



Instructions for Form CT-633

Economic Transformation and Facility Redevelopment Program Tax Credit

CT-633-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 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 Tax Law provides a credit to taxpayers who are participants in the Economic Transformation and Facility Redevelopment Program. The economic transformation and facility redevelopment program tax credit is available to taxpayers subject to tax under Articles 9 (section 185), 9-A, 22, 32, and 33.

Eligibility

To be eligible for this credit, **all** of the following requirements must be met:

- The taxpayer is a participant (see *Definitions*) or the owner of a participant in the Economic Transformation and Facility Redevelopment Program.
- The taxpayer or the entity in which the taxpayer is an owner (see *Definitions*) has received a certificate of eligibility (see *Definitions*) from Empire State Development (ESD). Attach a copy of the certificate of eligibility to Form CT-633.
- The taxpayer or the entity in which the taxpayer is an owner is a qualified new business (see *Definitions*).
- The taxpayer or the entity in which the taxpayer is an owner has created and maintained at least five net new jobs (see *Definitions*) in the economic transformation area.

For more information on becoming a participant in the program see ESD's Web site (at www.esd.ny.gov).

Credit information

The economic transformation and facility redevelopment program tax credit is equal to the sum of the following credit components:

- the jobs tax credit component,
- the investment tax credit component,
- the training tax credit component, and
- the real property tax credit component.

The credit may be claimed for five consecutive tax years (the benefit period), beginning with the first tax year in which five net new jobs are created. However, in no event may the benefit period start later than two years after the certificate of eligibility is issued. If a participant does not start construction, or acquire a qualified investment (see *Definitions*) or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the tax credits. If, in any year of the benefit period, the business fails to maintain the required level of five net new jobs (measured

quarterly), the business will not be allowed a credit for that year. Such failure to be allowed a credit will not extend the business's benefit period.

No cost or expense paid or incurred that is the basis for any of the components of this credit can be the basis for any other credit. If a business elects to claim an economic transformation and facility redevelopment program tax credit, the election is irrevocable.

Any unused amount of credit for the current tax year will be treated as a refund or overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

Definitions

Certificate of eligibility means the document issued by ESD to an applicant that demonstrates that the applicant has been admitted as a participant into the Economic Transformation and Facility Redevelopment Program. Possession of a certificate of eligibility does not guarantee the eligibility of the participant to claim the economic transformation and facility redevelopment program tax credit.

Closed facility means:

- a correctional facility, as defined in paragraph (a) of subdivision four of section two of the Correction Law, that has been selected by the governor of the state of New York for closure after April 1, 2011, but no later than March 31, 2012; **or**
- a facility operated by the Office of Children and Family Services under Article 19-G of the Executive Law that is closed pursuant to authority granted to such office in a chapter of the laws of 2011; **and**
- which has been closed provided that the Commissioner of Correctional Services or the Commissioner of the Office of Children and Family Services has notified the Commissioner of ESD of such closure.

Entity in which the taxpayer is an owner means a limited liability company (LLC) in which the taxpayer is a member, a partnership in which the taxpayer is a partner, and a New York S corporation in which the taxpayer is a shareholder.

Net new jobs means jobs created in the economic transformation area that:

- are new to the area;
- have not been transferred from employment in this state with the participant or with a related person in this state, and are not replacing jobs with similar titles or job responsibilities;
- are either full-time wage paying jobs or equivalent to a full-time wage paying job requiring at least 35 hours per week;
- are filled for more than six months in a tax year;
- are not general executive officers of the participant; **and**
- may not be filled with individuals having the familial relationship defined in Internal Revenue Code (IRC) section 267(c)(4) with any owner of the participant. Section 267(c)(4) states, *The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.*

Participant means a business entity that:

- is a new business (see *Qualified new business* on page 2);
- has completed an application to be admitted into the Economic Transformation and Facility Redevelopment Program;

- has demonstrated to ESD how it plans to meet the eligibility criteria in the program; **and**
- has been issued a certificate of eligibility by ESD.

Qualified investment means an investment in tangible property (including a building or a structural component of a building) that is owned by a business entity and:

- is depreciable under IRC section 167;
- has a useful life of four years or more;
- is acquired by purchase as defined in IRC section 179(d);
- has a situs in an economic transformation area in New York State in which the business is certified; **and**
- is placed in service in an economic transformation area in New York State on or after the date the certificate of eligibility is issued to the business entity.

