New York State Department of Taxation and Finance

# CT-46-I

1993

# Instructions for Form CT-46

## Claim for Investment Tax Credit and Employment Incentive Credit

**Tax Law — Sections 210.12 and 210.12-D**

## Law Change

Section 126 of Chapter 57 of the Laws of 1993 amended section 210.12(b)(i) to specifically exclude electricity generating equipment from eligibility for the investment tax credit. This amendment applies to property placed in service on or after 4/1/93.

## General Instructions

General business corporations may claim an investment tax credit under section 210.12 against the tax imposed by Article 9-A, for the tax year during which qualified property is placed in service. 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 qualified tangible property, including buildings and structural components of buildings, less the amount of nonqualified nonrecourse financing with respect to such property. The investment credit base also includes research and development property, industrial waste treatment facilities and pollution control property.

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 in *Rate Schedule 1* on page 3 of Form CT-46.

If an acquisition, construction, reconstruction or erection began in one tax 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-D allows an employment incentive tax credit for property where the acquisition, construction, reconstruction or erection began on or after January 1, 1987. For details see instructions for completing Schedule C of Form CT-46, on page 3 of these instructions.

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 tax years beginning before January 1, 1987, may be carried forward to any tax year beginning before January 1, 1994. An investment tax credit or employment incentive credit allowed for tax years beginning on or after January 1, 1987, may be carried forward for up to seven tax 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 or 168 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.

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, if there is an increase in nonqualified nonrecourse financing, or if the taxpayer was the target in a merger, consolidation or acquisition.

Types of property that do not qualify for the investment tax credit include:

(a) property leased to others (except qualified property in a "safe harbor" lease or production property which is "beneficially owned" by the lessee);

(b) retail equipment, office furniture and office equipment;

(c) excavating and road building equipment;

(d) public warehouses used to store the taxpayer's goods.

Types of property that qualify for the investment tax credit in lieu of other credits include:

(a) air and water pollution control facilities that qualify for elective deductions for tax years prior to January 1, 1987, under section 208.9(g);

(b) eligible business facilities for which a credit is allowable under section 210.11; or

(c) research and development facilities that qualify for elective deductions for tax years prior to January 1, 1987, under section 210.3(e)(2).

## Definitions

**Nonqualified nonrecourse financing:** 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 materials into wares suitable for use or giving new shapes, new qualities or new combinations 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 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 facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are otherwise marketable. When claiming the credit for this property, attach the certificate of compliance concerning industrial waste treatment facilities and industrial waste treatment controlled process facilities as explained in section 17-0707 of the Environmental Conservation Law.

**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. If claiming the credit for this property, attach the certificate of compliance concerning air pollution control facilities and air pollution controlled process facilities as explained in section 19-0309 of the Environmental Conservation Law.

**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 registered as a vendor under Article 28 of the New York State Tax Law and is "primarily" (at least 50%) 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 in Schedule E on page 3.

## Mergers and Acquisitions

Section 210.12(e) provides that when an acquisition occurs, any carryover of investment tax credit will not be allowed to the acquired corporation ("target corporation") in the tax year in which it was a "target corporation," or to any subsequent tax year if the credit was allowed for a tax year prior to the acquisition year. When a merger or consolidation occurs, any carryover of investment tax credit will not be allowed to the corporation remaining after the merger ("surviving corporation") or consolidation ("consolidated corporation") in the tax year the corporate merger or corporate consolidation occurred, or any subsequent tax year if the credit was allowed for a tax year prior to the merger or consolidation year and the credit is attributable to a corporation which is merged or consolidated into the "surviving corporation" or "consolidated corporation." However, the investment tax credit may be carried over if the "surviving corporation" or "consolidated corporation" can demonstrate that the acquiring corporation originally claimed and was allowed the investment tax credit.

## Computation of Investment Tax Credit

Complete Schedules A through E, as appropriate, before completing this section.

**Line 7 -** Enter from Schedule E, line 26, recaptured investment tax credit, additional investment tax credit (section 210.12-A), employment incentive tax credit (section 210.12-D) and additional recapture.

