New York's myriad tax credits were largely unimpacted by the 2014 corporate tax reform legislation when they were included into the new Tax Law section 210-B. Furthermore, the Tax Department historically has not written regulations for credits after they were added to the Law, and the few regulations that do exist have not been amended in years.

The current corporate reform regulation process contemplates a complete repeal of existing regulations and the promulgation of replacement regulations. Preliminary drafts of the new regulations have been periodically issued and updated on the Department's website.

The Department has concluded that a comprehensive regulation for tax credits should be examined in more detail but should proceed along a separate amendment process. This will allow the Department to focus on expeditiously completing the regulations pertaining to the broader corporate reform changes.

This draft credit regulation makes only the minimal changes to the existing credit regulations necessary to correspond with the timing and objective of the larger corporate reform regulation project. The changes fall into three categories:

- Regulations for expired credits are repealed and not replaced;
- Regulations that are essentially restatements of statute are repealed and not replaced;
- Regulations that contain information not in the statute or that have ongoing application are retained or updated in the new draft regulation to reflect changes in corporate reform, such as citations.

The Department intends to undertake a more comprehensive credit regulation effort after the corporate reform regulations are adopted and as such welcomes the identification of issues that would benefit from inclusion in a new regulation, as well as proposed language and examples.

Part 5, Credits Against Tax, of Subchapter A of Title 20 of the Codes, Rules, and Regulations of the State of New York is repealed and new Part 5 is added to read as follows:

PART 5

CREDITS AGAINST TAX



SUBPART 5-1

INVESTMENT TAX CREDIT

Sec.



Section 5-1.1 General. [Tax Law, Section 210-B(1)(a)].

(a) A corporation is allowed an investment tax credit against the tax imposed by Article 9-A with respect to qualified tangible personal property and other tangible property, including buildings and structural components of buildings that were acquired, constructed, reconstructed or erected after December 31, 1968.

(b) A corporation must claim the investment tax credit for the first taxable year in which the property becomes qualified property.

(c) The investment tax credit shall not reduce the tax to less than the fixed dollar minimum tax. If the corporation has an excess investment tax credit after reducing the tax due to the fixed dollar minimum tax or otherwise pays tax on the fixed dollar minimum, the excess credit may be carried over to the fifteen taxable years immediately following such taxable year and may be deducted from the corporation's tax for such year or years. In lieu of such carryover, any corporation that qualifies as a new business under section 210-B(1)(f) may elect to treat the excess credit as an overpayment of tax to be credited or refunded.

(d) A corporation must submit a Claim for Investment Tax Credit on Form CT-46 when claiming the credit.

Section 5-1.2 Qualified and nonqualified tangible personal property. [Tax Law, Section 210-B(1)(b)].

(a) The term qualified tangible personal property means tangible property that satisfies the requirements set forth in section 210-B(1)(b)(i).

(b) Nonqualified tangible personal property means tangible personal property that is not qualified tangible personal property. It includes, but is not limited to, the following:

(1) Tangible personal property and other tangible property, including buildings, and structural components of buildings, that a corporation leases to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property will be considered a lease. However, in cases where production property is leased in form and the lessee is in fact the beneficial owner and entitled to take Federal depreciation on the property and the property qualifies, the lessee may be

entitled to take the investment tax credit. The use of a qualified film production facility by a qualified production company is not considered a lease of that facility to that company.

(2) Retail equipment, office furniture, and office equipment.

(3) Excavating and road building equipment.

(4) Transportation equipment used on public roads.

(5) Property used to transport raw materials to the raw materials warehouse or finished goods to customers.

(6) Public warehouses used to store the corporation's goods.

(7) Property principally used in the production or distribution of electricity, natural gas after extraction from wells, steam, or water delivered through pipes and mains.

Section 5-1.3 Meaning of other terms. [Tax Law, Section 210-B(1)(b)(ii)].

For purposes of the investment tax credit, the following terms have these meanings:

(1) The term manufacturing means the process of working raw materials into wares suitable for use or which gives new shapes, new quality or new combinations to matter which already has gone through some artificial process by the use of machinery, tools, appliances and other similar equipment.