Qualified new business means a business entity that satisfies all of the following tests:

- it must not be currently operating or located within the economic transformation area in which it is applying for certification;
- it must not be moving existing jobs into the economic transformation area in which it is applying for certification from another area of the state;
- it must not be substantially similar in ownership and operation to another taxpayer taxable or previously taxable under section 183, 184, or 185 of Article 9, former section 186, or Article 9-A, 22, 32, or 33, or the income or losses of which is or was includable under Article 22;
- it must not have caused individuals to transfer from existing employment in New York State with another business entity with similar ownership to similar employment with the business entity;
- it must not have acquired, purchased, leased, or had transferred to it real property located in the economic transformation area in which it is applying for certification if that real property was previously owned by an entity with similar ownership (regardless of form of incorporation or organization); **and**
- it must not be substantially similar in operation to a business entity from which it has acquired real or tangible personal property that is located in the economic transformation area in which it is applying for certification.

Qualified training includes a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited degree-granting, post-secondary college or university in New York State. The course must:

- directly relate to the duties that the employee performs for the taxpayer within the economic transformation area; **and**
- be intended to upgrade, retrain, or improve the productivity or theoretical awareness of the employee.

Classes in the disciplines of management, accounting, or the law, or any class designed to fulfill the discipline-specific requirements of a degree program at the associate, baccalaureate, graduate, or professional level of these disciplines do not qualify. Satisfactory completion of a course or courses means the earning and granting of credit or an equivalent unit, with the attainment of a grade of *B* or higher in a graduate level course or courses, a grade of *C* or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

Qualified training expenditures include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering

the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any related person (see *Definitions*), that are paid or reimbursed by the taxpayer. Qualified training expenditures do not include room and board, computer hardware or software not specifically assigned for the qualifying course or courses, late charges, fines, or membership dues and similar expenses. Qualified training expenditures are not eligible for the credit unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a site in an economic transformation area during the period of the coursework and lasting through at least 180 days after the satisfactory completion of the qualified course work. Qualified training expenditures do not include expenses for in house or shared training outside of a New York State higher education institution or the use of consultants outside of credit granting courses, whether the consultants function inside the higher education institution or not.

Real property taxes are charges imposed upon real property by or on behalf of a county, city, town, village, or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a *like rate* against all property in the territory over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to Article 18 or Article 19 of the Real Property Tax Law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by Article 18 or 19, whichever applies.

The term real property taxes does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when:

- the property subject to the charge is limited to the property that benefits from the charge, or
- the amount of the charge is determined by the benefit to the property assessed, or
- the improvement for which the charge is assessed tends to increase the property value.

The term real property taxes includes payments in lieu of taxes (PILOT) made by the participant that is the beneficial owner of the real property to the state, a municipal corporation, or a public benefit corporation pursuant to a written agreement entered into between the participant and the state, municipal corporation, or public benefit corporation. A PILOT made by the participant pursuant to a written agreement does not constitute real property taxes in any tax year to the extent that the payment exceeds the product of:

- the basis for federal income tax purposes of the real property located in the economic transformation area and subject to that agreement, calculated without regard to depreciation, on the last day of the tax year, **and**
- the county's full value tax rate (see *Full-value tax rates by county* on page 3 for these rates)
- divided by 1,000.

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Full-value tax rates by county

County	Overall tax rate	County	Overall tax rate	County	Overall tax rate
Albany	27.70	Hamilton	14.40	Rockland	30.90
Allegany	48.90	Herkimer	25.40	St. Lawrence	33.60
Broome	37.60	Jefferson	19.50	Saratoga	20.80
Cattaraugus	35.90	Lewis	25.20	Schenectady	33.20
Cayuga	30.60	Livingston	35.20	Schoharie	31.20
Chautauqua	33.50	Madison	31.40	Schuylar	29.00
Chemung	34.20	Monroe	39.70	Seneca	33.70
Chenango	34.80	Montgomery	35.80	Steuben	37.10
Clinton	29.10	Nassau*	28.90	Suffolk	20.20
Columbia	20.70	Niagara	38.40	Sullivan	28.60
Cortland	39.80	Oneida	31.50	Tioga	32.90
Delaware	22.60	Onondaga	36.80	Tompkins	31.70
Dutchess	24.40	Ontario	28.40	Ulster	26.20
Erie	33.00	Orange	29.40	Warren	15.80
Essex	17.10	Orleans	41.40	Washington	23.50
Franklin	21.60	Oswego	39.60	Wayne	36.20
Fulton	29.80	Otsego	20.90	Westchester	26.30
Genesee	38.30	Putnam	27.60	Wyoming	33.40
Greene	21.70	Rensselaer	30.20	Yates	23.30
New York City by class*					7.50
1.....					42.26
2.....					56.84
3.....					41.40
4.....					

* New York City and Nassau County have a four-class property tax system (class 1: 1-3 family residential; class 2: apartment; class 3: utility equipment; and class 4: all other property). It was not possible to determine a countywide class-specific rate for Nassau County due to the complexity of taxing jurisdictions.

Related person means a related person as defined under IRC section 465(b)(3)(c).

