New York State Department of Taxation and Finance

2003

Instructions for Form IT-252

Investment Tax Credit for the Financial Services Industry

IT-252-I

General instructions

Individuals and estates and trusts may claim the investment tax credit for the financial services industry against the tax imposed under Article 22 for the tax year during which qualified property is placed in service. The property must be placed in service on or after October 1, 1998, and before October 1, 2008.

To claim the 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 (see Part I). Per TSB-A-03(10)C, *all or a substantial portion* means at least 80%.

Who must file

File Form IT-252 if you are an individual, a beneficiary or fiduciary of an estate or trust, a member of a partnership, or a shareholder of an S corporation, and:

– You are claiming the investment credit (including the employment incentive credit); or

– You had an early disposition of property for which the investment tax credit was allowed in a prior year.

An estate or trust that divides among itself and its beneficiaries the credit or addback of credit on early dispositions must attach Form IT-252 to Form IT-205, showing each beneficiary's share of the credit or addback of credit on early dispositions.

A partnership must file Form IT-252 with Form IT-204 showing the partnership's total investment in qualified property or total early dispositions of qualified property.

An S corporation does not file Form IT-252. It must file Form CT-44. If you are a shareholder in an S corporation that has made the election under section 660 of the Tax Law, obtain your share of the corporation's credit or addback of credit on early dispositions of qualified property from the corporation.

Qualified property

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 on or after October 1,1998, and before October 1, 2008;
- is depreciable pursuant to section 167 of the IRC;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase according to section 179(d) of the IRC;
- is located in New York State; and
- is principally used in the ordinary course of the taxpayer's business in one of the following capacities:
  - — 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)(2)), 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).

Though the property must be located in New York State, it is not necessary for the users of the property to be located in New York State. For example, a computer system that is placed in service in New York State would qualify for the credit, even if the brokers accessing the system are located outside the state.

Generally, property that a taxpayer purchases and leases to others does not qualify for the investment tax credit. However, if such property is leased to an affiliated broker or dealer that is an affiliate of the taxpayer that principally uses the property in the qualifying activities listed above, the property 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 or dealer that is an affiliate of the taxpayer in the qualifying activities listed above.

Definitions

Affiliate means:

- A partnership 80% or more of whose interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation 80% or more of whose 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 80% or more of whose 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.

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.

Nonqualified nonrecourse financing is any amount for which a 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 a creditor) who has an interest in the activity. Nonrecourse financing is nonqualified if it is not qualified commercial financing as defined in section 49(a)(1) 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 used more than 50%. A building or an addition to a building is principally used in qualifying activities if 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, or other securities or commodities includes, but is not limited to, the issuance, entering into, assumption, offset, assignment, termination, or transfer of stocks, bonds, commodities, or other securities.

When allowed

The credit is allowed only for the tax year in which qualified property is placed in service. However, if all of the credit cannot be used in the year the property is placed in service, you may carry over the unused amount to the following ten years (see *Carryover of unused investment credit* on page 2).

Investment credit base

The investment tax credit is figured on the investment credit base. The investment credit base is the cost or other basis of the qualified property for federal income tax purposes. Do not include any amount that was expensed under section 179(a) of the IRC. The basis of qualified property must include the remaining basis of other property exchanged or traded in for it. If a credit was previously allowed on the property exchanged or traded in, a disposition of property has occurred, and you may have to figure an addback of credit on early dispositions (see Part V instructions).

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

Investment credit base for replacement property that is similar or related in service or use to property destroyed as a direct result of the terrorist attacks of September 11, 2001 — If replacement property is acquired that is similar or related in service or use to the property destroyed as a direct result of the terrorist attacks of September 11, 2001, and you chose not to defer the required amount to be recaptured, the investment credit base of the replacement property is computed without regard to any basis reduction required by IRC section 1033. For more information, see TSB-M-02(7)I.

If the qualified property is purchased using nonqualified nonrecourse financing, the investment credit base must be reduced by the amount of financing that would be excludable from the credit base pursuant to section 49(a)(1) of the IRC. If, at the close of a tax year following the tax year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing for the property, the net decrease is to be treated as the cost or other basis of qualified property acquired, constructed, reconstructed, or erected during the year of the decrease.

Carryover of unused investment credit

If you cannot claim all of your 2003 credit because it is more than your New York State tax less other credits, you can carry over the unused amount to the following 10 years, or, if you are the owner of a new business, you may qualify for a refund (see *Refundable unused investment tax credit* below).

Refundable unused investment tax credit

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

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

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

— You have operated your new business in New York State for more than five years, excluding short years of the business; or

— Your new business is substantially similar in operation and ownership to a business that:

1. is (or was) subject to any of the following taxes:
   - franchise tax on transportation and transmission corporations and associations;
   - additional franchise tax on transportation and transmission corporations and associations;
   - franchise tax on farmers, fruit growers, and other like agricultural corporations organized and operated on a cooperative basis;
   - franchise tax on water-works companies, gas companies, electric or steam heating, lighting, and power companies;
   - franchise tax on business corporations;
   - franchise tax on banking corporations; or
   - franchise tax on insurance corporations;
2. would have been subject to the New York State unincorporated business tax (as such tax was in effect on January 1, 1980); or
3. had income or losses that are (or were) included in computing your New York State personal income tax.

