



Instructions for Form CT-33.1

Claim for CAPCO Credit

CT-33.1-1

Temporary deferral of certain tax credits

For tax years beginning on or after January 1, 2010, and before January 1, 2013, if the total amount of certain credits that you may use to reduce your tax or have refunded to you is greater than \$2 million, the excess over \$2 million must be deferred to, and used or refunded in, tax years beginning on or after January 1, 2013. For more information about the credit deferral, see Form CT-500, *Corporation Tax Credit Deferral*.

If you are subject to the credit deferral, you must complete all credit forms without regard to the deferral. However, the credit amount that is transferred to your tax return to be applied against your tax due or to be refunded to you may be reduced. Follow the instructions for Form CT-500 to determine the amounts to enter on your tax return.

General information

The certified capital company (CAPCO) credit is equal to 100% of a taxpayer's investment of certified capital in CAPCOs established under Tax Law, Article 1, section 11. You must claim the credit over 10 years, with 10% allowed each year. The total credit available in any particular tax year is the 10% allowed for that year plus any carryovers from prior years.

Certified capital company (CAPCO) program 5

Tax Law section 11 provides for CAPCO program 5. This program provides 60 million dollars of certified capital, which may be allocated and allowed as tax credits under Tax Law section 11 and Article 33, section 1511(k). Although investments in this program began in 2005, the credits were not allowed to be claimed until 2007. For more information, see TSB-M-05(3)C, *Summary of Corporation Tax Legislative Changes Enacted in 2005*.

Transferability of CAPCO tax credits

The Tax Law allows an insurance corporation that is a certified investor in a CAPCO to transfer or sell unused CAPCO tax credits, in whole or in part, to any affiliate within an affiliated group of taxpayers that is subject to tax under Article 33. The transfer or sale of the credit will not affect the time schedule for claiming the credit transferred or sold.

The insurance corporation making the transfer or sale must notify the Tax Department and the Insurance Department of the transfer or sale of the credit within 45 days of the date of the transfer. There is no specific form to notify the Tax Department and the Insurance Department. The insurance corporation that transfers or sells the credit must send a letter including the names of the corporations and their employer identification numbers, the date of transfer or sale, program number under which the credit was allocated, and the total amount of unused credit being transferred or sold, to the following addresses:

**NYS TAX DEPARTMENT
INCOME/FRANCHISE DESK AUDIT BUREAU
W A HARRIMAN CAMPUS
ALBANY NY 12227**

**ASSISTANT DIRECTOR OF ADMINISTRATION AND
OPERATIONS
NYS INSURANCE DEPARTMENT
TAXES AND ACCOUNTS BUREAU
ONE COMMERCE PLAZA
ALBANY NY 12257**

Once the insurance corporation has properly notified the Tax Department and the Insurance Department of the transfer, the affiliate may claim a credit or refund of the CAPCO credit transferred. The transferee corporation claims the CAPCO credit by filing Form CT-33.1.

This provision is retroactive and applies to any CAPCO credits transferred on or after August 1, 2003. If a transferee corporation has already filed its return for a tax year beginning in 2003, 2004, or 2005, for which it is entitled to claim a CAPCO credit, it may claim the CAPCO credit for such year by filing an amended franchise tax return and attaching the 2005 version of Form CT-33.1. A claim for credit or refund of tax must be filed within three years from the date the return was filed, or within two years from the date the tax was paid, whichever is later. For more information, see TSB-M-06(2)C, *Transfer of certified capital company (CAPCO) credits for Article 33 (Insurance Corporations)*.

Line instructions

Part 1 — Computation of certified capital company (CAPCO) credit

Before completing this part, complete applicable Parts 3 through Part 8. Complete Part 3 to calculate the allocated CAPCO credit available for the current tax year. Complete Part 4 to recapture credit previously allowed. **Transferors:** Complete Part 5 if you transferred unused allocated credit to an affiliate. Complete Part 8 if you transferred unused carryforward credit to an affiliate. **Transferees:** Complete Part 6 if an affiliate transferred unused allocated credit to you. Complete Part 7 if an affiliate transferred unused carryforward credit to you.

Line 6 — Enter the total amount of unused CAPCO credit carried forward from line 20 of the previous year's Form CT-33.1.

Line 11 — Subtract line 10 from line 9. This is the net CAPCO tax credit available for the current tax year. If the amount on line 10 is greater than the amount on line 9, you have a net recaptured tax credit; enter this amount as a negative in the appropriate credit box on franchise tax return Form CT-33, line 101, Form CT-33-NL, line 47, or Form CT-33-A, line 116. If the amount on line 9 is greater than the amount on line 10, complete Part 2.

Part 2 — Computation of CAPCO credit used and carried forward

Line 12 — Enter the amount from the following franchise tax returns, **plus** any net recapture of other tax credits:

- Form CT-33, line 11
- Form CT-33-A, line 15
- Form CT-33-NL, line 5

Line 13 — If you are claiming more than one tax credit, enter the total amount of credits applied against the current year's franchise tax before the CAPCO credit. If the CAPCO credit is the only credit that is being applied against the current year's franchise tax, enter **0**. If you are included in a combined return, include any amount of tax credit(s) being claimed by other members of the combined group, including the credit for the CAPCO tax credit, that you wish to apply before your CAPCO credit.

