusion would be warranted under section 46(c)(8) of the Internal Revenue Code. Thus, the subtraction is required in the case of a corporation meeting the personal holding company stock ownership criteria contained in section 542(a)(1) of the Internal Revenue Code, with respect to property used in connection with an activity with respect to which any loss is subject to limitation under section 465 of the Code.

Manufacturing is the process of working raw material into wares suitable for use or giving new shapes, new quality or new combination to matter that already has 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 that is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods.

Life or Useful Life (of property) means the depreciable life provided by section 167 or 168 of the Internal Revenue Code.

Industrial waste treatment facilities means property constituting facilities for the treatment, neutralization or stabilization of industrial waste and other wastes (as the terms "industrial waste" and "other wastes" are defined in section 17-0105 of the environmental conservation law) from a point immediately preceding such treatment, neutralization or stabilization to the point of disposal. Such property includes the necessary pumping and transmitting facilities, but excludes such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

Air pollution control facilities means property constituting facilities which remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms "air contaminant" and "air contamination source" are defined in section 19-0107 of the environmental conservation law) from a point immediately preceding such removal, reduction or rendering to the point of discharge of air meeting emission standards as established by the department of environmental conservation. The term also includes flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities. It does not include facilities installed primarily to salvage materials that are usable in the manufacturing process or are marketable or that rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission.

Research and development property is property used for research and development in the experimental or laboratory sense, but not for the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising promotions, or research in connection with literary, historical or similar projects.

Credit for Rehabilitation Expenditures of a "Retail Enterprise"

Section 210.12(k) allows a credit for qualified rehabilitation expenditures, as defined in section 48(g)(2) of the Internal Revenue Code, to a taxpayer which qualifies for a general business credit pursuant to section 48(a)(1)(E) of the Internal Revenue Code. In addition to qualifying for such federal credit, the taxpayer must constitute a retail enterprise. A retail enterprise is a taxpayer which is a registered vendor under Article 28 of the New York State Tax Law and is "primarily" (at least 50% or more) engaged in retail sales as defined by section 1101(b)(4)(i). The rehabilitated property must be located in New York State and the credit is limited to the portion of the expenditures attributable to the property employed in retail sales. Provisions for recapture applicable to investment tax credit property (section 210.12(g)) also apply to the credit allowed under section 210.12(k). Refer to instructions for computing recapture, Schedule F on page 3.

Computation of Investment Tax Credit

Line 8 - Enter from Schedule F, line 31, recaptured investment tax credit, additional investment tax credit and additional recapture.

Line 9 - Subtract line 8 from line 7. This is the net investment tax credit available for use this period. If the net investment tax credit reduces the franchise tax below the higher of the tax on minimum taxable income or the fixed dollar minimum tax, complete lines 10 through 17. If if does not, enter the amount shown on this line on Form CT-3, line 49.

Computation of Unused Investment Tax Credit Available for Carryover to Future Periods

Line 10 - Enter amount of franchise tax computed on Form CT-3, line 48.

Line 11 - Enter tax credits claimed on Forms CT-42 (Carryover of Research and Development Tax Credit), Form CT-45 (Eligible Business Facility Tax Credit), DTF-601 (EDZ Wage Tax Credit), DTF-602 (EDZ Capital Corporation Credit) and, for taxable years before January 1, 1987, CT-3C (DISC Export Credit).

Line 13 - Enter the higher of the tax on minimum taxable income or the fixed dollar minimum.

Line 14 - Subtract line 13 from line 12. This is the amount of investment tax credit to be used this period. Enter this amount on Form CT-3, line 49.

Line 15 - Subtract line 14 from line 9. This is the investment tax credit available before deduction of refund claimed on Form CT-46.1.

If you claim a refund of unused investment tax credit, complete Form CT-46.1 before completing lines 16 and 17 on Form CT-46.

Line 16 - Enter amount of refund of investment tax credit claimed on line 18 of Form CT-46.1

Line 17 - If you do not claim a refund of investment tax credit on line 16, enter the amount from line 15 on this line. If you claim a refund of investment tax credit on line 16, reduce line 15 by the amounts on lines 16 and 13, and enter the result on this line.

Schedule A

Investment Tax Credit for Property Located in New York State

Columns A and B - List in these columns a clear description of qualified property placed in service during this taxable period. Individual items of machinery and equipment must be listed separately and may not be shown as one general category such as "machinery." The description should be made in terms that a layman will understand. Attach additional pages if necessary.

Column D - Enter the useful life of each item claimed; the useful life is the number of years an item is expected to be of service to the taxpayer. **Do not** use the recovery period for depreciation under the Accelerated Cost Recovery System (ACRS).

