New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-M-00
(6)C Corporation Tax
(6) I Income Tax
December 27, 2000

Transportation Improvement Contribution Credit
(Articles 9, 9-A, 22, 32 and 33)

Section 20 of the Tax Law was added to provide a refundable credit to taxpayers subject to tax under Articles 9 (corporation tax), 9-A (franchise tax on business corporations), 22 (personal income tax), 32 (franchise tax on banking corporations), or 33 (franchise tax on insurance corporations) of the Tax Law who make certified contributions of at least $10 million to the State in taxable years beginning on or after January 1, 2000, for qualified transportation improvement projects.

General definitions

A *qualified business facility* (QBF) is a business facility whose construction or expansion is intended to be enhanced by a qualified transportation improvement project.

A *qualified transportation improvement project* means the design, development, construction and/or improvement of transportation infrastructure and related facilities and systems, including, but not limited to:

- highways, roadways, bridges, ramps or lanes; or
- railroad, port, aviation or mass transit facilities; or
- ferry or marine facilities; or
- associated right-of-way and associated connections to existing or planned transportation infrastructure or facilities.

The term *certified contribution* means a contribution certified jointly by the Commissioner of Transportation and Commissioner of Economic Development as a contribution to a qualified transportation improvement project.

The term *test year* means the third full taxable year following the year the contribution was made. A full taxable year means a period of not less than 12 months.

The term *base period* means the taxable year the certified contribution was made and the two immediately preceding taxable years. The base period does not include any years in which the entity was not a taxpayer in New York.

Who is eligible

The credit is allowed to taxpayers subject to tax under Articles 9, 9-A, 22, 32, or 33 of the Tax Law. To qualify for the credit, the taxpayer must have made a certified contribution of at least $10 million toward a qualified transportation improvement project in a prior taxable year.

The project must be designed, in part, to enhance the planned construction or expansion of a QBF. In addition, to qualify as a qualified transportation improvement project, the commissioners of transportation and economic development must jointly determine that the project will promote the development of employment opportunities by creating more than 1,000 new jobs in connection with the QBF.

Application of credit

The credit can be claimed in each taxable year following the taxable year in which the certified contribution was made until the aggregate credits claimed by the taxpayer equal the amount of the taxpayer's certified contribution.

The credit may not be applied against the following taxes:

- the applicable minimum tax fixed by section 183 or 185 of Article 9; or
- the larger of the tax on minimum taxable income base or fixed dollar minimum as computed under Article 9-A; or
- the fixed minimum tax of $250 computed under Article 32; or
- the minimum tax of $250 under Article 33; or
- the MTA surcharge under Article 9, 9-A, 32, or 33.

For taxpayers subject to tax under Article 9, sections 183 and 184, the credit must first be applied to the tax imposed under section 183 (but may not reduce the section 183 tax to less than the fixed minimum) and any excess credit may be applied to the tax imposed under section 184.

For taxpayers subject to tax under Article 22 (personal income tax), the credit may be used to reduce the current year's tax to zero.

For all taxpayers who claim the credit, any unused portion of the credit may be either entirely refunded without interest, or entirely applied as a payment against next year's tax.

Amount of credit

The credit is equal to 6% of the taxpayer's *increased QBF payroll* for the taxable year or *increased New York State payroll* for the taxable year, whichever is less.

The term *increased QBF payroll* means the amount by which the taxpayer's total wages, salaries, and other personal service compensation of employees (excluding general executive officers) employed at the QBF during the taxable year exceeds the QBF's base period payroll. The QBF's base period payroll is the average of the taxpayer's total wages, salaries, and other personal service compensation (excluding general executive officers) of employees employed at the QBF during the base period.

The term *increased New York State payroll* means the amount by which the taxpayer's total wages, salaries, and other personal service compensation of employees (excluding general executive officers) employed in New York State during the taxable year exceeds the New York State base period payroll. The New York State base period payroll is the average of the taxpayer's total wages, salaries, and other personal service compensation (excluding general executive officers) of employees employed in New York State during the base period.

Example:

A calendar-year taxpayer makes a certified contribution of $20 million to a qualified transportation improvement project on June 30, 2000. The credit may be claimed in the following taxable year, 2001. The base period for purposes of computing the increased QBF payroll are the contribution year (2000), and the two immediately preceding years (1998 and 1999). The taxpayer's payroll at the qualified business facility was $9,000,000, $10,000,000 and $11,000,000 for the years 1998, 1999, and 2000 respectively. The taxpayer's payroll at the qualified business facility was $12,000,000 for the year 2001. The taxpayer's total New York State payroll was $15,000,000, $16,000,000 and $17,000,000 for the years 1998, 1999, and 2000 respectively. The taxpayer's total New York State payroll for the year 2001 was $17,000,000.

