Department of Taxation and Finance

Instructions for Form IT-640

START-UP NY Telecommunication Services Excise Tax Credit

Tax Law – Sections 39 and 606(yy)

IT-640-I

General information

For tax years beginning on or after January 1, 2014, the telecommunication services excise tax credit is available to taxpayers who are approved to participate in the SUNY Tax-Free Areas to Revitalize and Transform Upstate New York (START-UP NY) Program. This program provides tax benefits to approved businesses that locate in vacant space or land of approved public and private colleges and universities, approved strategic state assets, and New York incubators affiliated with private universities or colleges that are designated as tax-free NY areas. The program is administered by Empire State Development (ESD). Approved businesses will be issued a Form DTF-74, *Certificate of Eligibility,* by the sponsoring campus, university, or college. For additional information about the START-UP NY Program, visit ESD's website at *www.esd.ny.gov* and the Tax Department's website (see *www.tax.ny.gov*).

The credit is equal to the amount of excise tax on telecommunication services imposed under Tax Law, Article 9, section 186-e that is passed through to and paid by approved businesses for such services rendered within a tax-free NY area during the tax year, to the extent not otherwise deducted in computing New York adjusted gross income.

The tax must be separately stated on a bill from the telecommunications service provider to qualify for the credit. Any unused amount of credit for the current tax year will be treated as a refund or overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

Eligibility

A taxpayer that is a business, or an owner of a business in the case of a business taxed as a sole proprietorship, partnership (including a limited liability company (LLC) taxed as a partnership), or New York S corporation, that is subject to tax under Tax Law Article 9-A (corporation franchise tax) or Article 22 (personal income tax), is eligible for the credit if the business:

- is approved to participate in the START-UP NY program under Economic Development Law (EDL) Article 21 by ESD;
- operates in a tax-free NY area at a location approved under EDL Article 21;
- creates and maintains net new jobs as required by EDL section 433.1(b); and
- meets an annual employment test beginning with the first year of operation as required by EDL section 433.1(b).

The net new jobs requirement and annual employment test under EDL section 433.1(b) must be met by the business on the annual performance report submitted to ESD. For more information about eligibility and net new job requirements, visit ESD's website.

Failure to meet the eligibility requirements under EDL section 433.1(b) disqualifies the business from claiming tax benefits and may result in an assessment for previous benefits claimed.

Note: A business that has successfully completed residency in a New York State incubator pursuant to Urban Development Corporation Act section 16-v is **not** required to create or maintain net new jobs as required by EDL section 433.1(b) to claim the tax benefits under the START-UP NY program. However, to qualify for the credit, the business must at least maintain the number of employees of the business in New York State as shown on their application for entry into the program. For more information on New York State incubators, see ESD's website.

An eligible taxpayer subject to tax under Tax Law Article 22 may claim the credit for 10 consecutive tax years beginning with the tax year during which the business locates in a tax-free NY area. These taxpayers should complete Form IT-640. Eligible taxpayers subject to tax under Tax Law Article 9-A should complete Form CT-640, *START-UP NY Telecommunication Services Excise Tax Credit*. An approved business may not claim any other tax credit allowed under the tax law other than those under Tax Law section 39, with respect to its activities or employees in a tax-free NY area.

If the approved START-UP NY business is notified by ESD that it is subject to a recovery of tax benefits due to not meeting its performance benchmarks outlined in its application, the business must reduce the credit by the percentage reduction in net new jobs as set by the performance benchmarks. For more information, see Form IT-645, *Recapture of START-UP NY Tax Benefits*, and its instructions.

Penalties for fraud

If the Commissioner of Economic Development makes a final determination that an approved business participating in the START-UP NY program has acted fraudulently in connection with its participation in the program, the business will be:

- immediately terminated from the program;
- subject to criminal penalties, including but not limited to the felony crime of offering a false instrument for filing in the first degree in accordance with Penal Law section 175.35; and
- required in that year to add back to tax the total value of all the tax benefits provided under the START-UP NY program that the business and the employees of the business have received up to the date of the final determination. The amount required to be added back is reported on the business's corporation franchise tax return if the business is taxed as a corporation or is a corporate partner of a partnership. If the owner of the business is a sole proprietor, an individual partner in a partnership, or a shareholder of a New York S corporation, the amount required to be added back is reported on their personal income tax return. For more information, see Form IT-645 and its instructions.

