New York State Department of Taxation and Finance

2005

Instructions for Form IT-252

IT-252-I

Investment Tax Credit for the Financial Services Industry

New York State e-file www.nystax.gov

For 2005, this form is not eligible for e-file. If you are attaching this form to your return, you must file on paper.

General instructions

Individuals and estates and trusts may claim the investment tax credit (ITC) for the financial services industry against the tax imposed under Article 22 for the tax year during which qualified property is placed in service. The property must be placed in service on or after October 1, 1998, and before October 1, 2008.

To claim the 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. See Parts 1 and 2 for more information.

Who must file

File Form IT-252 if you are an individual, a beneficiary or fiduciary of an estate or trust, a member of a partnership, or a shareholder of an S corporation, and:

— You are claiming the investment tax credit (including the employment incentive credit); or

— You had an early disposition of property for which the investment tax credit was allowed in a prior year.

An estate or trust that divides among itself and its beneficiaries the credit or addback of credit on early dispositions must attach Form IT-252 to Form IT-205, showing each beneficiary's share of the credit or addback of credit on early dispositions.

A partnership must file Form IT-252 with Form IT-204 showing the partnership's total investment in qualified property or total early dispositions of qualified property.

An S corporation does not file Form IT-252. It must file Form CT-44. If you are a shareholder in an S corporation that has made the election under Tax Law section 660, obtain your share of the corporation's credit or addback of credit on early dispositions of qualified property from the corporation.

Qualified property

Qualified property for the investment tax credit is tangible property, including buildings and structural components of buildings, that:

- was acquired, constructed, reconstructed, or erected by the taxpayer on or after October 1,1998, and before October 1, 2008;
- is depreciable pursuant to IRC section 167;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase according to IRC section 179(d);
- is located in New York State; and
- is principally used in the ordinary course of the taxpayer's business in one of the following capacities:
  - — 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)(2)), 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).

Though the property must be located in New York State, it is not necessary for the users of the property to be located in New York State. For example, a computer system that is placed in service in New York State would qualify for the credit, even if the brokers accessing the system are located outside the state.

Generally, property that a taxpayer purchases and leases to others does not qualify for the investment tax credit. However, if such property is leased to an affiliated broker or dealer that is an affiliate of the taxpayer that principally uses the property in the qualifying activities listed above, the property 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 that is an affiliate of the taxpayer in the qualifying activities listed above.

Definitions

Affiliate means:

- A partnership 80% or more of whose interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation 80% or more of whose 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 80% or more of whose 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.

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 IRC section 167 or 168.

Nonqualified nonrecourse financing is any amount for which a taxpayer is protected against loss and, generally, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used, or from someone related to a person (other than a creditor) who has an interest in the activity. Nonrecourse financing is nonqualified if it is not qualified commercial financing as defined in IRC section 49(a)(1).

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 used more than 50%. A building or an addition to a building is principally used in qualifying activities if 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, or other securities or commodities includes, but is not limited to, the issuance, entering into, assumption, offset, assignment, termination, or transfer of stocks, bonds, commodities, or other securities.

All references to *current tax year* mean the tax year covered by this claim.

When allowed

The credit is allowed only for the tax year in which qualified property is placed in service. However, if all of the credit cannot be used in the year the property is placed in service, you may carry over the unused amount to the following ten years (see *Carryover of unused investment credit* below).

Investment credit base

The investment tax credit is figured on the investment credit base. The investment credit base is the cost or other basis of the qualified property for federal income tax purposes. Do not include any amount that was expensed under IRC section 179(a). The basis of qualified property must include the remaining basis of other property exchanged or traded in for it. If a credit was previously allowed on the property exchanged or traded in, a disposition of property has occurred, and you may have to figure an addback of credit on early dispositions (see Part 6 instructions).

If qualified property is acquired to replace insured property that was stolen or 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 property.

Investment credit base for replacement property that is similar or related in service or use to property destroyed as a direct result of the terrorist attacks of September 11, 2001

If replacement property is acquired that is similar or related in service or use to the property destroyed as a direct result of the terrorist attacks of September 11, 2001, and you chose not to defer the required amount to be recaptured, the investment credit base of the replacement property is computed without regard to any basis reduction required by IRC section 1033. For more information, see TSB-M-02(7)I.