The information below represents the Internal Revenue Service (IRS) interpretation of the definition of related persons in IRC section 465(b)(3)(C) as contained in IRS Publication 925, *Passive Activity and At-Risk Rules*. When preparing your tax return, you should refer to section 465(b)(3)(C) to see if the definition of related persons has been amended.

Related persons include the following:

- Members of a family, but only an individual’s brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).
- Two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test.
- The fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts.
- A tax-exempt educational or charitable organization and a person who directly or indirectly controls it (or a member of whose family controls it).
- A corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation.
- A trust fiduciary and a corporation of which more than 10% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust.
- The grantor and fiduciary, or the fiduciary and beneficiary, of any trust.
- A corporation and a partnership if the same persons own over 10% in value of the outstanding stock of the corporation and

more than 10% of the capital interest or the profits interest in the partnership.

- Two S corporations if the same persons own more than 10% in value of the outstanding stock of each corporation.
- An S corporation and a regular corporation if the same persons own more than 10% in value of the outstanding stock of each corporation.
- A partnership and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership.
- Two partnerships if the same persons directly or indirectly own more than 10% of the capital or profits of each.
- Two persons who are engaged in business under common control.
- An executor of an estate and a beneficiary of that estate.

To determine the direct or indirect ownership of the outstanding stock of a corporation, apply the following rules:

1. Stock owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries.
2. Stock owned directly or indirectly by or for an individual’s family is considered owned by the individual. The family of an individual includes only brothers and sisters, half-brothers and half-sisters, a spouse, ancestors, and lineal descendants.
3. Any stock in a corporation owned by an individual (other than by applying rule 2) is considered owned directly or indirectly by the individual’s partner.

When applying rule 1, 2, or 3, stock considered owned by a person under rule 1 is treated as actually owned by that person. However, if a person constructively owns stock because of rule 2 or 3, he or she does not own the stock for purposes of applying either rule 2 or 3 to make another person the constructive owner of the same stock.

Line instructions

Schedule A — Eligibility

Part 1 — Qualified new business

Line 1 — To claim this credit, the business must meet the definition of qualified new business.

Part 2 — Net new jobs

For each date specified of the current tax year, enter the number of net new jobs.

Line 2 — Divide the total number of net new jobs for the current tax year by the number of the dates occurring during the current tax year (even if you had no net new jobs on those dates) to obtain the average number of net new jobs for the current tax year. Do not make entries for any dates that did not occur during your tax year. Do not include those dates in the calculation.

Schedule B — Computation of credit component amounts

Part 1 — Jobs tax credit component

Complete columns A through F for each net new job created and maintained in the economic transformation area.

Column D — To meet the definition of net new job, the job must have been filled for more than six months of the tax year. For each person still employed at the end of the year, enter the last day of the tax year.

Line 5 — Enter the amount from the *Jobs tax credit* column of line 35.

Line 6 — S corporations: Transfer this amount to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*, and provide your shareholders with their pro rata share of line 6. The shareholder will enter that amount on Form IT-633.

Part 2 — Investment tax credit component

Costs incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the investment tax credit component. A participant in the Economic Transformation and Facility Redevelopment Program or an owner of an entity that is a participant is not eligible for any other investment tax credits.

Qualified investment at a closed facility — An investment tax credit of 10% of the cost or other basis for federal income tax purposes is allowed for a qualified investment at a closed facility (see *Definitions*).

Line 8 — The total amount of investment tax credits allowed for all eligible participants located at each closed facility cannot exceed \$8 million. The maximum credit amount allowed to you at the closed facility will be provided to you by ESD. Enter the lesser of that amount or line 7 on line 8.

All other qualified investments — The economic transformation and facility redevelopment program investment tax credit allows a taxpayer that meets the requirements of the statute to claim a credit in the amount of 6% (.06) of the federal basis for qualified investments at all locations other than at a closed facility within the economic transformation area.

Line 10 — The amount of tax credit for all other qualified investments may not exceed \$4 million. This limit is imposed at the entity level so that the aggregate credit allowed to all partners, members, or shareholders of each entity does not exceed the \$4 million limitation.

Line 13 — Enter the amount from the *Investment tax credit* column of line 35.

Line 14 — S corporations: Transfer this amount to Form CT-34-SH and provide your shareholders with their pro rata share of line 14. The shareholder will enter that amount on Form IT-633.

Part 3 — Training tax credit component

A credit is allowed for qualified training expenditures (see *Definitions*) paid with respect to the project for which the certificate of eligibility is issued. The amount of the credit is the lesser of 50% of the qualified training expenses paid during the tax year or \$4,000 per employee. This credit applies only to qualified training (see *Definitions*) provided to employees who were hired after they lost their jobs at a closed facility as a result of the closure of that facility.

