2011

New York State Department of Taxation and Finance

Instructions for Form IT-251

Credit for Employment of Persons with Disabilities

IT-251-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

Effective for tax years beginning on or after January 1, 1998, Tax Law section 606(o) allows a credit for the employment of persons with disabilities. An individual or estate or trust is allowed the credit for employing a qualified employee within New York State. In addition, a partner in a partnership, a shareholder of a New York S corporation, or a beneficiary of an estate or trust is also eligible for the credit when the entity employs qualified employees.

In order for you to claim the credit, the qualified employee must be certified. For information on certification, call the New York State Department of Labor's Economic Development Services Unit (from New York State only) at 1 888 4-NYSDOL (1 888 469-7365) or, from areas outside New York State, (518) 457-6823.

For more information about this New York State tax credit, see TSB-M-98(1)I. This memo is available on the Tax Department's Web site *(www.tax.ny.gov)*.

Who must file

File Form IT-251 if you are an individual who operates a sole proprietorship, a partnership, or an estate or trust, and you qualify for the credit or have a carryover of credit. In addition, if you are a partner in a partnership (including members of a limited liability company (LLC) treated as a partnership for federal tax purposes), a shareholder of a New York S corporation, or a beneficiary of an estate or trust, file Form IT-251 to claim your share of the credit from your entity.

A partnership must file Form IT-251 with Form IT-204, *Partnership Return*, showing the partnership's total credit for wages paid during the tax year for services rendered by qualified employees of the partnership.

An S corporation cannot file Form IT-251. It must file Form CT-41, *Claim for Credit for Employment of Persons with Disabilities,* to claim this credit. If you are a shareholder in an S corporation that has made the New York S corporation election under Tax Law section 660, obtain your share of the corporation's credit from the S corporation.

Amount of credit

The New York credit amount is 35% of the first $6,000 of qualified first-year wages or qualified second-year wages. A credit of up to $2,100 per employee is available.

As long as the federal work opportunity credit for vocational rehabilitation referrals under Internal Revenue Code (IRC) section 51 (see federal Form 5884) is in effect for an employee, the New York credit is 35% of the first $6,000 of the employee's qualified **second-year** wages (see Schedule A, Part 2).

If the federal work opportunity credit for vocational rehabilitation referrals under IRC section 51 (see federal Form 5884) is not in effect for an employee, the New York credit will be based on 35% of the first $6,000 of the employee's qualified **first-year** wages (see Schedule A, Part 1).

The credit is allowed against New York State personal income tax and is not refundable. However, any amount of the credit not used in the current tax year may be carried over for an unlimited number of years.

Note: In computing New York adjusted gross income, individuals, including partners, S corporation shareholders, and beneficiaries, may subtract from federal adjusted gross income the amount of wages that were disallowed for federal purposes because you claimed the federal work opportunity credit. An estate or trust may make a similar subtraction in computing taxable income. For more information, see the instructions for the form that you are filing. Furthermore, unlike the IRC, the New York Tax Law allows a deduction for the portion of the wages and salaries that qualifies for the New York credit (that is, the taxpayer receives both a deduction and a credit for the wages).

Definitions

A *qualified employee* is an employee who

— began work for a taxpayer on or after January 1, 1997;

— qualifies as a vocational rehabilitation referral for purposes of the federal work opportunity credit under IRC section 51 (see federal Form 5884);

— has worked for the employer on a full-time basis for at least 180 days or 400 hours (does not need to be continuous); **and**

— is certified by the New York State Education Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID), or by the State of New York Office of Children and Family Services' Commission for the Blind and Visually Handicapped (CBVH) as a person with a disability that constitutes or results in a substantial handicap to employment; and who has completed or is receiving services under an individualized written rehabilitation plan approved by VESID or by CBVH.

In cooperation with VESID and CBVH, the New York State Department of Labor's Economic Development Services Unit administers the certification program.

Qualified first-year wages are wages paid or incurred by the taxpayer during the tax year to a qualified employee for services rendered during the one-year period beginning with the day the employee begins work for the taxpayer. If the qualified employee did not work for the taxpayer for a full year, the one-year period begins with the date the employee began work for the taxpayer and ends on the last date of employment with the taxpayer.

Qualified second-year wages are wages paid or incurred by the taxpayer during the tax year to a qualified employee for services rendered during the one-year period beginning one year after the date the employee begins work for the taxpayer. If the qualified employee did not work for the taxpayer for a full year after the first year, the one-year period begins with the date one year after the employee began work for the taxpayer and ends on the last date of employment with the taxpayer.

Note: If the one-year period covers two tax years, depending upon the amount of wages paid, part of your credit may be allowed in the current tax year and part may be allowed in the succeeding tax year.

