New York State Department of Taxation and Finance

Instructions for Form IT-605

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

IT-605-I

General information

For property placed in service on or after October 1, 1998, and on or before October 1, 2008, the Tax Law allows an empire zone (EZ) investment tax credit (EZ-ITC) for the financial services industry against the tax imposed by Article 22, for the tax year during which qualified property is placed in service in an EZ designated as such under Article 18-B of the General Municipal Law. The EZ-ITC allowed under Article 22 is computed at the rate of 8%. Compute the EZ investment tax credit by multiplying the credit rate by the cost (or other federal basis) of qualified property that was acquired, constructed, reconstructed, or erected in an EZ after its date of designation and before its date of expiration as an EZ. The taxpayer claiming this credit must also be certified under Article 18-B of the General Municipal Law. A copy of the documentation or certificate proving certification must be submitted by the taxpayer when claiming this credit. When an acquisition, construction, reconstruction, or erection is started during the period of designation and completed subsequent to the expiration of such period, the credit is computed based on the expenditures paid or incurred during the period of designation. Expenditures paid or incurred after the designated period may qualify for the investment tax credit under section 606(a) of the Tax Law.

In addition, in order to claim this credit, all, or a substantial portion, of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property must be located in New York State.

Also, an EZ employment incentive credit (EZ-EIC) for increasing employment is allowed. See the instructions for completing Schedule B on pages 2 and 3.

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, a taxpayer who has been decertified may carry forward the EZ-ITC for only seven years.

An individual who pays personal income tax and qualifies as an owner of a new business may elect to have 50% of the excess EZ-ITC and EZ-EIC refunded.

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 empire zone and prior to the expiration of such designation, and on or after October 1, 1998, and before October 1, 2008; and

B. is depreciable according to section 167 of the Internal Revenue Code (IRC); and

C. has a useful life of four years or more; and

D. was acquired by the taxpayer by purchase according to section 179(d) of the IRC; 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 EZ property to be located in the EZ. For example, a computer system that is placed in service in an EZ would qualify for the credit even if the brokers accessing the system are located outside the EZ.

Property leased to a broker or dealer, which is an affiliate of the taxpayer, that principally uses the property in the qualifying activities listed above, qualifies for the credit provided it 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 or dealer, which is an affiliate of the taxpayer, in the qualifying activities listed above.

A recapture of EZ-ITC and EZ-EIC previously allowed must be computed if the property is disposed of or ceases to be in qualified use prior to the end of its useful life.

If qualified property is acquired to replace other insured property that was stolen or was destroyed by fire, storm, shipwreck, or other casualty, the basis of the replacement property is its cost reduced by any amount of gain not recognized for federal income tax purposes because the insurance proceeds were invested in the replacement.

You may elect to take the EZ-ITC on qualified property in lieu of the investment tax credit.

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 section 475(e)(2) of the IRC.

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 section 167 or 168 of the IRC.

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 section 475(c)(2) of the IRC.

Line instructions

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust, complete Schedule C, Schedule D, and Schedule G and, if applicable, Schedule E, Schedule F, and Schedule H.

Individuals and fiduciaries complete all applicable schedules. However, individuals and fiduciaries should not complete Schedule H unless you elect to claim the refund for new businesses. For the definition of a new business, see the instructions for line 30 on page 4.

Partnerships complete all schedules except Schedule H.

Schedule A — Part I — Eligibility requirement

In order to claim this credit, all, or a substantial portion, of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property must be located in New York State. To meet this requirement, you must maintain a requisite number of employees performing administrative and support functions during the tax year in which the property is placed in service. You will be presumed to have maintained the requisite number of employees performing administrative and support functions, where the average number of employees performing the support functions is at least 95% of the average number of employees performing these functions during the 36 months immediately preceding the year in which the credit is claimed. Compute the average number of employees on a quarterly basis.

Employees performing administrative and support functions include all employees other than brokers, dealers, or investment advisors to regulated investment companies. Generally, any employee whose compensation for the tax year is based more than 50% on commissions is presumed to be a broker, dealer, or investment advisor. However, if you do not compensate those employees who are employed as brokers, dealers, or investment advisors on a commission basis, you must specifically identify the employees performing those functions and must exclude those employees from the employment percentage calculation.

Schedule A has been provided as an acceptable method of determining whether a taxpayer meets the eligibility requirements. As an alternative to Schedule A, you may employ other reasonable methods of determining eligibility. This alternative method must be demonstrated to the Tax Department as an appropriate method.

If you do not meet the eligibility requirement as stated above, do not complete Schedule A, Part II. **You are not eligible for the EZ investment tax credit.** However, you may need to complete Schedule B if you are eligible for the EZ employment incentive credit, and Schedule F if you need to recapture a credit previously taken. Complete Schedule G to claim the available employment incentive credit and any available carry over of credit, and complete Schedule H to claim the refund for a new business.

