New York State Department of Taxation and Finance

Instructions for Form CT-46

Claim for Investment Tax Credit

Tax Law — Section 210.12 and 210.12-D

CT-46-I

Instructions are included for the following schedules:

Schedule A — Investment tax credit

Schedule B — Eligibility for employment incentive credit

Schedule C — Employment incentive credit computation

Schedule D — Recapture of investment tax credit (including rehabilitation expenditures for retail enterprises and historic barns) and additional investment tax credit

Other forms that may apply

Form CT-46-ATT, *Credit for Rehabilitation Expenses for Retail Enterprises and Historic Barns*
Form CT-44, *Claim for Investment Tax Credit for the Financial Services Industry*
Form DTF-603, *Claim for EDZ Investment Tax Credit and EDZ Employment Incentive Credit*
Form DTF-605, *Claim for EDZ Investment Tax Credit for the Financial Services Industry*

Investment tax credit

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 they placed qualified property in service. Compute the investment tax credit on the investment credit base. The *investment credit base* is the cost, or other basis when placed in service in New York State 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. Do not include in the investment credit base any amount that was expensed under section 179(a) of the Internal Revenue Code (IRC).

The percentage for computing the investment tax credit depends upon the period when the property was acquired, constructed, reconstructed, or erected. Periods and the applicable rates are listed in *Rate schedule 1,* Form CT-46.

If an acquisition, construction, reconstruction, or erection began in one tax period and was completed in another period, you must apply the applicable rate to the investment credit base attributable to each period. In this situation, the method you must use to compute the investment tax credit is found in New York State 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.

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 you cannot use 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, 2002. 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 15 tax years (10 tax years for a New York S corporation).

Qualified property for the investment tax credit is 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 168 of the IRC;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase under section 179(d) of the IRC;
- is located in New York State; and
  - — 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
  - — is an industrial waste treatment facility or air pollution control facility, used in the taxpayer's trade or business; or
  - — is research and development property.

If qualified property is acquired to replace other insured property that was stolen or was 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.

You must compute the recapture of investment tax credit previously allowed 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:

- property leased to others (except qualified property in a safe harbor lease or production property which is beneficially owned by the lessee);
- retail equipment, office furniture, and office equipment;
- excavating and road building equipment;
- public warehouses used to store the taxpayer's goods; and
- electricity-generating equipment.

Types of property that qualify for the investment tax credit in lieu of other credits include eligible business facilities for which a credit is allowable under section 210.11.

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 from 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 49(a)(1) of the IRC. 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 49(a)(1) of the IRC. Thus, the subtraction is required in the case of a corporation meeting the personal holding company stock ownership criteria contained in section 542(a)(2) of the IRC, for property used in connection with an activity in which any loss is subject to limitation under section 465 of the IRC.

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 IRC.

Industrial waste treatment facilities are facilities for the treatment, neutralization, or stabilization of industrial waste and other wastes (as 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 that are usable in the manufacturing process or are otherwise marketable. Attach the certificate of compliance concerning industrial waste treatment facilities and industrial waste treatment controlled process facilities (section 17-0707 of the Environmental Conservation Law).

Air pollution control facilities are facilities that remove, reduce, or render less noxious, air contaminants emitted from an air contamination source (as 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. Also included are flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities, or other facilities. Not included are facilities installed primarily to salvage materials usable in the manufacturing process, or that are marketable, or that rely for their efficacy on dilution, dispersion, or assimilation of air contaminants in the ambient air after emission. Attach the certificate of compliance concerning air pollution control facilities and air pollution controlled process facilities (section 19-0309 of the Environmental Conservation Law).

Research and development property is 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 for research in connection with literary, historical, or similar projects.

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 in 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 that 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.

Summary of tax credit(s)

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

Line 10 — This is the net investment tax credit available for use this period. If the amount on line 9 is greater than line 8, you have a net recaptured tax credit. You must add the recaptured tax credit back to the tax on Form CT-3, line 78, or Form CT-3-A, line 77, for this taxable year. S corporations report this amount on Form CT-34-SH.

Line 12 — If you are claiming more than one credit, enter the amount of the credit(s) previously claimed before the investment tax credit. See the next paragraph. Otherwise, enter “*0*.”

Order of Credits — Section 210.25 provides that the following credits must be applied in the order shown, before the investment tax credit:

1. Eligible business facility credit
2. Tax credit for servicing mortgages
3. Economic development zone wage tax credit
4. Zone equivalent area wage tax credit
5. Carryovers of the economic development zone wage tax credit or zone equivalent area wage tax credit

You may apply other credits before the investment tax credit, at your election. See the instructions for Form CT-3 or CT-3-A, or Form CT-3-S or Form CT-3-S-A, for a listing of the credits you may apply.