In addition, the following federal rules apply in determining qualified wages:

— Wages qualifying for the credit generally have the same meaning as wages subject to the Federal Unemployment Tax Act (FUTA). For agricultural employees, if the work performed by an employee during more than half of any pay period qualifies under FUTA as agricultural labor, the first $6,000 of that employee's wages subject to social security and Medicare taxes are taken into account. For a special rule that applies to railroad employees, see IRC section 51(h)(1)(B).

— More than half the wages received from you must be for working in your trade or business.

— You may not claim a credit on wages that were paid to any employee during any period for which you received payment for the employee from a federally funded on-the-job training program.

— Any work-supplementation payments you received under the Social Security Act would reduce the amount of wages qualifying for the credit.

— The employee cannot be your relative or dependent. See IRC section 51(i) for other restrictions.

— The employee cannot be your rehired employee if he or she was not a targeted group member when employed previously.

— The wages cannot be for services of replacement workers during a strike or lockout.

In addition to the preceding list, any other provisions of IRC sections 51 and 52 (as these sections applied on October 1, 1996) that apply to the federal work opportunity credit for vocational rehabilitation referrals also apply to the New York credit to the extent the federal credit provisions are consistent with the New York credit provisions. In the event of a conflict, the New York credit provisions shall control.

Full-time basis means a job consisting of at least 35 hours per week, or two or more jobs which together constitute the equivalent of a job of at least 35 hours per week.

When two or more jobs are combined to create one full-time equivalent job, the credit may only be claimed for those employees who individually meet all the conditions described under *qualified employee* on the front page. For example, two employees share one full-time job and individually meet all the conditions described under *qualified employee* on the front page, except that only one of those employees worked at least 180 days or 400 hours. The credit may only be claimed for the employee who has worked for the employer for at least 180 days or 400 hours.

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 Schedules A, E, and F.

Partnerships: Complete Schedules A and E.

A married couple in a business enterprise 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 Schedules A, E, and F.

Fiduciaries: Complete Schedules A, D, E, and F.

Partners in a partnership, shareholders of an S corporation, and beneficiaries of an estate or trust: Complete Schedules B, C, E, and F.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-251.

Schedule A — Individuals (sole proprietors), partnerships, and estates or trusts

Enter in Schedule A, Part 1, qualified employees who began work after the expiration of the federal work opportunity credit for vocational rehabilitation referrals (see federal Form 5884).

Enter in Schedule A, Part 2, qualified employees who began work before the expiration of the federal work opportunity credit for vocational rehabilitation referrals.

Part 1 — Computation of credit on qualified first-year wages

Columns A and B — Enter the name and social security number of each qualified employee. Do **not** include employees shown in Part 2. If additional space is needed, attach a separate sheet of paper to the form listing the same information shown in columns A through D of this part.

Column C — Enter for each qualified employee the beginning date and ending date for the first year of employment. This one-year period begins with the date the qualified employee began work for the taxpayer. If the qualified employee did not work for the taxpayer for a full year, the one-year period begins with the date the qualified employee began work for the taxpayer and ends on the last date of employment with the taxpayer.

Column D — Enter the qualified first-year wages (limited to $6,000) paid or incurred by the taxpayer **during the tax year** to the qualified employee for services rendered during the one-year period shown in column C.

Part 2 — Computation of credit on qualified second-year wages

Columns A and B — Enter the name and social security number of each qualified employee. Do **not** include employees shown in Part 1. If additional space is needed, attach a separate sheet of paper to the form listing the same information shown in columns A through D of this part.

Column C — Enter for each qualified employee the beginning date and ending date for the second year of employment. This one-year period begins one year after the date the employee begins work for the taxpayer. If the qualified employee did not work for the taxpayer for a full year after the first year, the one-year period begins with the date one year after the employee began work for the taxpayer and ends on the last date of employment with the taxpayer.

Column D — Enter the qualified second-year wages (limited to $6,000) paid or incurred by the taxpayer **during the tax year** to the qualified employee for services rendered during the one-year period shown in column C.

Schedule B — Partnership, S corporation, and estate or trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust for which you received a share of the credit for employment of persons with disabilities. If you need more space, attach a separate schedule.

Schedule C — Partner's, shareholder's, or beneficiary's share of credit

Partners, shareholders, or beneficiaries must complete Schedule C.

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

Estates or trusts: Include on line 10 only your share of the credit from another estate or trust.

Schedule D — Beneficiary's and fiduciary's share of credit

An estate or trust must complete Schedule D.

The total credit is allocated between the estate or trust and its beneficiaries on the same basis as the income of the estate or trust is allocated.

Schedule F — Application of credit and computation of carryover

Line 17

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

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

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, use the following rules:

— First apply any household credit.

— Next apply any credits that cannot be carried over or refunded.

— Then 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 20 — If your total credits from all sources are $**2 million or less**, enter the amount from line 20 and code ***251*** on Form IT-201-ATT, line 6, or Form IT-203-ATT, line 7. **Fiduciaries:** Include the line 20 amount 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 17 through 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 amounts to enter on your tax return.