

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-M-94 (2) I  
Income Tax  
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1994 Legislation  
Investment Tax Credit, S Corporation Shareholder Credits  
and Federal Depreciation Modifications

**General**

Chapter 170 of the Laws of 1994 amended various provisions of the New York State personal income tax relating to the carryover period for investment tax credits, the pass through of credits to S corporation shareholders, and the modifications for depreciation. These changes are explained below.

**Investment Tax Credit**

Section 606(a)(5) of the Tax Law has been amended to extend the number of tax years that an unused investment tax credit may be carried forward. Any unused amount of an investment tax credit allowable for a tax year beginning before 1987 may now be carried forward to tax years beginning before 1997. In addition, any unused portion of an investment tax credit allowable for a tax year beginning after 1986 may be carried forward to the next 10 tax years after the year that the credit is first allowable. The new rules also apply to investment tax credits allowed to partners and New York S corporation shareholders.

Note: For tax years beginning before 1987, the credit for research and development property was a separate credit allowed under section 606(h) of the Tax Law. Under that section, any carryover of an unused research and development credit allowable for a tax year beginning before 1987 may not be carried over to a tax year beginning after 1993. The Tax Law has not been amended to extend the carryover period for this credit.

However, for tax years beginning after 1986, the credit for research and development property is allowable as part of the investment tax credit. Therefore, the ten-year rule for tax years after 1986 described above does apply to the investment tax credit allowable for research and development property.

**Credits for S Corporation Shareholders**

The Tax Law was amended to clarify the method by which New York S corporation shareholders claim credits attributable to the corporation on their individual personal income tax returns. In addition, the new law provides that the special additional mortgage recording tax credit

attributable to a New York S corporation can no longer be claimed by its shareholders. These changes are explained below.

### General Credit Rules

Section 606(i) of the Tax Law has been amended to clarify that each type of credit allowed to a New York S corporation shareholder will be treated as a credit allowable under the comparable credit provision of the personal income tax. As a result, provisions of the personal income tax regarding rates, dollar limitations, carryover limitations, refundability and ordering of credits would also apply to the portion of that credit attributable to the New York S corporation. For example, assume a shareholder is entitled to claim an investment tax credit and an economic development zone wage tax credit, both of which are attributable to a New York S corporation. The investment tax credit portion would be subject to the rules that apply to the personal income tax investment tax credit, and the wage tax credit portion would be subject to the rules that apply to the personal income tax wage tax credit.

These clarifying amendments apply to credits allowed for a shareholder's tax year beginning after 1993.

### Special Additional Mortgage Recording Tax Credit

Section 606(i)(4) of the Tax Law has been amended to provide that a shareholder of a New York S corporation may no longer claim a special additional mortgage recording tax credit attributable to the corporation. Except for the special transition rule described below, this change is effective for tax years of shareholders that begin after 1993. In lieu of the shareholder claiming the credit, the S corporation will now be allowed to claim the credit on its corporation franchise tax return (Form CT-3-S or CT-4-S). In addition, the corporation may be allowed a refund of any special additional mortgage recording tax paid by the corporation in a tax year that begins after 1993. For more information concerning the mortgage recording tax credit for S corporations, see TSB-M-94-(4)C, (7)1.

Special transition rule: A shareholder will still be eligible to claim on the 1994 return a pro rata share of a New York S corporation's special additional mortgage recording tax credit for a tax year of the S corporation that began in 1993 and ended in 1994. However, the credit will be allowed only if the S corporation's tax year ended during the shareholder's tax year that began in 1994. If the shareholder is entitled to claim the credit under this rule, the corporation cannot claim the credit on its corporation franchise tax return.

A shareholder may continue to claim a carryover of any unused mortgage recording tax credit allowed for a tax year beginning before 1994. In addition, any unused credit allowed under the special transition rule for taxable year 1994 may also be carried over. In both cases, the unused credit may be carried forward indefinitely until completely used up.

### **Modifications Relating to Federal Depreciation**

Sections 612(b)(25) and 612(c)(26) of the Tax Law have been amended to allow the federal depreciation deduction for property placed in service outside New York State in tax years beginning after December 31, 1993. However, the New York State addition for federal depreciation and the subtraction for New York depreciation must still be made for all property placed in service during 1981, 1982, 1983, 1984 and fiscal years beginning in 1984. These additions and subtractions must also be made for property placed in service outside New York State in tax years beginning after 1984 but before 1994. Exception: No modifications are required for any Internal Revenue Code section 280F property, regardless of when or where the property was placed in service.