(2) The term property used in the production of goods includes machinery, equipment or other tangible property which is principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods and includes all facilities used in the production operation, including storage of material to be used in production and of the products that are produced. Since property and equipment used to store raw materials and finished goods are included in the meaning of manufacturing, property

and equipment at the raw material warehouse and at the finished goods warehouse of a manufacturer qualify, provided that the property and equipment are principally used in storing the raw materials or finished goods. Property used for transportation of goods during the manufacturing process qualifies.

(3) The term principally used means more than 50 percent. A building or addition to a building is principally used in production where more than 50 percent of its usable business floor space is used in storage and production. Floor space used for bathrooms, cafeterias and lounges is not usable business floor space. Space used for offices, accounting, sales and distribution is not used in production. Dual purpose machinery is principally used in production when it is used in production more than 50 percent of its operating time.

Section 5-1.4 Computing the investment tax credit. [Tax Law, Section 210-B(1)(a), (e)]

The amount of credit that a corporation is allowed is computed at the rate set forth in section 210-B(1)(a) of the investment credit base as determined in section 210-B(1)(a).

Section 5-1.5 Recomputation of investment tax credit on property disposed of or property that ceases to qualify. [Tax Law, Section 210-B(1)]

(a) If property on which investment tax credit has been claimed is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back to the tax otherwise due in the year of disposition or disqualification.

(b) The amount of investment tax credit to be added back is computed as follows:

(1) divide the total number of months in qualified use of the property by the total

number of months of useful life;

(2) multiply the amount computed in paragraph (1) of this subdivision by the amount of the credit claimed on the property to ascertain the credit allowed for actual use;

(3) subtract the credit allowed for actual use from the credit claimed on the property to determine the amount of investment tax credit to be added back; and

(4) add the amount to be added back to the tax due for the year the property was disposed of or ceases to qualify.

(c) A disposition of qualified property includes:

(1) a sale of the property;

(2) a liquidation other than as part of a statutory merger or consolidation; see subdivision (e) of this section for the exception;

(3) a legal dissolution of the corporation;

(4) a trade-in of the property;

(5) a gift of the property;

(6) transfer upon foreclosure of a security interest in the property;

(7) retirement of the property before expiration of its useful life;

(8) condemnation of the property;

(9) loss of the property due to fire, theft, storm or other casualty; and

(10) transfer of the property to a corporation not taxable under Article 9-A.

(d) Property that ceases to be in qualified use includes:

(1) property that initially qualified but no longer meets the requirements of section 5-1.2 (a) of this Subpart, such as property that no longer has situs in New York State or property that no longer is used in the production of goods; and

(2) property on which a credit was allowed and subsequently leased to others.

(e) For purposes of this section, a disposition does not occur where property is transferred from a corporation as part of a transaction to which IRC section 381(a) applies: e.g., a complete liquidation of a subsidiary under IRC section 332, or a reorganization under IRC section 361 and IRC section 368 (a)(1)(A) (statutory merger or consolidation), IRC section 368 (a)(1)(C) (certain acquisitions of property from one corporation by another), IRC section 368 (a)(1)(D) (certain transfers of assets), IRC section 368 (a)(1)(F) (mere change in identity, form or place of organization, however effected) or IRC section 368 (a)(1)(G) (bankruptcy reorganizations). As there is no disposition in these cases, an add back is not required provided that the property continues in qualified use and is acquired by a corporation subject to tax under Article 9-A. Generally, in these cases, the acquiring or surviving corporation cannot claim an investment tax credit because it takes over such property at the adjusted basis of the transferror and the transfer therefore does not qualify as a purchase pursuant to IRC section 179(d)(2). If the property in the hands of the acquiring corporation is not in qualified use for its entire life or for more than 12 consecutive years, a recovery from the acquiring corporation is required. In measuring the period of qualified use, the period during which the property was held by the transferror corporation and the acquiring corporation are to be taken into account.

(f) There is no add-back of the investment tax credit if the property is disposed of or ceases to be in qualified use after it has been in qualified use for more than 12 consecutive years or after the end of its useful life.

(g) As used in this section, the useful life of property shall be the same number of years as the corporation uses for Federal depreciation purposes.

