Department of Taxation and Finance

Instructions for Form CT-605

Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry

CT-605-I

General information

The Empire Zones (EZ) Program expired on June 30, 2010. However, the Tax Law was amended to extend the period of eligibility to claim the empire zone investment tax credit (EZ-ITC) and empire zone employment incentive credit (EZ-EIC) for taxpayers that were certified as EZ businesses under General Municipal Law (GML) Article 18-B, prior to the expiration of the program.

EZ-ITC

The eligibility period for EZ businesses and designation period for EZs in which the business was certified for purposes of the EZ-ITC expired on April 1, 2014. For tax years beginning on or after April 1, 2014, the business may only claim a credit carryover from previous years.

EZ-EIC

For purposes of the EZ-EIC, a taxpayer that was certified as an EZ business under GML Article 18-B as of June 30, 2010, will continue to be deemed in the EZ in which the taxpayer was certified as an EZ business on the day immediately preceding the day the EZ Program expired and for each of the three years next succeeding the tax year for which the ITC was allowed.

A taxpayer is allowed an EZ-EIC if an EZ-ITC was claimed for qualified property placed in service in a previously designated EZ **and** the average number of employees in the EZ was increased to at least 101% of the number of employees in that EZ during the base year. The credit is 30% of the original EZ-ITC that was allowed. The EZ-EIC may be claimed for each of the three years succeeding the tax year for which the EZ-ITC was claimed. See Schedule A instructions.

A copy of the *Certificate of Eligibility* and the EZ retention certificate issued by Empire State Development (ESD) must be submitted with Form CT-605 each year the credit or carryforward of the credit is claimed. Flow-through entities, such as partnerships, S corporations, and fiduciaries, should distribute copies of the EZ retention certificate to their partners, shareholders, and beneficiaries to submit with their personal income tax returns when claiming EZ credits.

The EZ-ITC and EZ-EIC used may reduce your franchise tax liability to the fixed dollar minimum.

Any portion of EZ-ITC or EZ-EIC that cannot be used to reduce the current year tax liability may be carried over to the following year or years until it is used up. A taxpayer who has been decertified may carry forward the EZ-ITC for only seven years. However, a taxpayer who has been decertified as part of the 2009 recertification process will not be allowed any carryovers.

Qualified property

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

A. was acquired, constructed, reconstructed, or erected by the taxpayer on or after the date of designation of the EZ and prior to the expiration of such designation, and was placed in service on or after October 1, 1998, and before April 1, 2014; and

B. is depreciable according to Internal Revenue Code (IRC) section 167; and

C. has a useful life of four years or more; and

D. was acquired by the taxpayer by purchase according to IRC section 179(d); and

E. is located in an EZ; and

F. 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)); or
   - of providing investment advisory services for a regulated investment company (IRC section 851); or
   - 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); or
   - as a board of trade (section 1410(a) of the Not-for-Profit Corporation Law) (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 automation or technical services thereto (available to Article 9-A taxpayers only).

It is not necessary for the users of the property to be located in the EZ. For example, a computer system placed in service in an EZ would qualify even if the brokers accessing the system are located outside the EZ.

Property leased to a broker, dealer, registered investment advisor, national securities exchange, or board of trade that is an affiliate of the taxpayer, that principally uses the property in the qualifying activities listed above, qualifies 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.

A recapture of EZ-ITC and EZ-EIC previously allowed must be computed if the property is disposed of or ceases to be in qualified use prior to the end of its useful life.

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.

Definitions

An *affiliate* is any of the following:

- A partnership in which 80% or more of the interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation in which 80% or more of the 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 in which 80% or more of the 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 defined in IRC section 475(e)(2).

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

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

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 more than 50%. A building or an addition to a building is principally used in qualifying activities when 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 of stocks, bonds, commodities, or other securities 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).

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.

C corporations: Complete all applicable schedules.

New York S corporations: Complete schedules A through C.

Schedule A – EZ-EIC

If you acquired, constructed, reconstructed, or erected property for which an EZ-ITC was allowed, an EZ-EIC may be allowed in the following three years.

The amount of the EZ-EIC allowed is 30% of the original EZ-ITC for each of the three years following the year for which the EZ-ITC was originally allowed. However, the credit is allowed only for those years during which your average number of employees (except general executive officers) in the EZ is at least 101% of the average number of employees (except general executive officers) in the EZ, during the tax year immediately preceding the tax year for which the original EZ-ITC was allowed.

If you have claimed an EZ-ITC for property purchased that is principally used by your affiliate, you may also be eligible for an EZ-EIC. In this case, the credit is allowed based on your average number of employees in the EZ. The number of the affiliate's employees is not taken into consideration.

If you did not have a tax year for New York State immediately preceding the year in which the EZ-ITC was originally allowed, the average number of employees in the EZ in the tax year in which the EZ-EIC is claimed must be at least 101% of its average number of employees in the EZ in the tax year in which the EZ-ITC was originally allowed.

Part 1 – Employment information required to determine eligibility for EZ-EIC

Complete Part 1 to determine if you are eligible for the credit. If you are eligible, complete Part 2.

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

Column A – Enter in column A the current tax year and the base year. The *base year* is the year before the year you claimed the original EZ-ITC. However, if your business was not in operation in New York State during that year, the *base year* is the year in which you claimed the EZ-ITC.

Columns B through E – Enter the total number of employees employed within the EZ on each of the dates listed that occur during your tax year.