**Line 8 -** Subtract line 7 from line 6. 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 9 through 16. If it does not, enter the amount shown on this line on Form CT-3, line 94.

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

**Line 9 -** Enter amount of franchise tax computed on Form CT-3, line 73.

**Line 10 -** Enter tax credits claimed on Form CT-42 (Carryover of Research and Development Tax Credit), Form CT-45 (Eligible Business Facility Tax Credit), Form DTF-601 (EDZ Wage Tax Credit) and Form DTF-602 (EDZ Capital Corporation Credit).

**Line 12 -** Enter the higher of the tax on minimum taxable income or the fixed dollar minimum tax.

**Line 13 -** Subtract line 12 from line 11. This is the amount of investment tax credit to be used this period. Enter this amount on Form CT-3, line 94. If line 12 is more than line 11, no credit is allowed.

**Line 14 -** Subtract line 13 from line 8. 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 15 and 16 on Form CT-46.

**Line 15 -** Enter amount of refund of investment tax credit claimed on line 18 of Form CT-46.1.

**Line 16 -** If you do not claim a refund of investment tax credit on line 15, enter the amount from line 14 on this line. If you claim a refund of investment tax credit on line 15, reduce line 14 by the amounts on lines 15 and 12, and enter the result on this line.

## Schedule A

### Property Located in New York State Eligible for Investment Tax Credit

Columns A and B - Describe 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) or the Modified Accelerated Cost Recovery System (MACRS).

Column E - Enter the total investment credit base.

Column F - Enter the amount of 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. New York C corporations use appropriate rate from Schedule 1 on page 3. Electing New York S corporations must use a 4% rate. Enter the total of column F on line 17 and on line 1.

Column G - Enter the amount of 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 the total of column G on line 18 and on 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 in retail sales activity.

**Line 19** - Enter the total of column G here and on line 3.

## Schedule C

### Employment Incentive Credit - Section 210.12-D

Where a taxpayer (except New York S Corporations) is allowed an investment tax credit under section 210.12, the taxpayer may be eligible for an employment incentive credit under section 210.12-D of the Tax Law.

The amount of employment incentive tax credit will be a percentage of the original investment credit base on which the investment tax credit was allowed for each of the two years immediately following the year the investment tax credit under section 210.12 was allowed. The percentage used to compute the employment incentive tax credit will vary depending on the year the investment tax credit (section 210.12) was claimed and the level of employment (see *Rate Schedule 2* on page 3 of Form CT-46). However, the employment incentive tax credit will not be allowed for those years if the taxpayer's average number of employees in New York, excluding general executive officers, is not at least 101% of the average number of employees in New York, excluding general executive officers, during the tax year immediately preceding the tax year for which the investment tax credit was allowed. If the taxpayer was not subject to tax and did not have a tax year immediately preceding the tax year for which the investment tax credit was allowed, the employment incentive tax 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 in New York, excluding general executive officers, during the tax year in which the investment tax credit (section 210.12) 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 up to seven tax years or until completely used.

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

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

Column B - Enter the tax period for which the original 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 investment credit base by the appropriate percentage in *Rate Schedule 2* on page 3 of the form. Attach a separate sheet if necessary.

**Example:**
A calendar year corporation acquired qualified property in 1992 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 |
|---|---|---|
| 1991 | 200 | Employment Base Year |
| 1992 | not required | $25,000 ($500,000 x 5% ITC rate) |
| 1993 | 204 | $10,000 ($500,000 x 2% employment incentive rate) |
| 1994 | 199 | 0 |

In 1993, if the average number of employees had been 206 instead of 204, the percentage of employees in the current year as compared to the base year would have been 103% instead of 102%, and the corporation would have been entitled to compute its employment incentive tax credit at the rate of 2.5% (see *Rate Schedule 2* on page 3 of the form). In 1994 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 1991.

