



Instructions for Form IT-634

Empire State Jobs Retention Program Credit

Tax Law – Sections 36 and 606(tt)

IT-634-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

The Tax Law provides a credit to taxpayers who are participants in the Empire State Jobs Retention Program. Individuals (including sole proprietors), estate and trusts, shareholders of an S corporation, partners in a partnership (including a member of a limited liability company (LLC) that is treated as a partnership for federal tax purposes), and beneficiaries of an estate or trust may claim the credit.

A business enterprise must submit a completed application to Empire State Development (ESD). If ESD determines that a business entity will be a participant in the program, it will issue the entity a certificate of eligibility, a preliminary schedule of benefits, and a certificate of tax credit for one tax year. To receive a certificate of tax credit for subsequent tax years, the participant must demonstrate to ESD that the entity continues to satisfy the eligibility criteria. For more information about the Empire State Jobs Retention Program application and approval process, visit ESD's Web site (at www.esd.ny.gov).

A taxpayer that has been issued a certificate of tax credit by ESD will be allowed to claim the Empire State jobs retention program credit. The certificate of tax credit will indicate the amount of credit that may be claimed for the tax year. A taxpayer will be allowed to claim only the amount listed on the certificate of tax credit for that tax year. A copy of the certificate of tax credit must be submitted with the taxpayer's return.

A business accepted into the Empire State Jobs Retention Program must agree to be permanently disqualified for Empire Zone benefits at any location that qualifies for Empire State Jobs Retention Program benefits.

Eligibility

To be eligible to participate in the program, a business entity must:

- operate predominantly in New York State in certain industries;
- be located in a county in which an emergency has been declared by the governor on or after January 1, 2011;
- demonstrate substantial physical damage and economic harm resulting from the event leading to the emergency declaration by the governor; and
- have had at least 100 full-time equivalent jobs in the county in which an emergency has been declared by the governor on the day immediately preceding the day the event leading to the declaration occurred, and must retain or exceed that number of jobs in New York State.

The following businesses are not eligible for the program:

- a not-for-profit entity;
- a business entity whose primary function is the provision of services, including personal services, business services, or the provision of utilities;

- a business entity engaged predominantly in the retail or entertainment industry;
- a business engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with generation of electricity;
- a business entity that is not in compliance with all worker protection and environmental laws and regulations;
- a business entity that owes past due state taxes; or
- a business entity that owes local property taxes for any year prior to the year the business applies to participate in the program.

The credit may be claimed for up to 10 consecutive tax years provided the participant continues to meet the eligibility requirements. The benefit period begins in the first year the participant receives a certificate of tax credit from ESD, or the first tax year listed on the preliminary schedule of benefits, whichever is later. If the participant fails to satisfy the eligibility criteria for any one year, it will lose the ability to claim the credit for that year. The inability to claim the credit for any one year will not extend the original 10-year eligibility period.

The credit is equal to 6.85% of the gross wages paid for the impacted jobs. The participant will receive a certificate of tax credit from ESD annually specifying the amount of the credit allowed for that year.

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.

If a certificate of eligibility or a certificate of tax credit is revoked because you do not meet the eligibility requirements, you must recapture the amount of credit previously claimed prior to that revocation. The amount of credit to be recaptured must be added back to tax for the tax year in which the revocation becomes final.

Who must file

File Form IT-634 if you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in a partnership, or a shareholder of an S corporation, and:

- you are claiming the credit; or
- you are required to recapture any previous credit due to a certificate of eligibility or certificate of tax credit being revoked.

An estate or trust that divides the credit or addback of credit among itself and its beneficiaries must file Form IT-634 with Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit or recapture of the credit.

A partnership must file Form IT-634 with Form IT-204, *Partnership Return*, showing the total of each credit component of the partnership and any recapture of credit.

An S corporation does not file Form IT-634. It must file Form CT-634. If you are a shareholder of an S corporation that has made the election under Tax Law section 660, obtain your share of the corporation's credit or recapture of credit from the S corporation.

Definitions

Certificate of eligibility means the document issued by ESD to an applicant that has completed an application to be admitted into the Empire State Jobs Retention Program and has been accepted into the program by ESD. Possession of a certificate of eligibility does not by itself guarantee eligibility to claim the tax credit.

Certificate of tax credit means the document issued to a participant by ESD, after ESD has verified that the participant has met all applicable credit eligibility criteria. The certificate will be issued annually if such criteria are met and will specify the exact amount of

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credit that a participant may claim, and will specify the tax year for which the tax credit may be claimed.