Line 1 — Enter the number of employees who perform administrative and support functions in New York State for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) occurring during the current tax year to obtain the average number of employees for the current tax year.

Example 1:

Current tax year	*March 31*	*June 30*	*Sept. 30*	*Dec. 31*	*Total*
Number of administrative and support employees in New York State	*100*	*100*	*125*	*175*	*500*

1. *Average number of employees in New York State for current tax year (500 divided by four) 125*

Line 2 — Enter the number of employees who perform administrative and support functions in New York State on each of the dates listed for the 36 months immediately preceding the year in which the investment tax credit is claimed. Add the number of employees for the 36-month period, and divide by the number of such dates (include 0 dates) occurring during the 36-month period, to obtain the average number of employees for the 36-month test period.

Example 2:

Number of administrative and support employees in New York State during the 36-month test period	*March 31*	*June 30*	*Sept. 30*	*Dec. 31*	*Total*
First year	*100*	*100*	*100*	*100*	*400*
Second year	*50*	*75*	*75*	*100*	*300*
Third year	*0*	*0*	*40*	*50*	*90*

Total number of administrative and support employees in New York State for 36-month test period 790

2. *Average number of administrative and support employees in New York State for 36-month test period (790 divided by 12) 66*

Line 3 — Divide line 1 by line 2. If the result does not equal or exceed 95%, **stop**. Do not complete Schedule A, Part II. You do not qualify for the EZ investment tax credit.

Schedule A — Part II — EZ investment tax credit

Columns A and B: List in these columns a clear description of qualified property placed in service during this tax period and the principal use of each item of property. Describe the property in terms that a layperson could understand. Attach additional pages, if necessary.

Add column E to obtain the total cost or other basis of all property claimed in this schedule.

Line 4 — Multiply the total of column E by the rate of 8% (.08) to arrive at the EZ investment tax credit.

Schedule B — EZ employment incentive credit

If you acquire, construct, reconstruct, or erect property for which an EZ investment tax credit is allowed, an EZ employment incentive credit may be allowed in the following three years.

The amount of the EZ employment incentive credit allowed is 30% of the original EZ investment tax credit for each of the three years following the year for which the EZ investment tax credit 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 investment tax credit was allowed.

A taxpayer that has claimed an investment tax credit for property purchased which is principally used by an affiliate of the taxpayer, may also be eligible for an employment incentive credit. In this case, the credit is allowed based on the taxpayer's average number of employees. 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 investment tax credit is originally allowed, the average number of employees in the EZ in the tax year in which the EZ employment incentive credit is claimed must be at least 101% of its average number of employees in the EZ in the tax year in which the EZ investment tax credit 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 employment incentive credit, applicable to any EZ investment tax credit computed on property placed in service on or after October 1, 1998, whether or not deductible in such tax year.

Any excess EZ employment incentive credit 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 employment incentive credit 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 section 210.12(j) of the Tax Law.

Schedule B — Part I — Employment information required to determine eligibility for EZ employment incentive credit

Complete Part I to determine if you are eligible for the credit. If you are eligible, complete Part II.

Column A — Enter in column A the credit year and the base year. The *credit year* is the first tax year after the year in which you claimed the original EZ investment tax credit. The *base year* is the year preceding the year you claimed the original EZ investment tax credit. 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 investment tax credit.

Columns B, C, D, and E — Enter the total number of employees employed within New York State on each of the dates listed that occur during your tax year.

> ***Example:*** *A taxpayer filing for a fiscal year beginning September 1, 2003, and ending August 31, 2004, would enter the number of employees employed in New York State on the following dates: September 30, 2003, December 31, 2003, March 31, 2004, and June 30, 2004.*

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 carry the result to two decimal places. If the percentage in column H is at least 101% (1.01), complete Part II below. **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 B, Part II — Computation of EZ employment incentive credit

Use Schedule B, Part II, to determine the amount of the EZ employment incentive credit allowed for each year of eligibility listed in Schedule B, Part I.

Example

Taxpayer A acquired qualified property in 2002 at a cost of $100,000. The EZ-ITC allowed was $8,000.

Year	*Average number of EZ employees*	*EZ employment incentive credit available for use*
2001	*200*	*XXX*
2002	*not required*	*XXX*
2003	*202*	*$ 2,400 (30% of $8,000)*
2004	*199*	*-0-**
2005	*205*	*$ 2,400 (30% of $8,000)*

** In 2004, the average number of EZ employees was less than 101% of the number employed in 2001.*

Schedule C — Partnership, S corporation, and estate and trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust for which you receive a share of the EZ investment tax credit and EZ employment incentive credit. If you need more space, attach a separate schedule.

Schedule D — 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 6 — Enter your share of the EZ investment tax credit and EZ employment incentive 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 6.

S corporation shareholder

Line 7 — Enter your share of the total EZ investment tax credit and EZ employment incentive credit made by 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 7.