Life insurance corporations: Do not enter on this line any amount of empire zone (EZ) wage tax credit, zone equivalent area (ZEA) wage tax credit, or EZ capital tax credit you may be claiming. If you are included in a combined return, do not include any amount of these credits being claimed by other members of the combined group.

Line 15 — The CAPCO credit may not reduce the tax below the minimum tax. For an insurance company filing on an individual basis, enter **250** on this line. For a life insurance company filing as a member of a combined group, enter the sum of lines 4 and 12 from Form CT-33-A.

Line 17 — Enter the lesser of line 11 or line 16.

If your total credits from all sources are **\$2 million or less**, enter the amount from line 17 on your franchise tax return.

If your total credits from all sources are **more than \$2 million**, you may be subject to the temporary credit deferral. Complete line 17 but do not enter the amount from line 17 on your franchise tax return. See Form CT-500 to determine the proper amounts to enter on your franchise tax return.

Part 3 – Allocated CAPCO credit available for the current tax year

Column A — For each CAPCO investment, identify the name of the CAPCO, the program number, and the tax year of the investment. Attach additional sheets if necessary and include the column E amounts on line 21.

Column B — Enter the total amount of CAPCO credit allocated by the Superintendent of Insurance for each CAPCO investment.

Column D — Enter the total amount of allocated credit available in all prior tax years.

Part 4 – Computation of CAPCO credit recapture

Lines 22 through 26 — If the certified capital company is decertified or revoked from the CAPCO program, the credit will be disallowed and any credit previously taken must be recaptured using lines 22 thru 26. **Transferor/Transferees:** Any portion of the credit that is transferred to affiliates that is required to be recaptured will be the responsibility of the taxpayer who actually claimed the credit.

If you are required to recapture a credit previously taken, provide a backup schedule including the name of the CAPCO, the program number, the tax year of the investment, and the amount of CAPCO credit previously taken for each CAPCO that is decertified or whose certification is revoked.

Line 25 — Enter 100 percent of the credit previously taken if the certified capital company's certificate is revoked before the later of: (1) the third anniversary of the certification date of the CAPCO; or (2) the date on which the CAPCO satisfies the requirements for continuance of certification in Tax Law section 11(c)(1)(C).

Part 5 – Allocated CAPCO credit transferred to affiliates for the current tax year

Complete this part **only** if you transferred allocated credit to an affiliate.

Column A — For each CAPCO investment transferred, identify the name of the CAPCO, the program number, and the tax year of the investment. Attach additional sheets if necessary and include the column F amounts on line 27.

Column D — Enter the total amount of unused CAPCO credit allocated by the Superintendent of Insurance transferred to affiliates.

Column E — The percentage of available credit for the current tax year is 1 divided by the number of years remaining to claim the credit as of the date that the allocated credit was transferred.

***Example:** Corporation A invested \$1,000,000 in 2006 and began claiming the credit in 2008. Corporation A was allowed a total CAPCO credit of \$200,000 (10% per tax year) for tax years 2008 and 2009. On June 15, 2010, Corporation A transferred \$600,000 (a portion of the remaining allocated credit) to its affiliate Corporation B. Corporation A's percentage of credit available for the current tax year (as well as the next 7 subsequent years) equals 12.5% (1 divided by 8 years remaining to claim the credit as of the date that the allocated credit was transferred).*

Part 6 – Allocated CAPCO credit transferred from affiliates for the current tax year

Column A — For each CAPCO investment transferred, identify the name of the CAPCO, the program number, and the tax year of the investment. Attach additional sheets if necessary and include the column F amounts on line 28.

Column D — Enter the total amount of unused CAPCO credit allocated by the Superintendent of Insurance transferred from affiliates.

Column E — The percentage of available credit for the current tax year is 1 divided by the number of years remaining to claim the credit as of the date that the allocated credit was transferred.

***Example:** Corporation A invested \$1,000,000 in 2006 and began claiming the credit in 2008. Corporation A was allowed a total CAPCO credit of \$200,000 (10% per tax year) for tax years 2008 and 2009. On June 15, 2010, Corporation A transferred \$600,000 (a portion of the remaining allocated credit) to its affiliate Corporation B. Corporation B's percentage of credit available for the current tax year (as well as the next 7 subsequent years) equals 12.5% (1 divided by 8 years remaining to claim the credit as of the date that the allocated credit was transferred).*

Part 7 – CAPCO credit carryforward transferred from affiliates for the current tax year

Column A — For each CAPCO investment transferred, identify the name of the CAPCO, the program number, and the tax year of the investment. Attach additional sheets if necessary and include the column E amounts on line 29.

Column E — For each CAPCO investment transferred, **only** enter the amount of CAPCO credit **carryforward** transferred from its affiliates.

Part 8 – CAPCO credit carryforward transferred to affiliates for the current tax year

Column A — For each CAPCO investment transferred, identify the name of the CAPCO, the program number, and the tax year of the investment. Attach additional sheets if necessary and include the column E amounts on line 30.

Column E — For each CAPCO investment transferred, **only** enter the amount of CAPCO credit **carryforward** transferred to its affiliates. The column E total cannot exceed line 18.

Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.