> **Example:** *A taxpayer filing for a fiscal year beginning September 1, 2015, and ending August 31, 2016, would enter the number of employees employed in the EZ on the following dates: September 30, 2015, December 31, 2015, March 31, 2016, and June 30, 2016.*

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

Column H – Divide the average number of EZ employees for the current tax year by the average number of employees in the base year (column G), and 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%, stop. You do not qualify** for the employment incentive tax credit for this year.

Part 2 – Computation of EZ-EIC

Use Part 2 to determine the amount of the EZ-EIC allowed for each year of eligibility listed in Schedule A, Part 1.

Example:

A corporation acquired qualified property in 2013 at a cost of $100,000. The EZ-ITC allowed was $10,000.

Year	*Average number of EZ employees*	*EZ-EIC available for use*
2012	*200*	*–*
2013	*not required*	*–*
2014	*202*	*$3,000 (30% of $10,000)*
2015	*199*	*0**
2016	*205*	*$3,000 (30% of $10,000)*

** In 2015, the average number of EZ employees was less than 101% of the number employed in 2012.*

Schedule B – Computation of recapture of EZ-ITC and EZ-EIC

When property on which an EZ-ITC has been allowed is disposed of, or ceases to be in qualified use before 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.

The decertification of a business enterprise in an EZ constitutes a disposal or cessation of qualified use on the effective date of the decertification. If a business is decertified, any amount of credit not required to be recaptured may be carried forward for up to seven tax years after the tax year in which the credit is allowed. The taxpayer may claim the regular ITC for property that ceases to qualify as a result of the decertification.

For purposes of the recapture, the termination or expiration of an EZ's designation as an EZ will not be considered a disposal or cessation of qualified use.

Section 210-B.3(f) provides different formulas to compute the amount of EZ-ITC required to be recaptured.

1. For property depreciated under IRC section 167, the formula is:

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

2. For three-year property depreciated under IRC section 168, the formula is:

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

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:

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

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:

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

If qualified property has a useful life of more than 12 years, no credit need be added back if it has been in use more than 12 consecutive years.

Attach additional sheets if necessary. Use the same format as requested in columns A through I.

Column G – Enter the total amount of EZ-ITC credit allowed. Include the original EZ-ITC but not any EZ-EIC allowed.

Column I – Multiply 30% of amount in column H by the number of years the EZ-EIC was allowed.

Schedule C

Part 1 – Computation of EZ-ITC

Line 6 – If the amount on line 4 is greater than the amount on line 5, subtract line 5 from line 4 and enter the amount on this line.

C corporations: If the amount on line 5 is greater than the amount on line 4, subtract line 4 from line 5 and enter the result as a negative number with a minus (-) sign. Enter this negative amount in the appropriate box of the tax credits section of your franchise tax return.

New York S corporations: Enter the amount from line 5 on line 6. Enter this amount as a positive number in the recapture section on Form CT-34-SH.

If you have a net recapture amount of EZ-ITC and no EZ-EIC, **do not** complete the rest of this form. Otherwise, proceed to Schedule C, Part 2.

Part 2 – Computation of EZ-EIC

Line 11 – If the amount on line 9 is greater than the amount on line 10, subtract line 10 from line 9. This is the amount of your EZ-EIC. **New York S corporations:** Transfer this amount to Form CT-34-SH.

If the recapture amount on line 10 is greater than the total EZ-EIC on line 9, you have a net recapture amount; continue with line 11 instructions.

C corporations: Subtract line 9 from line 10 and enter the result as a negative number with a minus (-) sign. Enter this negative amount in the appropriate box of the tax credits section of your franchise tax return.

New York S corporations: Subtract line 9 from 10 and enter the result as a positive number in the recapture section on Form CT-34-SH.

Schedule D – Computation EZ-EIC and EZ-ITC used and carried forward

Part 1 – Computation of EZ-EIC and EZ-ITC used

(C corporations only)

Use column A to determine the amount of EZ-EIC that you may apply in the current period.

Use column B to determine the amount of EZ-ITC that you may apply in the current period.

Line 12, column A – Enter the amount from Form CT-3 or Form CT-3-A, Part 2, line 2, **plus** any net recapture of other tax credits, **minus** all other credits claimed, including credits claimed by other members of your combined group, before the EZ-EIC claimed on Form CT-605. If you wish to apply the EZ-ITC before the EZ-EIC, be sure to also subtract the EZ-ITC used this period (shown on line 15, column B). Certain credits must be applied before the EZ-EIC. To determine the order of credits that applies, refer to Form CT-600-I, *Instructions for Form CT-600*, *Ordering of Corporation Tax Credits*.

Line 12, column B – Enter the amount from Form CT-3 or Form CT-3-A, Part 2, line 2, **plus** any net recapture of other tax credits, **minus** all other credits claimed, including credits claimed by other members of your combined group, before the EZ-ITC claimed on Form CT-605. If you wish to apply the EZ-EIC before the EZ-ITC, be sure to also subtract the EZ-EIC used this period (shown on line 15, column A). Certain credits must be applied before the EZ-ITC. To determine the order of credits that applies, refer to Form CT-600-I.

Line 13 – Enter the fixed dollar minimum tax from Form CT-3, or the designated agent's fixed dollar minimum tax from Form CT-3-A.

Line 16 – Transfer this amount to your franchise tax return.

Need help? and Privacy notification

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