Column E - Enter the total investment credit base.

Column F - Enter investment tax credit on property (except research and development property claimed at the optional 9% rate and computed in column G) listed in this schedule. Electing New York S Corporations must use a 4% rate. Enter total of Column F on line 18 and line 1.

Column G - Enter investment tax credit claimed on research and development property listed in this schedule and claimed at the optional 9% rate. Electing New York S Corporations must substitute 7% for 9%. Enter total of Column G on line 19 and line 2.

Schedule B

Rehabilitation Expenditures in New York State Eligible for Investment Tax Credit

Provide the information required in Columns A and B. Attach a separate page if you need more space. Follow instructions for Column D as required for Schedule A. Enter in Column E the portion of the qualified rehabilitation expenditures paid or incurred with respect to that part of the building employed by you in retail sales activity.

Line 20 - Enter total of Column G on line 3.

Schedule C

Additional Investment Tax Credit on Property Where the Acquisition began on or after January 1, 1976 but before January 1, 1987 - Section 210.12-A

A corporation which is allowed a credit under section 210.12 of the Tax Law with respect to property, the acquisition, construction, reconstruction or erection of which commences on or after January 1, 1976 and prior to January 1, 1987, may be eligible for an additional investment tax credit.

The amount of the additional investment tax credit allowed is 50% of the original tax credit, for each of the three years following the year for which the original investment tax credit under section 210.12 was allowed. However, the additional credit is allowed only for those years during which the taxpayer's average number of employees in New York, other than general executive officers, is at least 101% of the average number of employees in New York, other than general executive officers, during the taxable year immediately preceding the one for which the original investment tax credit was allowed.

For taxable years beginning on or after January 1, 1981, the additional 50% of the original tax credit will be allowed to a taxpayer that was not subject to corporation franchise tax under Article 9-A and did not have a taxable year for New York State immediately preceding the year in which the investment tax credit (section 210.12) is originally allowed. To qualify, the corporation's average number of employees in New York State in the taxable year in which the additional investment tax credit is claimed must be at least 101% of the average number of employees, except general executive officers, in New York State in the taxable year in which the investment tax credit was originally allowed.

The additional investment tax credit may not reduce the tax liability to an amount less than the higher of the tax on minimum taxable income or the fixed dollar minimum.

Additional investment tax credit that cannot be used to reduce the current year's tax liability may be carried over to subsequent years. However, it may not be carried forward to taxable years beginning on or after January 1, 1994.

You must complete Schedule E to see if you qualify for the additional investment tax credit under section 210.12-A.

Column A - Enter the date and taxable year in which the acquisition, construction, reconstruction or erection commenced.

Column B - Enter the taxable period the original investment tax credit was allowed. Use line 21, 22 or 23 depending on whether this is the first, second or third year following the year the investment tax credit was allowed.

Column C - Enter the amount of original investment tax credit allowed.

Column D - To determine the amount of the additional investment tax credit, multiply each amount listed in column C by 50%.

Example:

A corporation acquired qualified property in 1983 at a cost of $100,000.

Year	Average # of N.Y. Employees	Investment Tax Credit Available for Use
1982	200	XXX
1983	not required	$6,000 (6% of $100,000) Investment Tax Credit
1984	202	$3,000 (50% of $6,000) Additional Inv. Tax Credit
1985	199	0*
1986	205	$3,000 (50% of $6,000) Additional Inv. Tax Credit

*In 1985, the average number of N.Y. employees was less than 101% of the number employed in 1982.

Enter the total of Column D on line 4.

Schedule D

Employment Incentive Credit on Property Acquired on or after January 1, 1987 - Section 210.12-D

Where a taxpayer is allowed an investment tax credit under section 210.12 with respect to property, the acquisition, construction, reconstruction or erection of which commenced on or after January 1, 1987, the taxpayer may be eligible for an employment incentive credit under section 210.12-D of the Tax Law.

The amount of employment incentive credit is 2% of the first $500,000,000 of investment credit base and 2.5% of the investment credit base in excess of $500,000,000, for each of the two years immediately following the year the original investment tax credit under section 210.12 was allowed. However, the employment incentive credit will be allowed only for those years during which the taxpayer's average number of employees in New York, other than general executive officers, is at least 101% of the average number of employees in New York, except general executive officers, during the taxable year immediately preceding the one for which the original investment tax credit was allowed. If the taxpayer was not subject to tax and did not have a taxable year immediately preceding the taxable year for which the investment tax credit was allowed, the employment incentive credit will be allowed if the average number of employees in New York, excluding general executive officers, is at least 101% of the average number of employees, excluding general executive officers, during the taxable year in which the investment tax credit was originally claimed.