How to claim the credit

File Form IT-640 if you are an individual, a partnership, or an estate or trust and you qualify for the credit. In addition, if you are a partner in a partnership (including members of an LLC treated as a partnership for federal tax purposes), a shareholder of a New York S corporation, or a beneficiary of an estate or trust, file Form IT-640 to claim your share of the credit from the entity.

An estate or trust that divides the credit among itself and its beneficiaries must submit Form IT-640 with Form IT-205, *Fiduciary Income Tax Return,* showing each beneficiary's share of the credit.

Partnerships must file Form IT-640 with Form IT-204, *Partnership Return,* showing the total amount of credit.

An S corporation does not file Form IT-640; it must file Form CT-640. If you are a shareholder in an S corporation that made the election under Tax Law, Article 22, section 660, obtain your share of the corporation's credit from the S corporation and report it on Form IT-640.

Definitions

Approved START-UP NY business is a taxpayer who is a business or owner of a business that operates within a tax-free NY area and who is approved to participate in the START-UP NY program pursuant to EDL Article 21.

Eligible telecommunication services excise tax is an excise tax on telecommunication services imposed under Tax Law section 186-e that is separately stated on a bill from the telecommunications provider and that has been paid by an approved START-UP NY business with respect to such services rendered within a tax-free NY area during the tax year.

Specific instructions

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

Line A – Mark an ***X*** in the appropriate box to determine the parts of this form you need to complete.

Individual (including sole proprietor) and partnership: Complete lines A, B, and C, and Schedules A and D.

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. Complete lines A, B, and C, Schedules A and D.

Partner in a partnership, shareholder of a New York S corporation, and beneficiary of an estate or trust: Complete lines A, B, and C, and Schedules B and D.

Fiduciary: Complete lines A, B, and C, and Schedules A, C, and D. If you are an estate or trust that divides the credit among itself and its beneficiaries, submit all Forms IT-640 with Form IT-205 showing each beneficiary's share of credit.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-640.

Line B – Enter the number from the *Certificate of Eligibility* issued to the approved START-UP NY business. Partners, shareholders, and beneficiaries will receive this information from the partnership, S corporation, estate, or trust.

Partnerships: Submit a copy of the *Certificate of Eligibility* with Form IT-640.

Line C – You may claim the credit for 10 consecutive tax years, starting with the first tax year the approved business that was issued the *Certificate of Eligibility* locates in a tax-free NY area. Enter a number 1 through 10 representing the tax year of the START-UP NY business tax benefit period for which the credit is being claimed on this form.

Schedule A – Individual (including sole proprietor), partnership, and estate or trust

Line 1 – Enter the total eligible telecommunication services excise tax imposed and paid during the tax year. The tax must be separately stated on a bill from the telecommunication services provider to qualify for the credit.

Schedule B – Partnership, New York S corporation, and estate or trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust from which you received a share of the credit. You may obtain this information from the partnership, New York S corporation, or estate or trust.

If you need additional space, submit a separate sheet of paper with the form listing this information in the same format as requested in columns A through F. Be sure to include your name and social security number (SSN) or employer identification number (EIN).

Schedule C – Beneficiary's and fiduciary's share of credit

An estate or trust must complete this schedule.

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. Provide your beneficiaries with their proportionate amount of the credit.

Schedule D – Computation of credit

Complete lines 6, 7, or 8 (whichever apply to you).

Fiduciaries: Do not enter any amounts on line 6 or 7.

Line 9 – Enter the amount and code ***640*** on Form IT-201-ATT, line 12; Form IT-203-ATT, line 12; or Form IT-204, line 147; or include the amount on Form IT-205, line 33.