If you are a shareholder of an S corporation that has an election in effect under section 660 of the Tax Law, and the S corporation qualifies as a new business as defined in section 210.12(j) of the Tax Law, you may qualify to have the excess credit that relates to your pro rata share of the corporation's credit refunded.

Early disposition of property and addback of credit on early dispositions

If property on which the investment credit was taken is disposed of or removed from qualified use before its useful life or specified holding period ends (see instructions for Part V), the difference between the credit taken and the credit allowed for actual use must be added to your income tax in the year of disposition. You must also add to your income tax an additional amount computed by multiplying the addback of credit on early dispositions by the underpayment interest rate in effect on the last day of your tax year. The underpayment interest rate is not compounded. However, if the property was in qualified use for more than 12 consecutive years, the addbacks for credit and interest on early dispositions are not required.

Disposition of property also includes:

— a sale of property;

— the contribution of property to a partnership or corporation, unless a substantial interest in the ownership of the trade or business is retained by the transferor;

— the sale by a partner of his or her interest in a partnership;

— a gift of property;

— a reduction in the proportionate stock interest of an electing New York S corporation shareholder;

— conversion of property to personal use;

— a change in the location of the property to a situs outside New York State;

— an exchange of property for other property of like kind (including a trade-in of property);

— the theft or destruction of property; and

— an increase in nonqualified nonrecourse financing (but the addback of credit only applies for the portion of such increase).

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

Use Part V of Form IT-252 to figure your addback of credit on early dispositions.

Line instructions

Individuals: Complete Parts I, II, III, IV, and V.
Fiduciaries: Complete Parts I, II, III, IV, V, and VI.
Partnerships: Complete Parts I, IV, and V.
Partners, shareholders of S corporations, and beneficiaries of estates and trusts: Complete Parts II and III.

Investment tax credit

Part I — Eligibility requirement

To claim this credit, at least 80% 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. For example, if you have a quarterly average of 1,000 employees performing the administrative and support functions during your tax year, then a quarterly average of at least 800 (1,000 x 80%) of them must be located in New York State. If you are claiming credit based on having met the 80% test, then you must attach a separate sheet indicating how you met this requirement. Another method to meet this requirement is to maintain the requisite number of employees performing administrative and support functions in New York State during the tax year in which the property is placed in service and the credit claimed (the *back-office test)*. (If the property is used by an affiliate in qualifying activities, it is the affiliate that must meet either the 80% test or the back-office test.) A taxpayer is presumed to have maintained the requisite number of employees when the average number of employees performing the administrative and 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. The average number of employees must be computed 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 tax year is based more than 50% on commissions will be presumed to be a broker, dealer, or investment advisor. However, if a taxpayer does not compensate those employees who are employed as brokers, dealers, or investment advisors on a commission basis, the taxpayer must specifically identify the employees performing those functions and must exclude those employees from the employment percentage calculation.

Part I has been provided as an acceptable method of determining whether an individual, a partnership, estate, or trust meets the back-office test. A taxpayer may employ other reasonable methods of determining eligibility. However, this other method must be demonstrated to the Tax Department as an appropriate method.

If you **do not meet the eligibility requirements** as stated above, **do not complete Part II.** You are **not eligible** for the investment tax credit.

Line 1 — In columns A through D, enter the number of employees who perform administrative and support functions in New York State on the dates listed. Add columns A through D and enter total in column E.

Lines 2 through 4 — Enter the number of employees who perform administrative and support functions in New York State on each of the dates listed for the three years immediately preceding the year in which the investment tax credit is claimed. Add columns A through D (include “0” dates) and enter total in column E for each line.

If you provided employment in New York State for only part of the three-year test period, the three-year test period is deemed to refer to that part. If you did not provide employment in New York State at any time during the three-year test period, skip lines 2 through 7 and enter ***100*** on line 8. (There must be a positive entry on line 1.)

Line 8 — Divide line 5 by line 7. The result **must equal or exceed 95%. If it does not, do not complete Part IV. You do not qualify** for the investment tax credit.

Example:

Part I - Eligibility requirement **(see instructions)**

Number of full-time clerical and administrative support employees in New York State on date specified					
	A	**B**	**C**	**D**	**E**
	3/31	**6/30**	**9/30**	**12/31**	**Total** *(A+B+C+D)*
1 Current tax year	100	100	125	175	500
2 First test year	100	100	100	100	400
3 Second test year	50	75	75	100	300
4 Third test year	0	0	40	50	90

Line 5 .... 500 ÷ 4 = 125
Line 6 .... 400 + 300 + 90 = 790
Line 7 .... 790/12 = 66
Line 8 .... 125 ÷ 66 = (189%)

Part II — Computation of credit

Individual or fiduciary

Line 9 — Enter your credit for investments in qualified property from line 28. See Part IV instructions.