Beneficiary

Line 8 — Enter your share of the total EZ investment tax credit and EZ employment incentive credit made by estates and trusts. 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 8.

Schedule E — Beneficiary's and fiduciary's share of credit and recapture of credit

An estate or trust must complete Schedule E. 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 F — Computation of recapture of EZ investment tax credit and EZ employment incentive credit

When property on which an EZ investment tax credit (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 investment tax credit required to be recaptured.

(1) For property depreciated under section 167 of the IRC, the formula is:

$$\frac{\text{months of unused life}}{\text{months of useful life}} \times \text{original EZ investment tax credit allowed}$$

(2) For three-year property depreciated under section 168 of the IRC, the formula is:

$$\frac{\text{36 minus the number of months of qualified use}}{36} \times \text{original EZ investment tax credit allowed}$$

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

(3) For property depreciated under section 168 of the IRC other than three-year property or buildings or structural components of buildings, the formula is:

$$\frac{\text{60 minus the number of months of qualified use}}{60} \times \text{original EZ investment tax credit allowed}$$

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

(4) For buildings or structural components of a building depreciated under section 168 of the IRC, the formula is:

$$\frac{\text{months of unused life}}{\text{number of months allowed by IRC and used by taxpayer}} \times \text{original EZ investment tax credit allowed}$$

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 12 — 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.

Line 13 — This information should be provided to you by your partnership, S corporation, estate, or trust.

Schedule G — Computation of available EZ investment tax credit and EZ employment incentive credit allowed for the current tax year

Line 15 — Individuals and partnerships: enter the EZ investment tax credit computed for the current year as shown on Schedule A, Part II, line 4.

Line 16 — Individuals and partnerships: enter the EZ employment incentive credit computed for the current year as shown on Schedule B, Part II, line 5.

Line 17 — Partner in a partnership, New York S corporation shareholder, or a beneficiary of an estate or trust: enter your EZ investment tax credit and employment incentive credit as shown on Schedule D, line 9.

Line 18 — Fiduciary: enter the amount from Schedule E, fiduciary line, column C.

Line 20 — Enter the amount of the EZ investment tax credit and EZ employment incentive credit carryover(s) from the tax year immediately preceding the current tax year.

Line 23 — If line 21 is more than line 22, subtract line 22 from line 21. This is the amount of your credit. If you are not completing Schedule H, enter this amount on Form IT-201-ATT, line 50, Form IT-203-B, line 36, Form IT-204, line 40 or Form IT-205, line 10. If you are completing Schedule H, continue with line 25.

Line 24 — If line 22 is more than line 21, subtract line 21 from line 22. This is your add back of EZ investment tax credit and EZ employment incentive credit. Enter this amount on Form IT-201-ATT, line 20, Form IT-203-B, line 4, Form IT-204, line 42 or Form IT-205, line 12. Do not complete Schedule H.

Schedule H — Computation of refundable portion of EZ investment tax credit and EZ employment incentive credit or carryover

Line 25 — Enter the amount of EZ investment tax credit and EZ employment incentive credit computed for the current year from Schedule G, line 19.

Line 27 — Enter the total amount of all credits that you choose to apply against your tax except for the EZ investment tax credit and EZ employment incentive credit. For more information, see the instructions for Form IT-201-ATT, Part IV or Form IT-203-B, Part III.

Line 29 — Subtract line 28 from line 25 to arrive at EZ investment tax credit and EZ employment incentive credit available to be carried forward to future years.

Line 30 — A new business may elect to treat 50% of the current year EZ-ITC available to be carried forward as an overpayment of tax to be refunded. In addition, an Article 22 taxpayer that qualifies as a new business may elect to have 50% of any excess EZ-EIC 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 Article 9-A; Article 9, section 183, 184, 185, or 186; Article 32; or Article 33 of the Tax Law; or
- a business entity that would have been subject to tax under Article 23 (as it was in effect on January 1, 1980); or
- a business entity 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 Article 9-A; Article 9, section 183, 184, or 185; Article 32; or Article 33 of the Tax Law; or
- that is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under Article 9-A, Article 9, section 183, 184, 185, or 186; Article 32; 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 of the Tax Law, whereby the intent and purposes of section 210.19(e) 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 19 or 50% of line 29.

Partners in a partnership, shareholders in a New York S corporation, beneficiaries of an estate or trust, or individuals: Enter the line 30 amount on Form IT-201-ATT, line 72 or Form IT-203-B, line 57. **Fiduciaries:** enter the line 29 amount on Form IT-205, line 33.

Line 31 — Subtract the amount on line 30 from the amount on line 23. This is the amount of your EZ investment tax credit and EZ employment incentive credit that is not refundable. Enter this amount on Form IT-201-ATT, line 50, Form IT-203-B, line 36 or Form IT-205, line 10.