



# Instructions for Form CT-44

## Claim for Investment Tax Credit for the Financial Services Industry

Tax Law – Article 9-A, Sections 210-B.1 and 210-B.2; and Article 33, Section 1511(q)

# CT-44-I

### General information

The investment tax credit (ITC) for the financial services industry expired for property placed in service on or after October 1, 2015.

Business corporations taxable under Article 9-A may claim an employment incentive credit (EIC) for the two years immediately succeeding the tax year for which an ITC is allowed. (See *Schedule A – Employment incentive credit*).

The ITC and the EIC may not reduce the tax liability to less than the fixed dollar minimum tax for Article 9-A filers or the minimum tax due for Article 33 filers.

Any portion of these credits that cannot be used to reduce the current year tax liability may be carried forward for up to 15 tax years (10 tax years for a New York S corporation).

### Recapture of ITC

You must compute a recapture of ITC previously allowed if the property was stolen, destroyed, disposed of, or ceases to be in qualified use prior to the end of its useful life, or if there is an increase in nonqualified nonrecourse financing. (See *Schedule B – Recapture of ITC*).

### Qualified property

*Qualified property* for the ITC is tangible property, including buildings and structural components of buildings, that:

- was acquired, constructed, reconstructed, or erected by the taxpayer on or after October 1, 1998 (for Article 33 filers: on or after January 1, 2002), and before October 1, 2015;
- is depreciable under IRC section 167 or 168;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase under IRC section 179(d);
- is located in New York State; and
- is principally used in the ordinary course of the taxpayer's business:
  - as a broker or dealer in connection with the purchase or sale of stocks, bonds, other securities (IRC section 475(c)(2)), or of commodities (IRC section 475(e)), or in providing lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale of securities (IRC section 475(c)(2));
  - providing investment advisory services for a regulated investment company (IRC section 851);
  - as an exchange registered as a national securities exchange (sections 3(A)(1) and 6(A) of the Securities Exchange Act of 1934) (available to Article 9-A taxpayers only);
  - as a board of trade (Not-for-Profit Corporation Law section 1410(a)) (available to Article 9-A taxpayers only); or
  - as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides them with automation or technical services (available to Article 9-A taxpayers only).

Though the property must be located in New York State, it is not necessary for the users of the property to be located in New York State. For example, a computer system that is placed in service in New York State would qualify for the credit, even if the brokers accessing the system are located outside the state.

Property leased to a broker, dealer, registered investment advisor, national securities exchange, board of trade, or any entity wholly owned by a national securities exchange or board of trade, as described above, that is an affiliate of the taxpayer and that principally uses the property in the qualifying activities listed above qualifies for the credit, provided it otherwise meets the criteria for qualified property. Any contract or agreement to lease or rent, or for a license to use the property, is considered a lease. In addition, property qualifies if it meets the criteria and is purchased by the taxpayer, but is principally used by a broker, dealer, registered investment advisor, national securities exchange, or board of trade that is an affiliate of the taxpayer in the qualifying activities listed above.

For the purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer, the affiliated broker, dealer, and registered investment advisor may be aggregated.

If qualified property is purchased using nonqualified nonrecourse financing, the investment credit base must be reduced by the amount of financing that would be excludable from the credit base pursuant to IRC section 49(a)(1). If at the close of a tax year following the tax year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to the property, the net decrease is to be treated as the cost or other basis of qualified property acquired, constructed, reconstructed, or erected during the year of the decrease.

If qualified property is acquired to replace other insured property that was stolen or was destroyed by fire, storm, shipwreck, or other casualty, the basis of the replacement property is its cost reduced by any amount of gain not recognized for federal income tax purposes because the insurance proceeds were invested in the replacement. If qualified property is acquired to replace property destroyed as a direct result of the terrorist attacks of September 11, 2001, and you did not elect to defer recapture, or escaped recapture because you met the employment test, you may compute the investment credit base of the replacement property without regard to any basis reduction required by IRC section 1033.

### Definitions

*Affiliate* means the following:

- A partnership 80% or more of whose interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation 80% or more of whose voting stock is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.
- A corporation 80% or more of whose voting stock is owned or controlled, directly or indirectly, by the entity that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.

*Commodities*, as referred to in these instructions, are those defined in IRC section 475(e)(2).

*Cost* is the basis of property as defined in IRC section 1012.

*Investment credit base* is the cost, or other basis, when placed in service in New York State for federal income tax purposes, of qualified tangible property, including buildings and structural components of buildings, less the amount of nonqualified nonrecourse financing for the property. Any amount that was

expensed under IRC section 179(a) or any amount for which you elected to claim an empire zone (EZ) ITC should **not** be included in the investment credit base.

*Life or useful life* (of property) is the depreciable life as provided by IRC section 167 or 168.

*Nonqualified nonrecourse financing* is any amount for which a taxpayer is protected against loss and, generally, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used, or from someone related to a person (other than the taxpayer) who has an interest in the activity. Nonrecourse financing is nonqualified if it is not qualified commercial financing as defined in IRC section 49(a)(1).

