Department of Taxation and Finance

Instructions for Form IT-603

IT-603-I

NEW YORK STATE 2016

Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit

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.

If an acquisition, construction, reconstruction, or erection was started during the period of designation and completed after the expiration of that period, expenditures paid or incurred after the designated period may qualify for the ITC under Tax Law, Article 22, section 606(a). To claim the ITC for property placed in service on or after April 1, 2014, use Form IT-212, *Investment Credit.*

EZ-EIC – A taxpayer that is 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 3 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 *Empire Zone Retention Certificate* issued by Empire State Development (ESD) must be submitted with Form IT-603 each year the credit or carryforward of the credit is claimed. Pass-through entities, such as partnerships, S corporations, and fiduciaries should distribute copies of the EZ retention certificate to their partners, shareholders, and beneficiaries, to be submitted with their tax returns when claiming EZ credits.

The EZ-ITC and EZ-EIC **may not** reduce the income tax liability under Article 22 to less than zero. 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. However, taxpayers decertified prior to the recertification process in 2009 may only carry forward their unused EZ-ITC for seven years. Taxpayers who were subject to the recertification process in 2009 and did **not** receive an EZ retention certificate as part of that process are not allowed any carryover from prior taxable years.

Qualifying property

Qualified property means tangible personal property and other tangible property, including buildings and structural components of buildings, that

– was acquired, constructed, reconstructed, or erected by the taxpayer on or after the date of designation of the EZ and before the expiration of such designation;
– is depreciable under Internal Revenue Code (IRC) section 167;
– has a useful life of four years or more;
– was acquired by the taxpayer by purchase under IRC section 179(d);
– is located in an EZ; and
  - is principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing; or
  - is an industrial waste treatment facility or air pollution control facility, used in the taxpayer's trade or business; or
  - is research and development property.

Types of property that do not qualify for this EZ-ITC are as follows:

– property leased to others (other than property subject to a safe harbor lease)
– retail equipment, office furniture and equipment
– excavating and road building equipment
– public warehouses used to store the taxpayer's goods
– electricity generating equipment

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

Definitions

Investment credit base means the cost or other basis of the qualified property for federal income tax purposes. Do not include any amount that was expensed under IRC section 179(a). The basis of qualified property must include the remaining basis of other property exchanged or traded in for it. If a credit was previously allowed on the property exchanged or traded in, a disposition of property has occurred and you may have to compute an addback of credit on early dispositions. If the 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.

Manufacturing means the process of working raw materials into wares suitable for use or giving new shapes, new quality, or new combination to matter that already has gone through some artificial process by the use of machinery, tools, appliances, and other similar equipment.

Property used in the production of goods includes machinery, equipment, or other tangible property that is principally used in the repair and service of other machinery; equipment or other tangible property used principally in the production of goods; and all facilities used in the production operation, including storage of material to be used in production and the products that are produced.

Industrial waste treatment facilities are facilities for the treatment, neutralization, or stabilization of industrial waste and other wastes (as the terms *industrial waste* and *other* *wastes* are defined in Environmental Conservation Law (ECL) section 17-0105) from a point immediately preceding the treatment, neutralization, or stabilization to the point of disposal. This property includes the necessary pumping and transmitting facilities, but excludes facilities installed for the primary purpose of salvaging materials that are usable in the manufacturing process or are otherwise marketable. Submit the certificate of compliance concerning industrial waste treatment facilities and industrial waste treatment controlled process facilities of ECL section 17-0707.

Air pollution control facilities are facilities that remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms *air contaminant* and *air contamination source* are defined in ECL section 19-0107) from a point immediately preceding the removal, reduction, or rendering to the point of discharge of air meeting emission standards as established by the Department of Environmental Conservation. The term also includes flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities. It does not include facilities installed primarily to salvage materials that are usable in the manufacturing process or are marketable, or that rely for their efficacy on dilution, dispersion, or assimilation of air contaminants in the ambient air after emission. **Submit** the certificate of compliance concerning air pollution control facilities and air pollution controlled process facilities (ECL section 19-0309).

Research and development property is property used for research and development in the experimental or laboratory sense, but not for the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

Line instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Note: If more than one of the instructions below applies to you, complete all appropriate schedules on one Form IT-603.

Individuals (including sole proprietors): Complete Schedule A, Schedule F, and Schedule G. If applicable, also complete Schedule E.