The employment incentive tax credit may not reduce the tax liability to an amount less than the higher of the tax on minimum taxable income or the fixed dollar minimum.

Employment incentive credit that cannot be used to reduce the current year's tax liability may be carried forward for seven taxable years.

You must complete Schedule E to see if you qualify for the employment incentive credit under section 210.12-D.

Column A - Enter the date and taxable year in which the acquisition, construction, reconstruction or erection of property commenced.

Column B - Enter the taxable period the original investment tax credit was allowed. Use line 25 or 26 depending on whether this is the first or second year following the year the investment tax credit was allowed.

Column C - Enter the amount of the investment credit base upon which the original investment tax credit was allowed. Do not include research and development property if the investment tax credit was computed at the optional 9% rate.

Column D - To determine the credit allowed under section 210.12-D, multiply the first $500,000,000 of investment credit base by 2%, and the amount over $500,000,000 by 2.5%. Attach a separate sheet if necessary.

Example:

A corporation acquired qualified property in 1988 at a cost of $500,000. The investment tax credit and employment incentive credit allowed under section 210.12-D will be computed as follows:

Year	Average # of N.Y. Employees	Computation of Credit
1987	200	XXX
1988	not required	$25,000 ($500,000 x 5% ITC rate)
1989	202	$10,000 ($500,000 x 2% employment incentive rate)
1990	199	0*

*In 1990 the corporation did not qualify for the employment incentive credit since the average number of New York employees was less than 101% of the number employed in 1987.

Example:

A corporation acquired qualified property in 1988 at a cost of $500,200,000 and an additional $300,000 of research and development property upon which the corporation elected to compute the investment tax credit at the rate of 9%. The investment tax credit and employment incentive credit under section 210.12-D will be computed as follows:

Year	Average # N.Y. Employees	Computation of Credit
1987	200	XXX
1988	not required	$25,035,000 ($500,000,000 x 5% ITC rate plus $200,000 x 4% ITC rate plus $300,000 x optional 9% rate)
1989	202	$10,005,000 ($500,000,000 x 2% EIC rate plus $200,000 x 2.5%)
1990	201	0*

*In 1990 the corporation did not qualify for the employment incentive credit since the average number of New York employees was less than 101% of the number employed in 1987. The $300,000 research and development property may not be included in the investment credit base in 1989 for purposes of computing the employment incentive credit since the corporation opted to use the 9% rate when computing its investment tax credit.

Enter total of Column D on line 5.

Schedule E

Information Required to Determine Eligibility for Additional Investment Tax Credit and Employment Incentive Credit

Sections 210.12-A(b) and 210.12-D(b) define the average number of employees as the total number of employees that are employed within New York State on March 31, June 30, September 30 and December 31 divided by the number of these dates occurring during the taxable period. Employees must be located in New York State. Do not include general executive officers.

The term **employment base year** means the year immediately preceding the investment tax credit year or, if the taxpayer was not taxable in New York State in such preceding year, the year in which the investment tax credit was allowed.

Example:

A taxpayer filing a report for a fiscal period beginning September 1, 1987 and ending August 31, 1988, would use the following dates to compute the average number of New York employees:

September 30, 1987, December 31, 1987,
March 31, 1988 and June 30, 1988

For each period listed in Schedules C and D for which an additional investment tax credit or employment incentive credit is claimed, you must provide information requested in sections A, B and C of Schedule E.

Schedule F

Computation of Recapture of Investment Tax Credit and Additional Investment Tax Credit

If property on which an investment tax credit has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the original credit and the credit allowed for actual use must be added back to the tax otherwise due in the year of disposition or disqualification. In 1982 and 1987, section 210.12(g) was amended to provide different formulas for computing the amount of recaptured investment tax credit for property depreciated for federal purposes under Internal Revenue Code sections 167 and 168.