*Other basis* means the adjusted basis for determining gain or loss used as the basis for depreciation under IRC section 167(g).

*Principally used* means used more than 50%. A building or an addition to a building is principally used in qualifying activities if more than 50% of its usable business floor space is used in qualifying activities. Floor space used for bathrooms, cafeterias, and lounges is not usable business floor space. Equipment is principally used in qualifying activities when it is used in such activities more than 50% of its operating time. Operating time may be determined based on actual time, cost allocations to individual business units, or any other reasonable method that accurately reflects operating time.

*Purchase or sale* includes, but is not limited to, the issuance, entering into, assumption, offset, assignment, termination, or transfer of stocks, bonds, commodities, or other securities.

A *security* is defined in IRC section 475(c)(2).

All references to *current tax year* mean the tax year covered by this claim.

**Bank or insurance corporation as a dealer:** A bank or insurance corporation is acting as a dealer when the corporation does **either** of the following:

- Regularly purchases securities (as defined in IRC section 475(c)(2)) or commodities (as defined in IRC section 475(e)) from or sells securities or commodities to customers in the ordinary course of its trade or business.
- Regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities or commodities with customers in the ordinary course of its trade or business.

The credit is not allowed for property located in the bank or insurance corporation's trading department, unless the property is principally used by the taxpayer in the ordinary course of the taxpayer's business as a dealer. On audit, it will be necessary for the taxpayer to demonstrate that the qualified property is principally used in the ordinary course of the taxpayer's business as a dealer.

## Line instructions

### Line A

If you are claiming a credit based on costs passed through to you from a partnership, mark an **X** in the box.

## Schedule A – Employment incentive credit (EIC)

### Part 1 – Eligibility for EIC

This credit is for Article 9-A filers only. **Do not complete Schedule A** if your corporation is not subject to tax under Article 9-A.

If a corporation was allowed an ITC, the corporation may be eligible for an EIC for the next two immediately succeeding tax

years. However, the credit is not allowed for those years if the corporation's average number of employees in New York State during the current tax year is not at least 101% of the average number of employees in New York State during the employment base year.

A corporation that has claimed an ITC for property it purchased that is principally used by an affiliate of the corporation may also be eligible for an EIC. In this case, the credit is allowed based on the corporation's average number of employees in New York State. The number of the affiliate's employees are not taken into consideration.

*Employment base year* means the calendar tax year or fiscal tax year immediately preceding the ITC year, or, if the corporation was not taxable in New York State in the preceding year, the year in which the ITC was allowed. Complete Part 1 to see if your corporation qualifies for the EIC.

Section 210-B.2(b) defines *the average number of employees* as the total number of employees that are employed within New York State on March 31, June 30, September 30, and December 31 of the current tax year divided by the number of these dates occurring during the tax period. Employees must be located in New York State. **Do not include general executive officers.**

### Example:

*A corporation filing a report for a fiscal period beginning September 1, 2015, and ending August 31, 2016, would use the following dates to compute the number of New York State employees for that fiscal year: September 30, 2015, December 31, 2015, March 31, 2016, and June 30, 2016.*

Complete Part 1 for each tax year listed in Part 2 for which you claimed an EIC. Exclude any employee for whom you claimed a zone equivalent area (ZEA) wage tax credit based on employment within a ZEA. However, include these employees for the employment base year on lines 2 and 4.

**Column A** – Enter the current tax year and the base year. The *current tax year* is the tax year covered by this claim.

**Columns B through E** – Enter the total number of employees employed in New York State on each of the dates listed that occurred during your tax year.

**Column G** – Unless you have a short tax year (less than 12 months), divide the amount in column F by four. If you have a short tax year, divide the amount in column F by the number of dates shown in columns B through E that occur during the short year.

**Column H** – Divide the average number of employees in the current tax year by the average number of employees in the base year. Carry the result to two decimal places. If the percentage in column H is at least 101%, (1.01), complete Schedule A, Part 2. If the percentage in column H is **less than 101%** for both tax periods, **do not complete Schedule A, Part 2. You do not qualify** for the EIC.

## Part 2 – Computation of EIC

### General

The amount of EIC is a percentage of the original investment credit base on which the ITC was allowed for each of the two years immediately following the year the ITC was allowed. The percentage used to compute this credit depends on the level of employment (see *Rate schedule* on Form CT-44).

**C corporations** – The EIC may not reduce the tax liability to an amount less than the fixed dollar minimum tax.

You may carry the credit forward for up to 15 tax years. A C corporation cannot claim a refund of the EIC.

**New York S corporations** – For shareholders of a New York S corporation who claim an EIC, any excess EIC that cannot be used to reduce their current tax liability can be carried forward for up to **ten** tax years. However, a shareholder that qualifies as an owner of a new business may elect to have the excess EIC refunded.