Participant means a business entity that has completed an application to be admitted into the Empire State Jobs Retention Program, has been issued a certificate of eligibility by ESD, has demonstrated that it meets the eligibility requirements of the Empire State Jobs Retention Program, and has been certified as a participant by ESD.

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 Schedule A. If applicable, also complete Schedule D.

Partnerships: Complete Schedule A. If applicable, also complete Schedule D.

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 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 Schedule A. If applicable, also complete Schedule D.

Fiduciaries: Complete Schedules A and C. If applicable, also complete Schedule D.

Partners in a partnership, shareholders of an S corporation, and beneficiaries of an estate or trust: Complete Schedules A and B. If applicable, also complete Schedule D.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-634.

Line A – Year of eligibility

You may claim the credit for 10 consecutive tax years starting with the first tax year for which you receive a certificate of tax credit or the first tax year listed on your preliminary schedule of benefits, whichever is later. Enter a number from 1 to 10. Failure to qualify for credits for any of those years does not extend the 10-year benefit period.

Schedule A – Credit computation

Individuals (including sole proprietors), partnerships and fiduciaries: Enter the credit, which can be obtained from your certificate of tax credit issued by ESD, on line 1. Submit a copy of your certificate of tax credit with Form IT-634.

Partners: Obtain the amount to enter on line 2 from the partnership. If you are a partner in more than one partnership, enter on the appropriate line the total of your credit received from the partnership(s). Submit a copy of the partnership(s) certificate of tax credit with Form IT-634.

S corporation shareholders: Obtain the amount to enter on line 3 from the S corporation. If you are a shareholder of more than one S corporation, enter on line 3 the total credit received from the S corporation(s). Submit a copy of the S corporation(s) certificate of tax credit with Form IT-634.

Beneficiaries: Obtain the amount to enter on line 4 from the estate or trust. If you are a beneficiary of more than one estate or trust, enter on line 4 the total credit received from the estate(s) or trust(s). Submit a copy of the estate(s) or trust(s) certificate of tax credit with Form IT-634.

Line 5

Partnerships: Enter the line 5 amount and code **634** on Form IT-204, line 147.

Fiduciaries: Complete Schedule C. Include the line 5 amount on the *Total* line of Schedule C, column C.

All others: If your total credits from all sources are **\$2 million or less**, enter the line 5 amount and code **634** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12.

If your total credits from all sources are **more than \$2 million**, you may be subject to a credit deferral. Complete line 5, but do not enter the line 5 amount on your tax return. See Form IT-500, *Income Tax Credit Deferral*, to determine the proper amount to enter on your tax return.

Schedule B – Partnership, S corporation, estate and trust information

Enter the appropriate information for each partnership, New York S corporation, or estate or trust from which you received a share of the credit. If you need more space, submit a separate schedule (be sure to include your name and taxpayer identification number).

Schedule C – Beneficiary's and fiduciary's share of credit and recapture of credit

An estate or trust must complete Schedule C. Enter the amount from line 5 on the *Total* line, column C. Enter recapture amounts on the *Total* line, column D. If an estate or trust allocates or assigns the credits to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust. Provide the beneficiaries with their share of the credit and recapture. If your total credits from all sources are **\$2 million or less**, enter the amount from the *Fiduciary* line, column C on Form IT-205, line 33. If your total credit from all sources are **more than 2 million**, you may be subject to a credit deferral. See Form IT-500, *Income Tax Credit Deferral*, to determine the proper amount to enter on your tax return.

Schedule D – Summary of recapture of credit

If a certificate of eligibility or a certificate of tax credit issued by ESD is revoked because you do not meet the eligibility requirements of the credit, the amount of all credits previously allowed and claimed by you under Tax Law section 36 prior to that revocation must be added back to your tax for the tax year in which the revocation becomes final.

Complete lines 6 through 11 as applicable.

Fiduciaries: Do not enter any amounts on lines 6 through 9. Include any flow through of credit recapture from partnerships, S corporations, estates, or trusts on the *Total* line of Schedule C, column D. Enter your share of recapture from Schedule C, column D, *Fiduciary* line on line 10.

Line 7 Beneficiaries: Enter on line 7 your share of recapture of credit from estates or trusts.

Line 8 Partners: Enter on line 8 your share of the total recapture of credit from partnerships. This information should be provided to you by the partnership.

Line 9 S corporation shareholders: Enter on line 9 your share of the recapture of credit from S corporations. This information should be provided to you by your S corporations.

Line 11

Fiduciaries: Enter the amount from line 10.

All others: Add lines 6 through 9.