New York State Department of Taxation and Finance

Instructions for Form IT-238

Claim for Rehabilitation of Historic Properties Credit

IT-238-I

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 IT-500, *Income 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 IT-500 to determine the amounts to enter on your tax return.

General information

What is the rehabilitation of historic properties credit?

The rehabilitation of historic properties credit is available to taxpayers for expenses related to the rehabilitation of a certified historic structure located in New York State.

For tax years beginning on or after January 1, 2010, and before January 1, 2015, the credit is equal to 100% of the federal credit amount allowed for the qualified rehabilitation expenditures relating to the rehabilitation of a certified historic structure as defined under IRC section 47(c)(3) for the same certified historic structure located in New York State. However, the credit cannot exceed $5,000,000 per structure. There is no limit on the number of structures for which the credit may be taken.

To claim the credit under Article 22 of the Tax Law, including any credit allowed to a shareholder of a New York S corporation, the rehabilitation project must also be in whole or in part:

- a targeted area residence within the meaning of IRC section 143(j) that is a residence in an area that is either a qualified census tract or an area of chronic economic distress, or
- located within a census tract that is identified as being at or below 100% of the state median family income in the most recent federal census.

If the credit exceeds the taxpayer's tax for the year, the excess may be carried over to the following year(s).

Any credit taken must be recaptured if the federal credit on which the New York State credit is based is recaptured.

Who is eligible to claim this credit?

- individuals (including sole proprietors)
- estates or trusts
- partners in a partnership (including members of a Limited Liability Company (LLC) that is treated as a partnership for federal income tax purposes)
- shareholders of a New York S corporation
- beneficiaries of an estate or trust

The credit must be claimed by the same taxpayer(s) that claimed the federal credit. Accordingly, the allocation of the New York State credit among partners in a partnership, members of an LLC, or shareholders of a New York S corporation must follow the same allocation allowed for purposes of the federal tax credit under IRC section 47.

How do I claim the credit?

If you are an individual (including a sole proprietor), file Form IT-238 with your personal income tax return, Form IT-201 or IT-203.

An estate or trust that divides the credit among itself and its beneficiaries must attach Form IT-238 to Form IT-205, *Fiduciary Income Tax Return,* showing each beneficiary's share of the credit.

A partnership must file Form IT-238 with Form IT-204, *Partnership Return,* showing the total amount of the credit. Partnerships must provide each partner with information about their share of the historic properties credit from the partnership.

A New York S corporation cannot file Form IT-238. It must file Form CT-238, *Claim for Rehabilitation of Historic Properties Credit*. The corporation must provide each shareholder with information about his or her share of the historic properties credit from the S corporation.

When do I claim the credit for the rehabilitation of historic properties?

Generally, you must claim the New York State credit for the same year you were allowed the federal credit for the rehabilitation of historic properties. If you elect under IRC section 47(d) to claim the credit for federal purposes based on when the rehabilitation expenses are paid instead of when the historic structure is placed in service under IRC section 167, you may only claim the New York State credit for the year in which the historic structure is placed in service. However, the New York State credit is equal to 100% of the total federal credit, including any amount of federal credit for the same structure that you claimed in prior years, but may not exceed $5,000,000 per structure for the year the property is placed in service.

Specific instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Individuals (including sole proprietors): Complete Parts 1, 5, and 6. If applicable, also complete Part 7.

Note: In the case of a historic property that is owned by two or more taxpayers, each taxpayer must complete his or her own Form IT-238 based on the **total** qualified rehabilitation expenditures attributable to that property, and prorate the total credit computed. See the instructions for line 2.

Partnerships: Complete Parts 1 and 5. If applicable, also complete Part 7.

Husband and wife business that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Complete Parts 1, 5, and 6. If applicable, also complete Part 7.

Fiduciaries: Complete Parts 1, 4, 5, and 6. If applicable, also complete Part 7.

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust: Complete Parts 2, 3, 5, and 6. If applicable, also complete Part 7.

Note to partners and shareholders: Unlike on your federal credit form, partners and shareholders do not compute their own individual credits based on their shares of qualified rehabilitation expenditures from the partnership or New York S corporation. Instead, your partnership or S corporation will compute a credit on the total qualified rehabilitation expenditures attributable to the property and provide you with your individual share of the credit. See the instructions for lines 3 and 4.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-238.

Part 1 — Individual (including sole proprietor), partnership, and estate or trust

Enter only the information relating to certified historic structures located in New York State for which you were allowed a federal credit.

If you are claiming a credit for more than three certified historic structures, complete as many Forms IT-238 (name, identification number, and Part 1 only) as necessary. On the first Form IT-238, complete Parts 1 through 7 (as applicable) and include on line 1 the total of column C from all additional Forms IT-238. Attach the additional

forms to the back of the first Form IT-238 with the entry on line 1. Enter on line 2 the total of all column C amounts.

Schedule A — Historic property information

Column A — Enter the location of the certified historic structure located in New York State. Give the specific address and, if applicable, the name of the historic district in which the property is located.