Fiduciaries: Complete Schedule A, Schedule D, Schedule F, and Schedule G. If applicable, also complete Schedule E.

Partnerships: Complete Schedule A and Schedule F. If applicable, also complete Schedule E.

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 amount 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, Schedule F, and Schedule G. If applicable, also complete Schedule E.

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust: Complete Schedule B, Schedule C, Schedule F, and Schedule G. If applicable, also complete Schedule E.

Schedule A – EZ employment incentive credit (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 tax credit for each of the three years following the year for which the original EZ-ITC was allowed. However, the credit is allowed only for those years during which your average number of employees in the EZ is at least 101% of the average number of employees in the EZ during the tax year immediately preceding the tax year for which the original EZ-ITC was allowed.

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

Carry forward any excess EZ-EIC that cannot be used to reduce your tax liability for the current year.

A taxpayer that qualifies as an owner of a new business may elect to have 50% of the excess EZ-EIC refunded. (A shareholder of an S corporation will be considered the owner of a new business if the S corporation, itself, qualifies as a new business under Tax Law section 210-B.1(f).)

Part 1 – Eligibility for EZ-EIC (employment information)

Complete Part 1 to determine if you are eligible for the credit.

Column A – Enter in column A the year covered by this claim 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, C, D and E – Enter the total number of employees employed within the EZ on each of the dates listed that occurred 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 (a tax year of 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 tax year.

Column H – Divide the average number of employees for the period covered by this claim 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 Part 2. If the percentage in column H is less than 101%, **stop;** you do not qualify for the EIC for this year.

Part 2 – Computation of EZ-EIC

Use Schedule A, Part 2 to determine the amount of the EZ-EIC allowed for each year of eligibility listed in Schedule A, Part 1. Taxpayers may not claim a credit for EZ-ITC earned as a C corporation.

Example:

A taxpayer acquired qualified property in 2013 at a cost of $100,000.

Year	*Average number of EZ employees*	*EZ-EIC available for use*
2012	*200*	*XXX*
2013	*not required*	*XXX*
2014	*202*	*$2,400 (30% of $ 8,000)*
2015	*199*	*-0-**
2016	*205*	*$2,400 (30% of $ 8,000)*

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

Line 1 – Individuals and partnerships: Enter the line 1 amount on Schedule F, line 11. **Fiduciaries:** Transfer the line 1 amount to the total line of Schedule D, column C.

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

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

Schedule C – Partner's, shareholder's, or beneficiary's share of credit

Enter your share of the total credit received from a partnership, New York S corporation, or an estate or trust. If you belong to more than one partnership, New York S corporation, or estate or trust, enter the total of all your shares on the appropriate line.

Partner

Line 2 – Enter your share of the partnership's credit. This information should be provided to you by the partnership. If you are claiming a credit from more than one partnership, combine all amounts on line 2.

S corporation shareholder

Line 3 – Enter your share of the S corporation's credit. This information should be provided to you by your S corporation. If you are claiming a credit from more than one S corporation, combine all amounts on line 3.

Beneficiary

Line 4 – Enter your share of the estate's or trust's credit. This information should be provided to you by your fiduciary. If you are claiming a credit from more than one estate or trust, combine all amounts on line 4.

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

An estate or trust must complete Schedule D. If an estate or trust allocates or assigns the credit to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust.

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

Note: For tax years beginning on or after December 20, 2005, the EZ-ITC recapture provisions do not apply with respect to manufacturing property where a partner disposes of a partnership interest, or the partnership disposes of the manufacturing property, if:

- the basis of the manufacturing property (or a project that includes such property) was $300 million or more for federal income tax purposes at the time it was placed in service by the partnership in the EZ, and
- the partner owned the partnership interest for at least three years from the date the property was placed in service by the partnership in the EZ.

However, if the property ceases to be in qualified use by the partnership after it is placed in service, the recapture provisions do apply to such partner in the year the property ceases to be in qualified use.

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.

Section 606(j)(6) provides different formulas to compute the amount of EZ-ITC required to be recaptured.

- For property depreciated under IRC section 167, the formula is as follows:

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

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

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

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

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

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

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

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

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

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.

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

Column F – Divide column E by column D and round the result to the fourth decimal place.

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 the amount in column H by the number of years the EZ-EIC was allowed. If the recapture of the EZ-ITC occurred in a prior year, enter 30% of the recaptured EZ-ITC.

