



# Instructions for Form IT-605

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

### 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 the 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** – 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 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 *Empire Zone Retention Certificate* issued by Empire State Development (ESD) must be submitted with Form IT-605 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 used may not reduce the personal 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 tax years.

### 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 on or 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).

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, or registered investment advisor who is an affiliate of the taxpayer, that principally uses the property in the qualifying activities listed above, qualifies provided the broker or dealer 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, or registered investment advisor who is an affiliate of the taxpayer, in the qualifying activities listed above.

For 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 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

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

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

**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.

**Note:** If more than one of the above applies to you, complete all appropriate schedules on one Form IT-605.

## 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 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 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.

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

If a taxpayer 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.

A taxpayer (including partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust) may claim an EZ-EIC, applicable to any EZ-ITC computed on

property placed in service on or after October 1, 1998, whether or not deductible in such tax year.

Any excess EZ-EIC that cannot be used to reduce a taxpayer's current year tax liability may be carried forward.

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).

## Schedule A – 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.

**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 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, 2016, and ending August 31, 2017, would enter the number of employees employed in the EZ on the following dates: September 30, 2016, December 31, 2016, March 31, 2017, and June 30, 2017.

**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 employees covered by this claim by the average number of employees in the base year (column G), and round the result to the second decimal place. 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 employment incentive tax credit for this year.

## Schedule A – 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.

**Example:** Taxpayer A acquired qualified property in 2014 at a cost of \$100,000. The EZ-ITC allowed was \$8,000.

Year	Average number of EZ employees	EZ-EIC available for use
2013	200	–
2014	not required	–
2015	202	\$2,400 (30% of \$8,000)
2016	199	0*
2017	205	\$2,400 (30% of \$8,000)

\* In 2016, the average number of EZ employees was less than 101% of the number employed in 2013.

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

Enter the appropriate information for each partnership, S corporation, or estate or trust for which you received a share of the EZ-EIC. If you need more space, submit a separate schedule B (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 credit from your partnership. 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 total credit received from the S corporation. 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 total credit received from the estate(s) or trust(s). 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 allocation 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:** If you are claiming a recapture of credit for more than two properties on which you previously claimed a credit, complete as many Form(s) IT-605 (name, identification number, and Schedule E only) as necessary. On the first Form IT-605, complete Schedules A through G, as applicable. Include on line 6, column H and on line 7, column I of the first Form IT-605, the total of line 6, column H and line 7, column I from all additional Form(s) IT-605. Place additional Form(s) IT-605 behind the first Form IT-605 that has an entry on line 6, column H and line 7, column I.

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.

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 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:
 
$$\frac{\text{months of unused life}}{\text{months of useful life}} \times \text{original EZ-ITC allowed}$$
- For three-year property depreciated under IRC section 168, the formula is:
 
$$\frac{36 \text{ minus the number of months of qualified use}}{36} \times \text{original EZ-ITC allowed}$$

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

- For property depreciated under IRC section 168, other than three-year property or buildings or structural components of buildings, the formula is:
 
$$\frac{60 \text{ minus the number of months of qualified use}}{60} \times \text{original EZ-ITC allowed}$$

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

- 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.

**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. If the recapture of the EZ-ITC occurred in a prior year, enter 30% of the recaptured EZ-ITC.

**Line 8** – In certain instances when an EZ business has been decertified, the amount of credit to be recaptured must be augmented by an interest charge. For information on how to compute the augmented recapture amount, 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 your partnership, S corporation, estate, or trust.

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

**Line 11 – Individuals and partnerships:** enter the EZ-EIC computed for the current year as shown on line 1.

**Line 12 – Partner in a partnership, New York S corporation shareholder, or a beneficiary of an estate or trust:** enter your EZ-EIC as shown on line 5.

**Line 13 – Fiduciaries:** enter the amount from Schedule D, *Fiduciary* line, column C.

**Line 15** – Enter the amount of the EZ-ITC and EZ-EIC carryover(s) from the tax year immediately preceding the current tax year.

**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 **165** on Form IT-204, line 147.
- All others:** Continue with line 20.

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

- Individuals:** Enter the amount from line 19 and code **165** on Form IT-201-ATT, line 20, or Form IT-203-ATT, line 19.
- Partnerships:** Enter the amount from line 19 and code **165** 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 **165** 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 individual that qualifies as the owner of a new business may elect to treat 50% of the current year EZ-EIC available to be carried forward as an overpayment of tax to be refunded.

The election may be made by a taxpayer qualifying as the owner of a new business under section 606(a)(10).

*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:

- 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, former section 185, or former section 186; or Article 33.
  - that would have been subject to tax under Article 23 (as it was in effect on January 1, 1980).
  - that would have been subject to tax under former Article 32 as it was in effect on December 31, 2014.
  - with income or losses that are or were includable under Article 22 if the intent and purpose of section 606(j)(5) or section 606(k)(5) with respect to refunding of credit to new business would be evaded.
- The individual operated the new business entity in New York 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, or 185; or Article 33.

- that 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, former section 185, or former section 186; former Article 32 as such article was in effect on December 31, 2014; Article 33; or Article 23 (the New York State unincorporated business tax 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 purposes 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.
- The S corporation has been in operation in New York for more than five tax years (excluding short tax years of the business).

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

Transfer the line 26 amount as follows:

Enter the amount from line 26 and code **165** on Form IT-201-ATT, line 12 or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

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