Column B — Enter the assigned National Park Service (NPS) project number.

Column C — Enter the completion date of the project.

Schedule B — Credit computation

Enter the information for each property in the same order as the properties are listed under Schedule A.

Column A — For each certified historic structure located in New York State that was placed in service under IRC section 167 during the tax year covered by this form, enter the amount of qualified rehabilitation expenditures allowed for the federal rehabilitation credit.

Line 2 — If the certified historic structure is owned by more than one taxpayer, the amount of the credit must be prorated based on the same ratio of expenses that was claimed for the federal credit. Enter only your share of the line 2 amount on line 7. However, a husband and wife filing a joint return do not have to prorate the credit.

Example: *You and your brother share ownership of an eligible historic property. The total qualified rehabilitation expenditures attributable to the property are $150,000, of which you each claimed one-half for federal credit purposes. You and your brother must each complete your own Form IT-238 based on the total expenses of $150,000. You must each enter $150,000 in Schedule B, column A; $30,000 in Schedule B, column B; and $30,000 in Schedule B, column C, of your individually filed Form IT-238.*

The total credit of $30,000 is included on line 2 of each Form IT-238. Since the expenses were divided equally for federal credit purposes, you and your brother would each include $15,000 on line 7 of your own Form IT-238.

Part 2 — Partnership, New York S corporation, estate, and trust information

Enter the appropriate information for each partnership, New York S corporation, estate, or trust from which you received a share of the rehabilitation of historic properties credit.

Part 3 — Partner's, shareholder's, or beneficiary's share of credit

Enter your share of the total credit received from a partnership, New York S corporation, estate, or trust. If you belong to more than one partnership, New York S corporation, estate, or trust, enter the total of all your shares on the appropriate line(s).

Line 3 Partner — Enter your share of the partnership's credit. This information should be provided to you by the partnership. If you are claiming a credit from more than one partnership, enter the total from all partnerships on line 3.

Line 4 S corporation shareholder — Enter your share of the New York S corporation's credit. This information should be provided to you by the New York S corporation. If you are claiming a credit from more than one New York S corporation, enter the total from all S corporations on line 4.

Line 5 Beneficiary — Enter your share of the estate's or trust's credit. This information should be provided to you by your fiduciary. If you are claiming a credit from more than one estate or trust, enter the total from all estates or trusts on line 5.

Part 4 — Beneficiary's and fiduciary's share of credit

An estate or trust must complete Part 4. If an estate or trust allocates or assigns the credit to its beneficiaries, it should base the division on each beneficiary's proportionate share of the income from the estate or trust.

Part 5 — Computation of credit

Line 12

Partnerships: Enter the line 12 amount and code ***238*** on Form IT-204, line 147.

All others: Complete Part 6 and, if applicable, Part 7.

Part 6 — Application of credit and computation of carryover

Line 15 — If line 13 is greater than line 14, subtract line 14 from line 13 and enter the result here. This is your credit amount. Skip line 16 and continue with lines 17, 18, and 19.

If line 14 is greater than line 13, skip line 15 and go to line 16.

Line 16 — If line 14 is greater than line 13, subtract line 13 from line 14 and enter the result here. This is your net recaptured credit. Do not complete the rest of this form. Enter the line 16 amount on your tax return as follows:

Individuals: Enter the line 16 amount and code ***238*** on Form IT-201-ATT, line 20, or Form IT-203-ATT, line 19.

Fiduciaries: Include the line 16 amount on Form IT-205, line 12.

Line 17

Form IT-201 filers: Enter the tax from Form IT-201, line 39, plus any amount from Form IT-201-ATT, line 21.

Form IT-203 filers: Enter the tax from Form IT-203, line 46, plus any amount from Form IT-203-ATT, line 20.

Form IT-205 filers: Enter the tax from Form IT-205, line 8 (for residents), or line 9 (for nonresidents), ***plus*** any credits shown on line 1 of the *Addbacks worksheet*, in the instructions for Form IT-205, line 12.

Line 18 — If you are applying any credits against the tax before this credit, enter those amounts here.

When applying credits, follow the order of credits under Tax Law section 606(yy):

- First apply any credits that cannot be carried over or refunded.
- Next apply any credits that can be carried over for a limited duration.
- Then apply any credits that can be carried over for an unlimited duration.
- Apply refundable credits last.

Lines 20 and 21 — If your total credits from all sources are **$2 million or less**, enter the amount from line 20 and code ***238*** on Form IT-201-ATT, line 6, or Form IT-203-ATT, line 7, or include it on Form IT-205, line 10.

If your total credits from all sources are **more than $2 million**, you may be subject to a credit deferral. Complete lines 20 and 21, but do not enter the amount from line 20 on your tax return. See Form IT-500, *Income Tax Credit Deferral,* to determine the proper amount to enter on your 2010 tax return.

Part 7— Computation of credit recapture

You must recapture all or a portion of the rehabilitation of historic properties credit if the qualified property ceases to be qualified and you are required to recapture all or part of the federal credit.

Line 24 — Divide line 22 by line 23 and round the result to the fourth decimal place.