Computation of investment tax credit used, refunded, or carried forward

Line 18 — 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. We will not pay interest on a refund of the investment tax credit. 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; 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 it 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; or
- 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.

Transfer the refund amount to Form CT-3, line 99, or Form CT-3-A, line 100.

To avoid the unnecessary exchange of funds, we will apply this refund against the minimum tax due, and we will refund any balance.

Schedule A — Investment tax credit

Columns A and B — Describe qualified property placed in service during this taxable period. You must list individual items of machinery and equipment separately; do not list them as one general category such as *machinery*. Describe the property 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).

Schedule B — Eligibility for employment incentive credit

When a corporation is allowed an investment tax credit, other than at the optional rate applicable to research and development property, the corporation may be eligible for an employment incentive credit for the two succeeding years. However, the credit is not allowed for those years if the corporation's average number of employees in New York State is not at least 101% of the average number of employees in New York State during the employment base year. Complete Schedule B to see if you qualify for the 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 (unless you have a short tax year and one or more of the dates do not occur), 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.

Example:

A taxpayer filing a report for a fiscal period beginning September 1, 1998, and ending August 31, 1999, would use the following dates to compute the average number of New York State employees for that fiscal year: September 30, 1998, December 31, 1998, March 31, 1999, and June 30, 1999.

Complete Schedule B for each period listed in Schedule C for which you are claiming an employment incentive credit. **Exclude** from lines 23 and 25 any employee for whom you claimed an EDZ wage tax credit, based on employment within a zone equivalent area. However, **include** such employees for the employment base year on lines 22 and 24.

For the purposes of these instructions, the term *employment base year* means the calendar year or fiscal year immediately preceding the investment tax credit year, or, if you were not taxable in New York State in such preceding year, the year in which the investment tax credit was allowed.

Column A — Enter the credit year and the base year. The *credit year* is the first or second tax year after the year in which you claimed the original investment credit.

Columns B, C, D, and E — Enter the total number of employees employed within New York State on each of the dates listed that occurred during your tax year.

Example:

A taxpayer filing for a fiscal year beginning September 1, 1999, and ending August 31, 2000, would enter the number of employees employed in New York State on the following dates: September 30, 1999, December 31, 1999, March 31, 2000, and June 30, 2000.

Column G — Unless you have a short tax year, divide the amount in column F by **four**. If you have a short tax year (a tax year of less than 12 months), divide the amount in column F by the number of dates shown in columns B through E that occur during the short tax year.

Column H — Divide the average number of employees covered by this claim by the average number of employees in the base year (column G), and carry the result to two decimal places. If the percentage in column H is at least 101% (1.01), complete Schedule C. If the percentage in column H is less than 101%, **stop**. You do not qualify for the employment incentive tax credit for this year.

Schedule C — Employment incentive credit computation

General

The amount of employment incentive credit is 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 was allowed. The percentage for computing the employment incentive credit will vary depending on the year the investment tax credit was claimed and on the level of employment (see *Rate schedule 2*, Form CT-46).

New York C corporations — The employment incentive 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 tax.

You may carry the credit forward for up to 15 tax years or until completely used. A New York C corporation may not claim a refund of the employment incentive credit.

New York S corporations — The shareholders of a New York S corporation may claim an employment incentive credit. The employment incentive credit applies to any investment tax credit computed on property placed in service on or after January 1, 1997, whether or not deductible in the year placed in service.

You may carry forward any excess employment incentive credit that cannot be used to reduce a shareholder's current year's tax liability for up to **ten** tax years. However, a shareholder that qualifies as an owner of a new business may elect to have the excess employment incentive credit refunded.

