



Beer Production Credit

Chapter 109 of the Laws of 2012 was signed into law on July 18, 2012. This new legislation provides a credit for beer produced in New York State by certain registered distributors.

Chapter 109 of the Laws of 2012 added sections 37, 210.45, and 606(uu) to the Tax Law. These new sections provide a credit for beer produced in New York State on or after April 1, 2012, and in a tax year that begins on or after January 1, 2012. To qualify for this credit, a taxpayer must:

- be a registered distributor under Article 18 of the Tax Law (taxes on alcoholic beverages); and
- produce 60,000,000 or fewer gallons of beer in New York State in the tax year the credit is claimed.

The credit may be claimed for tax years beginning on or after January 1, 2012. The beer production credit is not subject to the temporary deferral of certain tax credits under sections 33 and 34 of the Tax Law.

Who is eligible

The beer production credit may be claimed by:

- Corporations that are taxable under Article 9-A of the Tax Law (franchise tax on business corporations). This includes a corporation that is a partner in a partnership (or a member of a limited liability company (LLC) that is treated as a partnership for federal income tax purposes).
- Resident and nonresident individuals, estates, and trusts who are taxable under Article 22 of the Tax Law (personal income tax). This includes an individual, estate, or trust that is a partner in a partnership (including a member of an LLC that is treated as a partnership for federal income tax purposes), a shareholder of a New York S corporation, or a beneficiary of an estate or trust.

Amount of credit

The beer production credit is equal to:

- 14 cents per gallon for the first 500,000 gallons produced in New York State in a tax year; **plus**

- 4.5 cents per gallon for each additional gallon over 500,000 (up to 15,000,000 additional gallons) produced in New York State in the same tax year.

The credit is limited to the first 15,500,000 gallons of beer produced in New York State in the tax year. No credit is allowed for any beer produced in excess of 15,500,000 gallons. Therefore, the maximum amount of credit allowed to a distributor in a tax year is \$745,000¹.

Special rules for partners and S corporation shareholders. The new law provides that if a taxpayer is a partner in a partnership or a shareholder of a New York S corporation, the maximum credit amount will be applied at the entity level of the partnership or New York S corporation. Accordingly, the aggregate credit amount allowed to all partners or shareholders of a partnership or New York S corporation cannot exceed \$745,000 for a tax year.

Computation of credit for taxpayers whose tax year begins on or after January 1, 2012, but before April 1, 2012

For taxpayers whose tax year begins on or after January 1, 2012, but before April 1, 2012, the credit is equal to:

- 14 cents per gallon for the first 500,000 gallons produced in New York State on or after April 1, 2012, but before the end of the tax year; **plus**
- 4.5 cents per gallon for each additional gallon over 500,000 (up to 15,000,000 additional gallons) produced in New York State on or after April 1, 2012, but before the end of the tax year.

How to claim the credit

Article 9-A business corporation taxpayers claim this credit by filing Form CT-636, *Beer Production Credit*, with their franchise tax returns. Personal income tax taxpayers claim this credit by filing Form IT-636, *Beer Production Credit*, with their personal income tax return.

Credit limitation

For Article 9-A taxpayers, the credit cannot reduce the tax due to less than the applicable fixed dollar minimum tax under section 210.1(d) of the Tax Law. However, if the credit allowed for any tax year reduces the tax to the minimum amount, any excess credit may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund.

For Article 22 taxpayers, there is no credit limitation, and the credit may reduce the tax to zero. If the credit allowed exceeds the tax, the excess may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund.

(Tax Law sections 37, 210.45, 606(i), and 606(uu))

¹ (\$.14 X 500,000 gallons) + (\$.045 X 15,000,000 gallons) = \$745,000

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.