New York State Department of Taxation and Finance

2003

Instructions for Form CT-605

CT-605-I

Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry

General information

For property placed in service on or after October 1, 1998, and on or before October 1, 2008, the Tax Law allows an empire zone (EZ) investment tax credit (EZ-ITC) for the financial services industry against the tax imposed by Articles 9-A and 22, respectively, for the tax year during which qualified property is placed in service in an EZ designated as such under Article 18-B of the General Municipal Law. The EZ-ITC allowed under Articles 9-A and 22 is computed at different rates. For New York C corporations taxable under Article 9-A (corporation franchise tax), the credit rate is 10%; for New York S corporation shareholders taxable under Article 22 (personal income tax), the credit rate is 8%. Compute the EZ investment tax credit by multiplying the appropriate credit rate by the cost (or other federal basis) of qualified property that was acquired, constructed, reconstructed, or erected in an EZ after its date of designation and before its date of expiration as an EZ. The taxpayer claiming this credit must also be certified under Article 18-B of the General Municipal Law. Submit a copy of the documentation or certificate proving certification when claiming this credit.

When an acquisition, construction, reconstruction, or erection is started during the period of designation and completed subsequent to the expiration of such period, the credit is computed based on the expenditures paid or incurred during the period of designation. Expenditures paid or incurred after the designated period may qualify for the investment tax credit under section 210.12 of the Tax Law.

In addition, in order to claim this credit, all or a substantial portion of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property, must be located in New York State.

Also, an EZ employment incentive credit (EZ-EIC) for increasing employment is allowed. See the instructions for completing Schedule B.

The EZ-ITC used may not reduce the corporation franchise tax liability to an amount less than the higher of the tax on minimum taxable income or the fixed dollar minimum. It may not be applied against the MTA surcharge.

The EZ-EIC used may reduce your franchise tax liability to the fixed dollar minimum.

Any portion of EZ-ITC or EZ-EIC that cannot be used to reduce the current year tax liability may be carried over to the following year or years until it is used up. However, a taxpayer who has been decertified may carry forward the EZ-ITC for only seven years.

A corporation which is a new business may elect for a refund of 50% of the current year EZ-ITC. However, the EZ-EIC is not refundable to corporations.

Qualified property

Qualified property for the EZ-ITC is tangible property, including buildings and structural components of buildings, that:

A. was acquired, constructed, reconstructed, or erected by the taxpayer on or after the date of designation of the empire zone and prior to the expiration of such designation and on or after October 1, 1998, and before October 1, 2008; and
B. is depreciable according to section 167 of the Internal Revenue Code (IRC); and
C. has a useful life of four years or more; and
D. was acquired by the taxpayer by purchase according to section 179(d) of the IRC; and
E. is located in an EZ; and
F. is principally used in the ordinary course of the taxpayer's business:
   - as a broker or dealer in connection with the purchase or sale of stocks, bonds, other securities (IRC section 475(c)(2)), or of commodities (IRC section 475(e)), or in providing lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale of securities (IRC section 475(c)(2)); or
   - of providing investment advisory services for a regulated investment company (IRC section 851); or
   - as an exchange registered as a national securities exchange (sections 3(A)(1) and 6(A) of the Securities Exchange Act of 1934); or
   - as a board of trade (section 1410(a) of the Not-for-Profit Corporation Law); or
   - as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides automation or technical services thereto (available to Article 9-A taxpayers only).

It is not necessary for the users of the EZ property to be located in the EZ. For example, a computer system that is placed in service in an EZ would qualify for the credit even if the brokers accessing the system are located outside the EZ.

Property leased to a broker, dealer, national securities exchange, or board of trade which is an affiliate of the taxpayer, that principally uses the property in the qualifying activities listed above, qualifies for the credit provided it otherwise meets the criteria for qualified property. Any contract or agreement to lease or rent, or for a license to use the property, is considered a lease. In addition, property qualifies if it meets the criteria and is purchased by the taxpayer but is principally used by a broker, dealer, national securities exchange, or board of trade which is an affiliate of the taxpayer, in the qualifying activities listed above.

A recapture of EZ-ITC and EZ-EIC previously allowed must be computed if the property is disposed of or ceases to be in qualified use prior to the end of its useful life.

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 may elect to take the EZ-ITC on qualified property in lieu of the investment tax credit.

Definitions

An *affiliate* is any of the following:

- A partnership in which 80% or more of the interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation in which 80% or more of the voting stock is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.
- A corporation in which 80% or more of the voting stock is owned or controlled, directly or indirectly, by the entity that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.

Commodities as referred to in these instructions are defined in section 475(e)(2) of the IRC.