Schedules B and C — Examples

Example 1

A calendar-year corporation acquired qualified property in 1997 at a cost of $500,000. The corporation computed an investment tax credit for 1997 of $25,000 ($500,000 × 5% ITC rate). The corporation's average number of New York employees was 200 for 1996 (employment base year), 204 for 1998 (first succeeding year), and 199 for 1999 (second succeeding year). In 1998 and 1999, the corporation computes its employee incentive credit on Schedule B and C as shown below:

Schedule B

A. Use with Schedule C, line 26, first succeeding year	A Year	B March 31	C June 30	D September 30	E December 31	F Total B+C+D+E	G Average	H Percent
22 Number of New York State employees in employment base year	1996	200	200	200	200	800	200	
23 Number of New York State employees in period covered by this claim	1998	204	204	204	204	816	204	102%
B. Use with Schedule C, line 27, second succeeding year	Year	March 31	June 30	September 30	December 31	Total B+C+D+E	Average	Percent
24 Number of New York State employees in employment base year	1996	200	200	200	200	800	200	
25 Number of New York State employees in period covered by this claim	1999	200	200	198	198	796	199	99.5%

Schedule C

	A Tax year in which investment tax credit was allowed	B Amount of investment credit base upon which original investment tax credit was allowed (excluding R & D property at optional rate)	C Employment incentive credit *(multiply column B by the appropriate rate from* Rate schedule 2 *on page 3)*
26 First succeeding year	1997	$500,000	$10,000 ($500,000 × 2%)
27 Second succeeding year	**		

** In 1999, 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 1996.

In 1998, 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 credit at the rate of 2.5% (see *Rate schedule 2* on Form CT-46).

Example 2

A calendar-year corporation acquired qualified property in 1997 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 optional rate of 9%. The corporation computed an investment tax credit for 1997 of $21,527,000 ($350,000,000 × 5% ITC rate + $100,000,000 × 4% ITC rate + $300,000 × 9% optional R & D rate). The corporation's average number of New York employees was 200 for 1996 (employment base year), 204 for 1998 (first succeeding year), and 201 for 1999 (second succeeding year). In 1998 and 1999, the corporation computes its employee incentive credit on Schedules B and C as shown below:

Schedule B

	A Year	B March 31	C June 30	D September 30	E December 31	F Total B+C+D+E	G Average	H Percent
A. Use with Schedule C, line 26, first succeeding year								
22 Number of New York State employees in employment base year	1996	200	200	200	200	800	200	
23 Number of New York State employees in period covered by this claim	1998	200	200	206	206	812	204	102%
B. Use with Schedule C, line 27, second succeeding year	A Year	B March 31	C June 30	D September 30	E December 31	F Total B+C+D+E	G Average	H Percent
24 Number of New York State employees in employment base year	1996	200	200	200	200	800	200	
25 Number of New York State employees in period covered by this claim	1999	200	200	202	202	804	201	100.5%

Schedule C

	A Tax year in which investment tax credit was allowed	B Amount of investment credit base upon which original investment tax credit was allowed (excluding R & D property at optional rate)	C Employment incentive credit *(multiply column B by the appropriate rate from* Rate schedule 2 *on page 3)*
26 First succeeding year	1997	$450,000,000	$9,000,000 ($450,000,000 × 2%)
27 Second succeeding year	**		

** In 1999, 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 1996.

In 1998, 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 credit at the rate of 2.5% (see *Rate schedule 2* on Form CT-46).

Schedule D — Recapture of investment tax credit (including rehabilitation expenditures for retail enterprises and historic barns) and additional investment tax credit

If property on which an investment tax credit, retail enterprise credit, or rehabilitation credit has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life, you must add the difference between the original credit allowed and the credit allowed for actual use 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 IRC sections 167 and 168.

1. For property depreciated solely under IRC section 167, the formula 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 is:

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

3. For property depreciated under IRC section 168, other than three-year property or buildings or structural components of buildings, the formula is:

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

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 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 that is depreciated under IRC section 168 for federal tax, but that is required to be depreciated under IRC section 167 alone for New York State 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, is recaptured as follows:

- 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

- 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, and has been in use for more than 12 consecutive years, no recapture is necessary.

If an air pollution control facility was allowed an investment tax credit on the basis of a certificate of compliance, issued under the Environmental Conservation Law, and that certificate is revoked under 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 17 corporate acquisition, property that 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 18 corporate merger, property of a target corporation that 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) will be increased 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 at 1 800 972-1233.

If, at the end of any tax year, there is a net increase in nonqualified nonrecourse financing, recapture the decrease in the investment tax credit that would have resulted from the net increase in nonqualified nonrecourse financing.

If the property qualified for the additional investment tax credit, you must add back 50% of the amount of recaptured investment tax credit for each year the additional investment tax credit was allowed.

Column I — To recapture an additional investment tax credit, multiply 50% of the amount in column H by the number of years the additional investment tax credit was allowed.

Line 31 — The additional recapture you must add back is 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. Call 1 800 972-1233 for the applicable rate.

Example:

$1000 recaptured investment tax credit × 8% interest rate for 1999 = $80 additional recapture.