A *new business* is defined as any business **except** the following:

- A corporation in which more than 50% of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned by a taxpayer subject to tax under Tax Law, Article 9, section 183, 184, 185, or 186; Article 9-A; or Article 33.
- A corporation substantially similar in operation and in ownership to a business entity or entities taxable or previously taxable under Article 9, section 183, 184, 185, or 186; Article 9-A; or the income (or losses) of which is (or was) includable under Article 22; Article 23, as this article was in effect on January 1, 1980; Article 32, as this article was in effect on December 31, 2014; or Article 33.
- A corporation that has been subject to tax under Article 9-A, former Article 32, or Article 33 for more than five years (excluding short years).

**Schedule B – Recapture of ITC**

If property on which an ITC has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the original credit allowed and the credit allowed for actual use must be added back to the tax otherwise due in the year of disposition.

There are different formulas for computing the amount of recaptured ITC for property depreciated under IRC sections 167 and 168.

**Column H**

(1) For property depreciated solely under IRC section 167, the recapture formula is as follows:

$$\frac{\text{months of unused life}}{\text{months of useful life}} \times \text{original ITC allowed}$$

(2) For three-year property depreciated under IRC section 168, the recapture formula is as follows:

$$\frac{36 \text{ minus the number of months of qualified use}}{36} \times \text{original ITC allowed}$$

Recapture is only required if the property is disposed of or ceases to be in qualified use prior to the end of 36 months.

(3) For property depreciated under IRC section 168, other than three-year property, or buildings, or structural components of buildings, the formula is as follows:

$$\frac{60 \text{ minus the number of months of qualified use}}{60} \times \text{original ITC allowed}$$

Recapture is only required if the property is disposed of or ceases to be in qualified use prior to the end of 60 months.

(4) For buildings or structural components of buildings depreciated under IRC section 168, the formula is as follows:

$$\frac{\text{months of unused life}}{\text{number of months allowed by the IRC and used by the taxpayer}} \times \text{ITC allowed}$$

Property that is depreciated under IRC section 168 for federal tax purposes, but is required to be depreciated under IRC section 167 for New York State tax purposes (decoupled property), is subject to formula (1).

If qualified property has a useful life of more than 12 years, and it has been in use for more than 12 years, no recapture is necessary.

If there is a net increase in nonqualified nonrecourse financing at the end of the tax year, the decrease in the ITC that would have resulted from the net increase in nonqualified nonrecourse financing must be recaptured.

**Line 9 – Additional recapture** – You must also compute an additional recapture amount equal to the original recapture amount multiplied by the underpayment interest rate in effect on the last day of the tax year.

**Summary of tax credit(s)**

**Line 15** – If the amount on line 13 is greater than the amount on line 14, subtract line 14 from line 13.

**New York S corporations:** transfer this amount to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule*.

**C corporations:** continue with line 16.

If the amount on line 14 is greater than line 13, you have a net recaptured tax credit. Continue with line 15 instructions, but do not complete lines 16 through 24.

**C corporations:** subtract line 13 from line 14 and enter the result as a negative number with a minus (-) sign in the appropriate box of the tax credits section of your franchise tax return.

**New York S corporations:** subtract line 13 from line 14 and enter the result as a positive number on Form CT-34-SH.

**Computation of credit used or carried forward** (New York S corporations do not complete this section)

**Lines 16 and 19 entries table**

If you filed	Enter on line 16 any net recapture of other tax credits <b>plus</b> the amount from	Enter on line 19 the minimum tax below
CT-3	Part 2, line 2	Part 2, line 1c
CT-3-A	Part 2, line 2	Part 2, line 1c
CT-33	Line 11	<b>250</b>
CT-33-A	Line 15	Line 4 <b>plus</b> line 12
CT-33-NL	Line 5	<b>250</b>

**Line 16** – Enter your tax due before credits using the *Lines 16 and 19 entries table* above.

**Line 17** – If you are claiming more than one credit, enter the amount of the credits claimed before this credit. Otherwise, enter **0**.

If filing as a member of a combined group, include any amount of tax credit(s), including ITC(s), being claimed by other members of the combined group that you wish to apply before this credit.

**CT-33 and CT-33-A filers, including unauthorized insurance corporations:** Do not enter on this line any amount of 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.

See the instructions for your franchise tax return for a listing of credits and the order in which the credits are applied.

**Article 9-A taxpayers:** Refer to Form CT-600-I, *Instructions for Form CT-600*, to determine proper ordering of multiple credits.

**Line 19** – Enter your minimum tax using the *Lines 16 and 19 entries table* above.

**Line 21** – Enter the lesser of line 15 or line 20. Transfer this amount to your franchise tax return.

**Line 23** – Any unused portion of the ITC and EIC that you earned in prior periods can be carried forward for up to 15 years. Enter on this line any unused tax credit included on line 22 that expired during this tax year and is no longer available.

## **Need help? and Privacy notification**

See Form CT-1, *Supplement to Corporation Tax Instructions*.

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