Line 8 – If an EZ business is decertified pursuant to clauses (1), (2), or (5) of GML section 959(a), the recapture amount must be augmented by an amount equal to the recapture multiplied by the interest rate in effect on the last day of the tax year. Only EZ businesses that have been decertified must compute the additional recapture. For details on computing the recapture, see TSB-M-86(13.3)C, (5.3)I, *Decertification of Economic Development Zone Business.*

Line 9 – This information should be provided to you by the partnership, S corporation, or estate or trust.

Schedule F – Computation of EZ-ITC and EZ-EIC allowed for the current tax year or recapture amount

Line 18 – If line 16 is more than line 17, subtract line 17 from line 16. This is the amount of your credit.

- **Partnerships:** Enter the line 18 amount and code ***163*** on Form IT-204, line 147.
- **All others:** Continue with Schedule G.

Line 19 – If line 17 is more than line 16, subtract line 16 from line 17. This is your net recapture of EZ-ITC and EZ-EIC.

- **Individuals:** Enter the amount from line 19 and code ***163*** on Form IT-201-ATT, line 20, or Form IT-203-ATT, line 19.
- **Partnerships:** Enter the amount from line 19 and code ***163*** on Form IT-204, line 148.
- **Fiduciaries:** Include the amount from line 19 on Form IT-205, line 12.

Do not complete Schedule G.

Schedule G – Computation of EZ-ITC and EZ-EIC used, refunded, and carried over

Line 21

Form IT-201 filers: Enter the tax from Form IT-201, line 39, plus any amount from Form IT-201-ATT, line 21.

Form IT-203 filers: Enter the tax from Form IT-203, line 46, plus any amount from Form IT-203-ATT, line 20.

Form IT-205 filers: Enter the tax from Form IT-205, line 8 (for residents), or line 9 (for nonresidents), **plus** any credits shown on line 1 of the *Addbacks worksheet*, in the instructions for Form IT-205, line 12.

Line 22 – If you are applying any credits against the tax before this credit, enter those amounts here.

When applying credits, use the following rules:

- First apply any household credit.
- Next apply any credits that cannot be carried over or refunded.
- Then apply any credits that can be carried over for a limited duration.
- Then apply any credits that can be carried over for an unlimited duration.
- Apply refundable credits last.

Line 24 – Enter the amount from line 24 and code ***163*** on Form IT-201-ATT, line 6, or Form IT-203-ATT, line 7, or include it on Form IT-205, line 10.

Line 26 – An Article 22 taxpayer that qualifies as an owner of a new business may elect to have 50% of any excess EZ-EIC refunded. The election may be made by a taxpayer qualifying as the owner of a new business under section 606(a)(10) (see definition below).

If you qualify as an owner of a new business, you must enter the lesser of either 50% of line 14 or 50% of line 25.

Enter the amount from line 26 and code ***163*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

Owner of a new business under Article 22, section 606(a)(10) means an individual who is either a sole proprietor or a member of a partnership **unless** any of the following apply:

– The business entity of which the individual is an owner is substantially similar in operation and in ownership to:
  - a business entity taxable or previously taxable under Tax Law Article 9-A; Article 9, section 183, 184, 185, or 186; or Article 33; or
  - a business entity that would have been subject to tax under former Article 23 (the New York State unincorporated business tax as it was in effect on January 1, 1980); or
  - a business entity that would have been subject to tax under former Article 32 as it was in effect on December 31, 2014; or
  - a business entity with income or losses that are or were includable under Article 22 if the intent and purpose of section 606(j)(4) or section 606(j-1)(3) with respect to refunding of credit to new business would be evaded; or

– The individual operated the new business entity in New York State for more than five tax years (excluding short tax years of the business).

An *owner of a new business* under Article 22 also includes a shareholder of a New York S corporation, **unless** the S corporation is a corporation:

- in which over 50% of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned or controlled either directly or indirectly by a taxpayer subject to tax under Tax Law Article 9-A; Article 9, section 183, 184, 185, or 186; or Article 33; or
- that is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under Article 9-A, Article 9, section 183, 184, 185, or 186; former Article 32 as such article was in effect on December 31, 2014; Article 33; or former Article 23 (as it was in effect on January 1, 1980), or that has income or losses that are or were includable under Article 22, whereby the intent and purpose of section 210-B.1(f), 606(j)(4) or 606(j-1)(3) with respect to refunding of credit to new businesses would be evaded; or
- that has been in operation in New York State for more than five tax years (excluding short tax years of the business).