Cost is the basis of property as defined in IRC section 1012.

Life or useful life (of property) means the depreciable life as provided by section 167 or 168 of the IRC.

Other basis means the adjusted basis for determining gain or loss used as the basis for depreciation under IRC section 167(g).

Principally used means more than 50%. A building or an addition to a building is principally used in qualifying activities when more than 50% of its usable business floor space is used in qualifying activities. Floor space used for bathrooms, cafeterias, and lounges is not usable business floor space. Equipment is principally used in qualifying activities when it is used in such activities more than 50% of its operating time. Operating time may be determined based on actual time, cost allocations to individual business units, or any other reasonable method that accurately reflects operating time.

Purchase or sale of stocks, bonds, commodities, or other securities includes, but is not limited to, the issuance, entering into, assumption, offset, assignment, termination, or transfer of stocks, bonds, commodities, or other securities.

A *security* is defined in section 475(c)(2) of the IRC.

Line instructions

New York C corporations complete all applicable schedules.

New York S corporations complete schedules A through D.

Schedule A — Part I — Eligibility requirement

In order to claim this credit, all or a substantial portion of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property must be located in New York State. To meet this requirement, you must maintain a requisite number of employees performing administrative and support functions during the tax year in which the property is placed in service. You will be presumed to have maintained the requisite number of employees performing administrative and support functions, where the average number of employees performing the support functions is at least 95% of the average number of employees performing these functions during the 36 months immediately preceding the year in which the credit is claimed. Compute the average number of employees on a quarterly basis.

Employees performing administrative and support functions include all employees other than brokers, dealers, or investment advisors to regulated investment companies. Generally, any employee whose compensation for the taxable year is based more than 50% on commissions is presumed to be a broker, dealer, or investment advisor. However, if you do not compensate those employees who are employed as brokers, dealers, or investment advisors on a commission basis, you must specifically identify the employees performing those functions and must exclude those employees from the employment percentage calculation.

A national securities exchange, board of trade, or their wholly owned entity should identify those employees who are performing the administrative and support functions resulting from or related to the activities of the securities exchange, board of trade, or other entity, and calculate the employment percentage using those employees.

Schedule A has been provided as an acceptable method of determining whether a corporation meets the eligibility requirements. As an alternative to Schedule A, you may employ other reasonable methods of determining eligibility. This alternative method must be demonstrated to the Tax Department as an appropriate method.

Combined filers under Article 9-A apply the appropriate method on an individual entity basis for each company claiming a credit to determine if each company has maintained the requisite number of employees performing administrative and support functions in New York State in the tax year for which the credit is claimed.

If your corporation does not meet the eligibility requirements as stated above, do not complete Schedule A, Part II. **You are not eligible for the EZ investment tax credit.** However, you may need to complete Schedule B if you are eligible for the EZ employment incentive credit, and Schedule C if you need to recapture a credit previously taken. Complete Schedule E, Parts I and II, to compute an EZ employment incentive credit, or to use a carryforward earned in a prior period.

Line 1 — Enter the number of employees who perform administrative and support functions in New York State for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) occurring during the current tax year to obtain the average number of employees for the current tax year.

Example 1:

Current tax year	*March 31*	*June 30*	*Sept. 30*	*Dec. 31*	*Total*
Number of administrative and support employees in New York State	*100*	*100*	*125*	*175*	*500*

1. Average number of employees in New York State for current tax year (500 divided by four) 125

Line 2 — Enter the number of employees who perform administrative and support functions in New York State on each of the dates listed for the 36 months immediately preceding the year in which the investment tax credit is claimed. Add the number of employees for the 36-month period, and divide by the number of such dates (include 0 dates) occurring during the 36-month period, to obtain the average number of employees for the 36-month test period.

Example 2:

Number of administrative and support employees in New York State during the 36-month test period	***March 31***	***June 30***	***Sept. 30***	***Dec. 31***	***Total***
First year	*100*	*100*	*100*	*100*	*400*
Second year	*50*	*75*	*75*	*100*	*300*
Third year	*0*	*0*	*40*	*50*	*90*

Total number of administrative and support employees in New York State for 36-month test period 790

2. Average number of administrative and support employees in New York State for 36-month test period (790 divided by 12) 66

Line 3 — Divide line 1 by line 2. If the result does not equal or exceed 95%; **stop**. Do not complete Schedule A, Part II. You do not qualify for the EZ investment tax credit.

Schedule A — Part II — EZ investment tax credit

Columns a and b: List in these columns a clear description of qualified property placed in service during this tax period and the principal use of each item of property. Describe the property in terms that a layperson could understand. Attach additional pages if necessary.