Credit claim year:	2001
Contribution year:	2000
Base period:	1998, 1999, 2000

Increased QBF payroll computation

QBF Payroll during base period:	1998:	$ 9,000,000
	1999:	$ 10,000,000
	2000:	$ 11,000,000
	Total:	$ 30,000,000

Total QBF payroll for base period:	$30,000,000
Average QBF payroll for base period:	$30,000,000 ÷ 3 years = $10,000,000

QBF Payroll for credit claim year 2001:	$ 12,000,000
Average QBF Payroll for base period:	- $ 10,000,000
Increased QBF payroll:	$ 2,000,000

Increased New York State payroll computation

New York State payroll during base period:	1998:	$15,000,000
	1999:	$16,000,000
	2000:	$17,000,000
	Total:	$48,000,000

Total New York State payroll for base period:	$48,000,000
Average New York State payroll for base period:	$48,000,000 ÷ 3 years = $16,000,000
New York State payroll for credit claim year:	$ 17,000,000
Average New York State payroll for base period:	-$ 16,000,000
Increased New York State payroll:	$ 1,000,000

Credit computation

The increased QBF payroll equals $2,000,000, and the increased New York State payroll equals $1,000,000. Since the credit computation is based on the amount of increased payroll at the QBF to the extent that the increase in payroll for the taxpayer also exists in New York State, the maximum increased payroll that the taxpayer can use to compute its credit is the lower of the increased QBF payroll or New York State payroll, which, in this example, is $1,000,000.

Increased payroll		Credit percentage		Transportation credit allowable for the year 2001
$1,000,000	x	6%	=	$60,000

Recapture of credit

If the employment increase test is not met in the test year (the third full taxable year following the contribution year), the taxpayer is required to recapture the credit.

To meet the employment increase test, the average number of full-time employees employed by the taxpayer at the qualified business facility and in New York State during the test year must each exceed, by 1,000, the average number of full-time employees employed during the base period. Full-time employment is a job consisting of at least 35 hours per week or two or more jobs which together constitute the equivalent of a job of at least 35 hours per week. A seasonal job which meets such requirements qualifies as a full-time employment position if the seasonal job is of at least three months continuous duration.

The average number of full-time employees employed in a taxable year is computed by adding the number of full-time employees (except general executive officers in the case of a corporation) employed by the taxpayer on the dates March 31, June 30, September 30 and December 31 of the taxable year and dividing by the number of these dates occurring during the taxable year. This average is computed for both the number of full-time employees employed in connection with the qualified business facility, and the number of full-time employees employed by the taxpayer within New York State.

Example:

A calendar-year taxpayer makes a certified contribution of $20 million to a qualified transportation improvement project on June 30, 2000. The following is the computation of the number of employees employed by the taxpayer in connection with the QBF and within New York State during the base period and during the test year.

Contribution year: 2000
Base period: 1998, 1999, 2000
Test year: 2003

Average number of full-time employees for the base period:

At the Qualified Business Facility

	1998	1999	2000
March 31	2,030	2,092	2,175
June 30	2,072	2,110	2,225
September 30	2,055	2,129	2,262
December 31	2,075	2,177	2,350
Total	8,232	8,508	9,012
	÷ 4	÷ 4	÷ 4
Yearly average	2,058	2,127	2,253

Total of all yearly averages in the base period: 6,438
Average number of full-time employees at the QBF for the base period: 6,438 ÷ 3 = 2,146

Within New York State

	1998	1999	2000
March 31	7,208	7,365	7,339
June 30	7,243	7,346	7,369
September 30	7,301	7,332	7,402
December 31	7,272	7,301	7,422
Total	29,024	29,344	29,532
	÷ 4	÷ 4	÷ 4
Yearly average	7,256	7,336	7,383

Total of all yearly averages in the base period: 21,975
Average number of full time employees within New York State during the base period: 21,975 ÷ 3 = 7,325

Average number of full-time employees for the test year:

At the Qualified Business Facility

	2003
March 31	3,252
June 30	3,283
September 30	3,303
December 31	3,322
Total	13,160

Test year average for Qualified Business Facility: 13,160 ÷ 4 = 3,290

Within New York State

	2003
March 31	7,889
June 30	7,908
September 30	8,108
December 31	8,235
Total	32,140

Test year average for New York State: 32,140 ÷ 4 = 8,035

Employment increase at the Qualified Business Facility:

Test year average less base period average: 3,290 - 2,146 = 1,144 employees

Employment increase within New York State:

Test year average less base period average: 8,035 - 7,325 = 710 employees

The average number of full-time employees employed in connection with the qualified business facility increased by 1,144 employees. The average number of full-time employees employed by the employer in New York State increased by 710 employees. The employment increase test is not met since the average number of full-time employees employed by the taxpayer at the qualified business facility and within New York State did not both increase by 1,000.

If the employment increase test is met during the test year, the taxpayer may continue to take the transportation improvement contribution credit for any year in which the taxpayer has both an increased QBF payroll and an increased New York State payroll.

If the employment increase test is not met in the test year, the taxpayer must recapture the transportation improvement contribution credit taken in previous years, with interest. Interest is computed from the due date of the return, without regard to extensions, on which the credit(s) were claimed. Interest is to be paid at the underpayment rate set for the period for which the tax credit was taken, and in the case of taxpayers who applied the credit against the personal income tax, interest is to be paid at the underpayment rate in effect on the last day of the tax year in which the credit was taken. In addition, no further credit will be allowed for the contribution.

(See Tax Law, sections 20, 187-e, 210.32, 606(z), 1456(n), 1511(p))