(1) For property depreciated solely under IRC section 167, the formula for recapture of investment tax credit is:

$$\frac{\text{months of unused life}}{\text{months of useful life}} \times \text{investment tax credit allowed}$$

(2) For three-year property depreciated under IRC section 168, the formula for recapture of investment tax credit is:

$$\frac{\text{months of unused life}}{\text{36 months}} \times \text{investment tax credit allowed}$$

(3) For property depreciated under IRC section 168, other than three-year property or buildings or structural components of buildings, the formula for recapture of investment tax credit is:

$$\frac{\text{months of unused life}}{\text{60 months}} \times \text{investment tax credit allowed}$$

(4) For a building or structural component of a building placed in service after December 31, 1980, and depreciated under IRC Section 168, the formula for recapture of investment tax credit is:

$$\frac{\text{months of unused life}}{\text{number of months allowed by IRC and used by taxpayer}} \times \text{investment tax credit allowed}$$

For tax years beginning on or after January 1, 1987 property which is depreciated under Internal Revenue Code section 168 for federal purposes, but which is required to be depreciated pursuant to Internal Revenue Code section 167 alone for New York purposes ("decoupled property"), is subject to the first recapture formula set out above.

For taxable years beginning in 1987, property that is disposed of or ceases to be in qualified use will be recaptured as follows:

(i) If the property was depreciated for New York State franchise tax purposes under IRC 167, use the life of the property as depreciated under IRC 167

or

(ii) If the property was depreciated for New York State franchise tax purposes under IRC 168, use the life of the property as depreciated under IRC 168.

If qualified property has a useful life of more than 12 years, no credit need be added back if it has been in use for more than 12 consecutive years.

If an investment tax credit is allowed for an air pollution control facility on the basis of a certificate of compliance, issued pursuant to the environmental conservation law, and the certificate is revoked pursuant to subdivision 3 of section 19-0309 of the environmental conservation law, the revocation will constitute a disposal or cessation of qualified use and a recapture of investment tax credit is required (unless the property otherwise qualifies).

For taxable years beginning on or after January 1, 1987, recapture of investment tax credit (but not additional investment tax credit) will be augmented by an additional recapture amount equal to the original recapture amount multiplied by the interest rate in effect (without compounding) on the last day of the taxable year. For applicable rates see Regulations, Part 603 or call toll free 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

If at the end of any taxable year, there is a net increase in nonqualified nonrecourse financing, an amount equal to the decrease in the investment tax credit that would have resulted from the net increase in nonqualified nonrecourse financing must be recaptured.

If the property qualified for the Additional Investment Tax Credit, 50% of the amount of recaptured investment tax credit must be added back for each year the additional investment tax credit was allowed.

In years that the taxpayer is not claiming an investment tax credit, additional investment tax credit, or employment incentive credit the recaptured tax credit must be added to the tax on Form CT-3, line 48. Investment tax credit recapture may be offset against credits claimed on Form CT-46, page 1.

Column D - Enter the life of the property in months. Do not use years.

Column E - Enter the unused life in months.

Column F - Divide unused life in Column E by the total life of the property in Column D to obtain the percentage of unused life.

Column G - Enter the total amount of original investment tax credit allowed.

Column H - Multiply Column F by Column G to obtain the amount of recaptured investment tax credit.

Column I — Multiply 50% of amount in Column H by the number of years the additional investment tax credit was allowed. If the recapture of the investment tax credit occurred in a prior year, enter 50% of the recaptured investment tax credit.

Line 28 - Add the amounts in Column H.

Line 29 - Add the amounts in Column I.

Line 30 - The additional recapture required to be added back is an amount equal to the recaptured investment tax credit (but not additional investment tax credit) multiplied by the interest rate in effect on the last day of the taxable year.

Example:

$1000 recaptured investment tax credit × 7.5% interest rate for 1988 = $75 additional recapture.

Line 31 - Add lines 28 through 30 and enter on line 8.

Refundable Unused Investment Tax Credit

For taxable years beginning on or after January 1, 1982, a corporation that is eligible to claim an investment tax credit and is also a new business as defined in Article 9-A, section 210.12(j), may elect to receive a refund of its unused investment tax credit instead of carrying the credit forward. Section 210.12(j) defines a new business as any corporation except:

— a corporation in which over 50% of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned by a taxpayer subject to the tax under Article 9-A; sections 183, 184, 185 or 186 of Article 9; or Article 32; or Article 33 of the Tax Law;

— a corporation that is substantially similar in operation and in ownership to a business entity or entities taxable or previously taxable under Article 9-A; section 183, 184, 185 or 186 of Article 9; or Article 32; or Article 33; or that would have been subject to the tax under Article 23, as such article was in effect on January 1, 1980; or the income (or losses) of which is (or was) includable under Article 22 of the Tax Law;

— a corporation that has been subject to tax under Article 9-A for more than four taxable years (excluding short periods) prior to the taxable year during which the taxpayer first becomes eligible for the investment tax credit.

Claim this refund on Form CT-46.1. For further information about the refund of unused investment tax credit by a new business, see Form CT-46.1 and Technical Services Bureau Memorandum TSB-M-81(8)C.