Column e: Enter your cost or other basis (see *Definitions* on page 1). Corporate partners enter your allocable share of the cost or other basis in the partnership's property listed in column a.

Line 4a — New York C corporations: Add column e to obtain the total cost or other basis of all property claimed in this schedule. Multiply this figure by 10%.

Line 4b — New York S corporations: Add column e to obtain the total cost or other basis of all property claimed in this schedule. Multiply this figure by 8%.

Schedule B — EZ employment incentive credit

If you acquire, construct, reconstruct, or erect property for which an EZ investment tax credit is allowed, an EZ employment incentive credit may be allowed in the following three years.

The amount of the EZ employment incentive credit allowed is 30% of the original EZ investment tax credit for each of the three years following the year for which the EZ investment tax credit was originally allowed. However, the credit is allowed only for those years during which your average number of employees (except general executive officers) in the EZ is at least 101% of the average number of employees (except general executive officers) in the EZ, during the tax year immediately preceding the tax year for which the original EZ investment tax credit was allowed.

If you have claimed an EZ investment tax credit for property purchased which is principally used by your affiliate, you may also be eligible for an EZ employment incentive credit. In this case, the credit is allowed based on your average number of employees in the EZ. The number of the affiliate's employees is not taken into consideration.

If you did not have a tax year for New York State immediately preceding the year in which the EZ investment tax credit is originally allowed, the average number of employees in the EZ in the tax year in which the EZ employment incentive credit is claimed must be at least 101% of its average number of employees in the EZ in the tax year in which the EZ investment tax credit was originally allowed.

New York C corporations: The EZ employment incentive credit can reduce the corporate tax liability to the fixed dollar minimum. Any EZ employment incentive credit that cannot be used to reduce the current year's tax liability may be carried over to the following year or years.

A corporation may **not** claim a refund of the EZ employment incentive credit.

Schedule B — Part I — Employment information required to determine eligibility for EZ employment incentive credit

Complete Part I to determine if you are eligible for the credit. If you are eligible, complete Part II.

Column A — Enter in column A the credit year and the base year. The *credit year* is the first tax year after the year in which you claimed the original EZ investment tax credit. The *base year* is the year preceding the year you claimed the original EZ investment tax credit. However, if your business was not in operation in New York State during that year, the *base year* is the year in which you claimed the EZ investment tax credit.

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

> ***Example:*** *A taxpayer filing for a fiscal year beginning September 1, 2003, and ending August 31, 2004, would enter the number of employees employed in the EZ on the following dates: September 30, 2003, December 31, 2003, March 31, 2004, and June 30, 2004.*

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 Part II below. **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 B — Part II — Computation of EZ employment incentive credit

Use Schedule B, Part II, to determine the amount of the EZ employment incentive credit allowed for each year of eligibility listed in Schedule B, Part I.

Example

A corporation acquired qualified property in 2002 at a cost of $100,000. The EZ-ITC allowed was $10,000.

Year	*Average number of EZ employees*	*EZ employment incentive credit available for use*
2001	*200*	*XXX*
2002	*not required*	*XXX*
2003	*202*	*$ 3,000 (30% of $ 10,000)*
2004	*199*	*-0-**
2005	*205*	*$ 3,000 (30% of $10,000)*

** In 2004, the average number of EZ employees was less than 101% of the number employed in 2001.*

Schedule C — Computation of recapture of EZ investment tax credit and EZ employment incentive credit

When property on which an EZ investment tax credit has been allowed is disposed of, or ceases to be in qualified use before the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back to the tax otherwise due in the year of disposition or disqualification. The decertification of a business enterprise in an EZ constitutes a disposal or cessation of qualified use on the effective date of the decertification.

For purposes of the recapture, the termination or expiration of an EZ's designation as an EZ will not be considered a disposal or cessation of qualified use.

Section 210.12-B(f) provides different formulas to compute the amount of EZ investment tax credit required to be recaptured.

(1) For property depreciated under section 167 of the IRC, the formula is:

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

(2) For three-year property depreciated under section 168 of the IRC, the formula is:

$$\frac{\text{36 minus the number of months of qualified use}}{36} \times \text{original EZ investment tax credit allowed}$$

Recapture is only required if the property is disposed of or ceases to be in qualified use prior to the end of 36 months.

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

$$\frac{\text{60 minus the number of months of qualified use}}{60} \times \text{original EZ investment tax credit allowed}$$

Recapture is only required if the property is disposed of or ceases to be in qualified use prior to the end of 60 months.

