



Instructions for Form IT-256

Claim for Special Additional Mortgage Recording Tax Credit

Tax Law – Article 22, Section 606(f)

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

For a tax year beginning on or after January 1, 2004, if you paid the special additional mortgage recording tax to record a mortgage on or after January 1, 2004, on real property located in New York State, you may qualify for a credit for the amount of special additional mortgage recording tax you paid. Partners in a partnership (including members of an LLC that is treated as a partnership for federal income tax purposes), estates and trusts, and beneficiaries of estates and trusts may also qualify for this credit if the partnership, estate or trust in its tax year beginning on or after January 1, 2004, paid the tax to record a mortgage on or after January 1, 2004. This credit does not apply to shareholders of New York S corporations. A New York S corporation will continue to claim a credit for this tax directly on its New York State S corporation return using Form CT-43, *Claim for Special Additional Mortgage Recording Tax Credit*.

This credit may be claimed by the lender or borrower, as the case may be, that paid the special additional mortgage recording tax. Except for loans made by a federal credit union and some loans made by a federal savings bank or by an exempt organization, in the case of a residential mortgage (defined below), the special additional mortgage recording tax is paid by the lender. In most other cases, the special additional mortgage recording tax is paid by the borrower. You should contact your lending institution or tax advisor to determine the amount, if any, of special additional mortgage recording tax you paid.

A tax credit is not allowed for the special additional mortgage recording tax paid on residential mortgages (defined below) recorded on or after January 1, 2004, if the real property is located in Erie county or any of the counties within the Metropolitan Commuter Transportation District (MCTD). The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

A *residential mortgage*, for purposes of this credit, means a mortgage of real property principally improved by one or more structures containing a total of not more than six **residential** dwelling units, each with its own separate cooking facilities.

Who is eligible

- individuals (including sole proprietors)
- estates or trusts
- partners in a partnership (including members of an LLC treated as a partnership for federal income tax purposes)
- beneficiaries of an estate or trust

Who may file

File Form IT-256 if you are an individual (including a sole proprietor), a partnership, or an estate or trust and you qualify for the credit. In addition, if you are a partner in a partnership (including members of an LLC treated as a partnership for federal income tax purposes) or a beneficiary of an estate or trust, file Form IT-256 to claim your share of the credit from your entity.

Amount of credit

If the amount of the special additional mortgage recording tax credit exceeds your tax for the tax year, any amount of credit exceeding the tax may be carried over to the following year or years, or you can elect to treat the unused amount of credit as an overpayment of tax to be credited or refunded. However, you cannot receive a refund of any credit carried over from a prior year.

Line 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.

Partnerships: Complete Parts 1 and 5.

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.

Fiduciaries: Complete Parts 1, 4, 5, and 6. An estate or trust that divides the credit among itself and its beneficiaries must attach Form IT-256 to Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit.

Partners in a partnership and beneficiaries of an estate or trust: Complete Parts 2, 3, 5, and 6.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-256.

Part 1 – Individuals, including sole proprietors, partnerships, and fiduciaries

Enter the information and amount of special additional mortgage recording tax paid on each mortgage recorded for this tax year, that is eligible for this credit. If you are the lender, enter the amount of special additional mortgage recording tax you paid to record a residential mortgage.

If you are claiming a credit for the purchase of more than five properties, complete as many Forms IT-256 as necessary. On the first Form IT-256, complete Parts 1 through 6 (as applicable). Include on line 1 of the first Form IT-256 the total of the column D amounts from all additional Forms IT-256. Enter your name and identification number and complete Part 1 on the additional Form(s) IT-256. Attach the additional Form(s) IT-256 to the back of the first Form IT-256 that has the entry on line 1. Enter on line 2 the total credit computed.

Note: If you are listing more than 20 properties, you may attach an 8½" x 11" spreadsheet showing all the required information instead of attaching additional Forms IT-256.

Part 2 — Partnership and estate or trust information

Enter the appropriate information for each partnership, or estate or trust from which you receive a share of the special additional mortgage recording tax credit.

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

Enter your share of the total credit received from a partnership, or an estate or trust. If you belong to more than one partnership, or estate or trust, enter the total of all your shares on the appropriate line.

Line 3 — Partner: Enter your share of the partnership's special additional mortgage recording tax credit. This information should be provided to you by the partnership. If you are claiming a credit from more than one partnership, combine all the amounts on line 3.

Line 4 — Beneficiary: Enter your share of the estate's or trust's special additional mortgage recording tax credit. This information should be provided to you by your fiduciary. If you are claiming a credit from more than one estate or trust, combine all the amounts on line 4.

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, base the division on each beneficiary's proportionate share of the income of the estate or trust.

Part 5 — Computation of special additional mortgage recording tax credit available for the current tax year

Line 9 — Partnerships: Enter the line 9 amount and code **256** on Form IT-204 line 147. Do not complete the rest of this form. **All others:** Continue with this form.

Line 10 — Enter the amount of credit available for carryover to this tax year. The credit available for carryover is that portion of your prior year credit that was not applied to last year's tax. Enter on line 10 the amount from last year's Form IT-256.

Part 6 — Computation of credit used and carried forward or refunded

Line 12

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 13 — 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.

Line 15 — If your total credits from all sources are **\$2 million or less**, enter the amount from line 15 and code **256** 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 line 15, but do not enter the amount from line 15 on your tax return. See Form IT-500, *Income Tax Credit Deferral*, to determine the proper amount to enter on your 2010 tax return.

Line 18 — You may elect to have the amount on line 17 refunded to you, or carried over to the following year or years. Enter on line 18 the amount of line 17 that you want refunded to you. If you elect to carry forward the unused credit, enter **0** on line 18.

If your total credits from all sources are **\$2 million or less**, enter the amount from line 18 and code **256** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

If your total credits from all sources are **more than \$2 million**, you may be subject to a credit deferral. Complete line 18, but do not enter the amount from line 18 on your tax return. See Form IT-500, *Income Tax Credit Deferral*, to determine the proper amount to enter on your 2010 tax return.