Beneficiary

Line 10 — Enter your share of the credit for investments in qualified property made by estates and trusts (from fiduciary’s Form IT-252, Part VI, column C).

Partner

Line 11 — Enter your share of the total credit for investments in qualified property made by partnerships (the total credit is shown on Form IT-204, Schedule B, Part II, line 19). This information should be provided to you by your partnership.

S corporation shareholder

Line 12 — Enter your share of the total credit for investments in qualified property made by S corporations. This information should be provided to you by your S corporation.

Line 14 — Enter the amount of credit that was allocated to beneficiaries in Part VI, column C.

Line 16 — Enter the amount of net credit available for carryover to 2003. The net credit available for carryover is that portion of your prior year’s credit from 2002 Form IT-201-ATT, line 48, 2002 Form IT-203-B, line 34, or 2002 Form IT-205, line 10, that was not applied to your 2002 tax.

Line 18 — If you own a new business and want to claim a refund for the amount of your credit instead of carrying it over to the next year, enter the amount from line 17 on line 18 and on Form IT-201-ATT, line 70, Form IT-203-B, line 55, or Form IT-205, line 33. Do not include a carryover from a previous year; you cannot have a refund of that portion. If you claim a refund of the credit, you cannot carry the credit over to 2004.

Line 19 — Subtract line 18 from line 17. Enter the difference on line 19 and on Form IT-201-ATT, line 48, Form IT-203-B, line 34, or Form IT-205, line 10. This is your nonrefundable investment tax credit available for 2003.

Part III — Summary of addback of credit on early dispositions

Individual or fiduciary

Line 20 — Enter your addback of credit on early dispositions from Part V, line 33, column H. See Part V instructions.

Beneficiary

Line 21 — Enter your share of the addback of credit on early dispositions made by estates and trusts from the fiduciary’s Form IT-252, Part VI, column D, on line 21.

Partner

Line 22 — Enter your share of the total addback of credit on early dispositions made by partnerships (the total is shown on the partnership’s Form IT-204, Schedule B, Part II, line 20). This information should be provided to you by your partnership.

S corporation shareholder

Line 23 — Enter your share of the addback of credit on early dispositions made by S corporations. This information should be provided to you by your S corporation.

Fiduciary

Line 24 — Enter your share of the addback of credit on early dispositions from Part VI, *Fiduciary* line, column D.

Line 25 — Total addback of credit on early dispositions

Individuals — enter the amount from line 25 on Form IT-201-ATT, line 19, or Form IT-203-B, line 3. **Fiduciaries —** enter the amount from line 25 on Form IT-205, line 12.

Part IV — Investments in qualified property

Fill in columns A through F for qualified property that was placed in service. Enter in column D the property's useful life under section 167 of the IRC, even if the property is subject to the provisions of section 168 of the IRC on or after October 1, 1998.

Column F — Multiply column E amount by the credit rate of 4%.

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

— For depreciable property under section 167 of the IRC, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is the number of months of useful life of the property.

— For property subject to the provisions of section 168 of the IRC, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is:

- 36 for three-year property;
- the number of months you chose for buildings or structural components of buildings; or
- 60 for all other classes of property.

Part V — Early dispositions of qualified property and addback of credit on early dispositions

Fill in columns A through H if you have claimed the credit on property that was disposed of or was removed from qualified use (a) during 2003, and (b) prior to the end of its useful life or specified holding period. Do **not** include property that has been in qualified use for more than 12 consecutive years.

Enter in column D:

— For depreciable property under section 167 of the IRC, the number of months of useful life of property.

— For recovery property under section 168 of the IRC:

- 36 for three-year property;
- the number of months you chose for buildings or structural components of buildings; or
- 60 for all other classes of property.

Enter in column E the number of months that the property was not in qualified use (cannot be greater than the amount in column D).

Line 31 — Enter on line 31 the applicable underpayment interest rate in effect on the last day of your tax year:

- If you are a 2003 calendar-year taxpayer, the underpayment rate is 6% (.06)
- If you are a fiscal-year taxpayer, you can obtain the underpayment interest rate in effect on the last day of your fiscal year by calling toll free 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

Part VI — Beneficiary's and fiduciary's share of investment tax credit and addback of credit on early dispositions

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

Need help?

Internet access: *www.nystax.gov*
(for information, forms, and publications)

Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications:	1 800 462-8100
Business Tax Information Center:	1 800 972-1233
From areas outside the U.S. and outside Canada:	(518) 485-6800

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.

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

If you need to write, address your letter to:
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BUSINESS TAX INFORMATION CENTER
W A HARRIMAN CAMPUS
ALBANY NY 12227