(4) For buildings or structural components of a buildings depreciated under section 168 of the IRC, the formula is:

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

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

Column G — Enter the total amount of EZ-ITC credit allowed. Include the original EZ-ITC but not any EZ-EIC allowed.

Column I — Multiply 30% of amount in column H by the number of years the EZ-EIC was allowed. If the recapture of the EZ-ITC occurred in a prior year, enter 30% of the recaptured EZ-ITC.

Line 8 — In certain instances when an EZ corporation has been decertified, the amount of credit to be recaptured must be augmented by an interest charge. For information on how to compute the augmented recapture amount, see TSB-M-86(13.3)C.

Schedule D — Part I — Computation of EZ investment tax credit

Line 14 — New York C corporations: If the amount on line 12 is greater than the amount on line 13, subtract line 13 from line 12. This is the amount of your EZ investment tax credit. If the amount on line 13 is greater than the amount on line 12, you have a net recaptured EZ investment tax credit; subtract line 12 from line 13. Add this recaptured credit amount back to the tax due on your franchise tax return.

New York S corporations: If the amount on line 12 is greater than the amount on line 13, subtract line 13 from line 12. This is the amount of your EZ investment tax credit. Transfer that amount to Form CT-34-SH, line 17. If the amount on line 13 is greater than the amount on line 12, you have a net EZ investment tax credit recapture; subtract line 12 from line 13. Transfer that amount to Form CT-34-SH, line 18.

Schedule D — Part II — Computation of EZ employment incentive credits

Line 19 — New York C corporations: If the amount on line 17 is greater than the amount on line 18, subtract line 18 from line 17. This is the amount of your EZ employment incentive credit. If the amount on line 18 is greater than the amount on line 17, you have a net recaptured EZ employment incentive credit; subtract line 17 from line 18. Add this recaptured credit amount back to the tax due on your franchise tax return.

New York S corporations: If the amount on line 17 is greater than the amount on line 18, subtract line 18 from line 17. This is the amount of your EZ employment incentive credit. Transfer that amount to Form CT-34-SH, line 17. If the amount on line 18 is greater than the amount on line 17, you have a net EZ employment incentive credit recapture; subtract line 17 from line 18. Transfer that amount to Form CT-34-SH, line 18.

Schedule E — Part I — Computation of EZ employment incentive credit and EZ investment tax credit used *(New York C corporations only)*

Use Column A to determine the amount of EZ employment incentive credit that you may apply in the current period.

Use Column B to determine the amount of EZ investment tax credit that you may apply in the current period.

Line 20, Column A — Enter your franchise tax from Form CT-3, line 78, or CT-3-A, line 77, minus the total amount of any tax credits you are claiming before the EZ employment incentive credit. If you wish to apply the EZ investment tax credit before the EZ employment incentive credit, be sure to also subtract the EZ investment tax credit used this period (shown on line 24, Column B). Certain credits must be applied before the EZ employment incentive credit. Refer to the instructions of your franchise tax return to determine the order of credits that applies, or refer to Form CT-600, *Ordering of Corporation Tax Credits*.

Line 20, Column B — Enter your franchise tax from Form CT-3, line 78, or CT-3-A, line 77, minus the total amount of any tax credits you are claiming before the EZ investment tax credit. If you wish to apply the EZ employment incentive credit before the EZ investment tax credit, be sure to also subtract the EZ employment incentive credit used this period (shown on line 24, Column A). Certain credits must be applied before the EZ investment tax credit. Refer to the instructions of your franchise tax return to determine the order of credits that applies.

Schedule E — Part II — Credits available for refund or carryforward *(New York C corporations only)*

Line 29 — A new business may elect to treat 50% of the current year EZ-ITC available to be carried forward as an overpayment of tax to be refunded.

New business under Article 9-A, section 210.12(j), means 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 or controlled either directly or indirectly by a taxpayer subject to tax under Article 9-A; Article 9, section 183, 184, or 185; Article 32; or Article 33 of the Tax Law.
- A corporation that is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under Article 9-A; Article 9, section 183, 184, 185, or 186; Article 32; Article 33; or Article 23 of the Tax Law, or that would have been subject to tax under Article 23, as such article was in effect on January 1, 1980; or the income or losses of which are or were includable under Article 22 of the Tax Law, whereby the intent and purposes of section 210.19(e) with respect to refunding of credit to new businesses would be evaded.
- A corporation that has been subject to tax under Article 9-A for more than five tax years (excluding short periods).

Enter 50% of line 28; then enter the line 29 amount on Form CT-3, line 99 or Form CT-3-A, line 100.

Lines 30 and 33 — Refer to these figures when computing next year's credit on Form CT-605.

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Hotline for the hearing and speech impaired:
If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

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