(h) If property that qualifies for the investment tax credit is deposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, an investment tax credit is allowed for the period the property was in qualified use. The credit that will be allowed is that part of the credit that would have been allowed for the entire taxable year multiplied by a fraction, the numerator of which is the total number of months in qualified use of the property and the denominator of which is the total number of months of the property's useful life.

## SUBPART 5-2
## EMPLOYMENT INCENTIVE TAX CREDIT



Section 5-2.1 Employment incentive tax credit. [Tax Law, Section 210-B(2)]

(a) Where a corporation is allowed an investment tax credit under section 210-B(1), the corporation may be allowed an employment incentive tax credit for each of the two years next succeeding the taxable year for which the investment tax credit is allowed. The amount of the employment incentive credit is a percentage, as provided in section 210-B(2), of the investment credit base as described in section 210-B(1)(a)(ii), that varies depending on the percentage increase in employment. Provided, that the employment incentive credit will be allowed for any taxable year only if:

(1) the average number of employees during such taxable year is at least 101 percent of the average number of employees during the taxable year immediately preceding the taxable year for which the investment tax credit is allowed; or

(2) in case of a corporation that was not subject to the tax imposed by Article 9-A and

did not have a taxable year immediately preceding the taxable year for which the investment tax credit is allowed, the average number of employees in the taxable year for which the credit under this Subpart is allowable is at least 101 percent of the average number of employees during the taxable year in which the investment tax credit is allowed.

(b) The employment incentive tax credit shall not reduce the tax to less than the fixed dollar minimum tax. If the corporation has excess employment incentive tax credit after reducing the tax due to the fixed dollar minimum tax or the corporation otherwise pays tax on the fixed dollar minimum, the excess credit may be carried over to the fifteen taxable years immediately following such taxable year and may be deducted from the corporation's tax for such year or years.

(c) A corporation entitled to claim the employment incentive tax credit must submit a Claim for Investment Tax Credit that includes the employment incentive tax credit on Form CT-46 when claiming the credit.

SUBPART 5-3

SECURITY TRAINING TAX CREDIT

Sec.



Section 5-3.1 General [Tax Law, Sections 26 and 210-B(21)] .

(a) A corporation that is a qualified building owner, as defined under section 26(b)(1), and that has been issued a certificate of tax credit by the State Office of Homeland Security is allowed to claim a credit against the tax imposed by Article 9-A. The amount of the credit allowed is three thousand dollars for each qualified security officer, as defined under section 26(b)(4), who is directly or indirectly employed to provide protection to the corporation's building or buildings for a full year. However, the amount of the credit may be reduced due to the limitation placed on the total amount of all tax credits issued by the State Office of Homeland Security in any calendar year. In the case of a qualified security officer who is employed for less than a full year, the amount of the credit is prorated to reflect the length of such employment pursuant

(b) The security training tax credit shall not reduce the tax to less than the fixed dollar minimum tax. If the corporation has excess security tax training credit after reducing the tax to the fixed dollar minimum tax or the corporation otherwise pays the tax on the fixed dollar minimum, the security training tax credit shall be treated as an overpayment of tax to be credited or refunded.

(c) A corporation must submit a Claim for Security Officer Training Credit on Form CT-631 when claiming the credit.

Section 5-3.2 Definitions for purposes of the security training tax credit. [Tax Law, Sections 26 and 210-B(21)]

(a) Full year means 1,750 qualified hours worked during the calendar year.

(b) Qualified hours means hours worked, directly or indirectly, as a qualified security officer for the qualified building owner.

Section 5-3.3 Prorating the security training tax credit for security officers employed for less than a full year. [Tax Law, Sections 26 and 210-B(21)]

(a) In the case of a qualified security officer who is employed for less than a full year, the amount of the security training tax credit is prorated.

(b) The prorated amount of the credit for a qualified security officer employed for less than a full year is computed as follows:

(1) ascertain the number of qualified hours worked by the qualified security officer during the calendar year (limited to 1,750 hours);

(2) divide the number of hours by 1,750; and

(3) multiply the result by three thousand dollars.

(c) This method of proration applies for purposes of the security training tax credit against the tax imposed by Article 9-A as well as the taxes imposed by Articles 9, 22, and 33.