**Example:**
A calendar year corporation acquired qualified property in 1992 at a cost of $450,000,000 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 # of N.Y. Employees | Computation of Credit |
|---|---|---|
| 1991 | 200 | Employment Base Year |
| 1992 | not required | $21,527,000 ($350,000,000 x 5% ITC rate plus $100,000,000 x 4% ITC rate plus $300,000 x optional 9% rate) |
| 1993 | 204 | $9,000,000 ($450,000,000 x 2% EIC rate) |
| 1994 | 201 | 0 |

In 1993, if the average number of employees had been 206 instead of 204, the percentage of employees in the current year as compared to the base year would have been 103% instead of 102%, and the corporation would have been entitled to compute its employment incentive tax credit at the rate of 2.5% (see *Rate Schedule 2* on page 3 of the form). In 1994 the corporation did not qualify for the employment incentive credit since the average number of employees was less than 101% of the number employed in 1991.

Enter the total of column D on line 4.

## Schedule D

### Information Required to Determine Eligibility for Employment Incentive Credit

Section 210.12-D(b) defines 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 tax 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, 1991, and ending August 31, 1992, would use the following dates to compute the average number of New York employees:

September 30, 1991, December 31, 1991,
March 31, 1992, and June 30, 1992

For each period listed in Schedule C for which an employment incentive credit is claimed, you must provide information requested in Schedule D.

## Schedule E

### Computation of Recapture of Investment Tax Credit, Additional Investment Tax Credit (section 210.12-A) and Employment Incentive Tax Credit (section 210.12-D)

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 allowed and the credit allowed for actual use must be added back to the tax otherwise due in the year of disposition or disqualification. Section 210.12(g) provides different formulas for computing the amount of recaptured investment tax credit for property depreciated 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 tax, but which is required to be depreciated pursuant to Internal Revenue Code section 167 alone for New York tax ("decoupled property"), is subject to the first recapture formula set out above.

For tax 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 under IRC section 167, use the life of the property as depreciated under IRC section 167

or

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

If the taxpayer is a target corporation in a subdivision seventeen corporate acquisition, property which was the basis for the investment tax credit shall be deemed disposed of and the investment tax credit must be recaptured in the tax year in which the acquisition occurred. If a taxpayer is a consolidated corporation in a subdivision eighteen corporate consolidation or a surviving corporation in a subdivision eighteen corporate merger, property of a target corporation which was the basis for the allowance of the investment tax credit shall be deemed disposed of on the day immediately preceding the corporate consolidation or corporate merger.

Recapture of investment tax credit (but not additional investment tax credit or employment incentive 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 tax year. For applicable rates see Regulations, Part 603 or call the Business Tax Information Center toll free (from the continental U.S. only) 1 800 972-1233. You can also call toll free (from within New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State, call (518) 438-8581.

If at the end of any tax 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.

If the property qualified for the employment incentive tax credit, an appropriate amount of employment incentive tax credit must be added back. This amount may be computed by multiplying the recaptured investment tax credit by a recapture percentage for each year the employment incentive tax credit was allowed. The recapture percentage will be computed by dividing the employment incentive tax credit rate used by the investment tax credit rate used.

**Example:** Taxpayer A computed an investment tax credit using a 5% rate. The corporation qualifies for and computed an employment incentive tax credit using a 2% rate. The recapture percentage is 40% as follows:

$$\frac{\text{2\% EIC rate}}{\text{5\% ITC rate}} = \text{40\% Recapture Percentage}$$

In years that the taxpayer does not claim 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 73. Investment tax credit recapture may be offset only against credits claimed on page 1 of the form.

**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.

**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 the amount in column H by the number of years the additional investment tax credit was allowed. Multiply the recapture percentage by the amount in column H by the number of years the employment incentive tax credit was allowed.

Recapture % × Recaptured ITC × No. of Yrs. EIC was allowed = Recaptured EIC

**Line 23** - Add the amounts in column H.

**Line 24** - Add the amounts in column I.

**Line 25** - 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 tax year.

**Example:** $1000 recaptured investment tax credit × 7% interest rate for 1992 = $70 additional recapture.

**Line 26** - Add lines 23, 24 and 25 and enter on line 7.

## Refundable Unused Investment Tax Credit

For tax 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 tax years (excluding short periods) prior to the tax 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.

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