Line 16 — Enter the amount from the *Training tax credit* column of line 35.

Line 17 — S corporations: Transfer this amount to Form CT-34-SH and provide your shareholders with their pro rata share of line 17. The shareholder will enter that amount on Form IT-633.

Part 4 — Real property tax credit component

A credit is allowed for the real property taxes (see *Definitions*) on the real property located in the economic transformation area with respect to the project for which the certificate of eligibility is issued. Attach copies of your real property tax bills or your PILOT agreement.

Property located entirely within a closed facility

For property that is located entirely within the grounds of a closed facility, the credit for the first year of the benefit period is 50% of the real property taxes assessed and paid by the participant during that year on that property. For the following years of the benefit period, the percentage decreases by 10% each year.

Property located outside a closed facility

For property that is located outside of the closed facility, the credit for the first year of the benefit period is 25% of the real property taxes assessed and paid by the participant during that year on that property. For the following years of the benefit period, the percentage decreases by 5% each year.

Line 21 — Enter the amount from the *Real property tax credit* column of line 35.

Line 22 — S corporations: Transfer this amount to Form CT-34-SH and provide your shareholders with their pro rata share of line 22. The shareholder will enter that amount on Form IT-633.

Schedule C — Credit summary

S corporations: Complete this schedule only if reporting a recapture. Complete line 24 only. Report the recapture on Form CT-34-SH and provide your shareholders with their pro rata share of recapture. The shareholder will enter that amount on Form IT-633. Do not complete the rest of this form.

Line 24 — If at the end of the benefit period the participant has not created sufficient net new jobs and made sufficient qualified investments to achieve a benefit to cost ratio of at least ten to one, the taxpayer is required to add back as tax for the last year of its benefit period the portion of the economic transformation and facility redevelopment program tax credits claimed for the years of its benefit period necessary to achieve a cost benefit ratio of ten to one.

If you are a corporate partner, include your share of the partnership recapture here.

Line 25 — New York C corporations: If the amount on line 23 is greater than the amount on line 24, subtract line 24 from line 23. This is the amount of your credit; continue with the rest of this form. If the amount on line 24 is greater than the amount on line 23, you have a net recapture amount; subtract line 23 from line 24 and enter the result with a minus sign (-). Transfer the line 25 amount (with the minus sign if a recapture) to the appropriate line of the tax credits section on your franchise tax return. Do not complete Schedule D.

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Schedule D — Computation of tax credit used, refunded, or credited as an overpayment in the next year

S corporations: Do not complete this schedule.

Lines 26 and 29 entries table

If you filed	Enter on line 26 any net recapture of other tax credits plus the amount from	Enter on line 29 the minimum tax below
Form CT-185	Line 6	10
Form CT-3	Line 78	Line 74b amount
Form CT-3-A	Line 77	Line 74b amount
Form CT-32	Line 5	250
Form CT-32-A	Line 5	250
Form CT-33	Line 11	250
Form CT-33-A	Line 15	Line 4 plus line 12
Form CT-33-NL	Line 5	250

Line 26 — Enter your tax due before credits using the *Lines 26 and 29 entries table* above.

Line 27 — If you are claiming more than one tax credit for this year, enter the total amount of credits claimed before applying this credit. Otherwise, enter **0**. You must apply certain credits before the economic transformation and facility redevelopment program tax credit. Refer to the instructions of your franchise tax return to determine the order of credits that applies.

Article 9-A filers: Refer to Form CT-600-I, *Instructions for Form CT-600, Ordering of Corporation Tax Credits*, for the correct order of credits.

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 economic transformation and facility redevelopment program tax credit, that you wish to apply before the credit claimed on this form.

CT-33 and CT-33-A filers, including unauthorized insurance corporations: Do not enter on this line any 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 29 — Enter your minimum tax using the *Lines 26 and 29 entries table* above.

Lines 31, 33, and 34 — Enter on line 31 the lesser of line 25 or line 30.

If your total credits from all sources are **\$2 million or less**, enter the amounts from lines 31, 33, and 34 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 lines 31, 33, and 34, but do not enter the amounts from lines 31, 33, and 34 on your franchise tax return. See Form CT-500 to determine the proper amount to enter on your franchise tax return.

Schedule E — Partnership information

Complete this section only if you were a partner in a partnership and received a share of the economic transformation and facility redevelopment program tax credit from that entity. Enter the name, employer identification number (EIN), and credit component(s) amount passed through to you from each partnership.

Obtain these amounts from the partnership(s) allocating this credit to you. Attach a copy of the partnership(s) certificate of eligibility issued by ESD.

Line 35 — Total the credit component amounts for each column and enter the total for each column on line 35. Enter these amounts on lines 5, 13, 16 and 21.