If the qualified property is purchased using nonqualified nonrecourse financing, the investment credit base must be reduced by the amount of financing that would be excludable from the credit base pursuant to IRC section 49(a)(1). If, at the close of a tax year following the tax year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing for the property, the net decrease is to be treated as the cost or other basis of qualified property acquired, constructed, reconstructed, or erected during the year of the decrease.

Carryover of unused investment credit

If you cannot claim all of your 2005 credit because it is more than your New York State tax less other credits, you can carry over the unused amount to the following 10 years, or, if you are the owner of a new business, you may qualify for a refund (see *Refundable unused investment tax credit* below and the instructions for Part 8 on page 4 of these instructions).

Refundable unused investment tax credit

If you are a sole proprietor or a partner in a new business, you can claim a refund of your unused credit instead of carrying over the unused amount to next year.

You can only make this election in the first five years that you operate your new business.

You **cannot** claim a refund of unused credit if:

— you have operated your new business in New York State for more than five years, excluding short years of the business; or

— your new business is substantially similar in operation and ownership to a business that:

1. is (or was) subject to any of the following taxes:
   - franchise tax on transportation and transmission corporations and associations;
   - additional franchise tax on transportation and transmission corporations and associations;
   - franchise tax on farmers, fruit growers, and other like agricultural corporations organized and operated on a cooperative basis;
   - franchise tax on water-works companies, gas companies, electric or steam heating, lighting, and power companies;
   - franchise tax on business corporations;
   - franchise tax on banking corporations; or
   - franchise tax on insurance corporations;
2. would have been subject to the New York State unincorporated business tax (as such tax was in effect on January 1, 1980); or
3. had income or losses that are (or were) included in computing your New York State personal income tax.

If you are a shareholder of an S corporation that has an election in effect under Tax Law section 660, and the S corporation qualifies as a new business as defined in Tax Law section 210.12(j), you may qualify to have the excess credit that relates to your pro rata share of the corporation's credit refunded.

Early disposition of property and addback of credit on early dispositions

If property on which the investment tax credit was taken is disposed of or removed from qualified use before its useful life or specified holding period ends (see instructions for Part 6), the difference between the credit taken and the credit allowed for actual use must be added to your income tax in the year of disposition. You must also add to your income tax an additional amount computed by multiplying the addback of credit on early dispositions by the underpayment interest rate in effect on the last day of your tax year. The underpayment interest rate is not compounded. However, if the property was in qualified use for more than 12 consecutive years, the addbacks for credit and interest on early dispositions are not required.

Disposition of property also includes:

— a sale of property;

— the contribution of property to a partnership or corporation, unless a substantial interest in the ownership of the trade or business is retained by the transferor;

— the sale by a partner of his or her interest in a partnership;

— a gift of property;

— a reduction in the proportionate stock interest of an electing New York S corporation shareholder;

— conversion of property to personal use;

— a change in the location of the property to a situs outside New York State;

— an exchange of property for other property of like kind (including a trade-in of property);

— the theft or destruction of property; and

— an increase in nonqualified nonrecourse financing (but the addback of credit only applies for the portion of such increase).

Ordinarily, transfers by reason of death are **not** dispositions of property.

Use Part 6 of Form IT-252 to figure your addback of credit on early dispositions.

Important reminder to file a complete return

You must complete all required schedules and forms that make up your return, and include all pages of those forms and schedules when you file. Attach **only** those forms and schedules that apply to your return, and be sure that you have made all required entries. Returns that are missing required pages or that have pages with missing entries are considered incomplete and cannot be processed, and may subject taxpayers to penalty and interest.

Filling in your tax forms

For complete information on how to fill in New York State scannable income tax forms, see the instructions for:

- resident returns (Forms IT-150 and IT-201),
- nonresident and part-year resident return (Form IT-203),
- partnership return (Form IT-204), **or**
- fiduciary return (Form IT-205).

Also see the instructions for the above returns for the *Privacy notification* or if you *Need help* in contacting the Tax Department.

Line instructions

Individuals: Complete Parts 1, 2, 3, 4, 5, 6, and, if applicable, 8.
Fiduciaries: Complete Parts 1, 2, 3, 4, 5, 6, 7, and, if applicable, 8.
Partnerships: Complete Parts 1, 2, 5, and 6.
Partners, shareholders of S corporations, and beneficiaries of estates and trusts: Complete Parts 3, 4, and, if applicable, 8.

Eligibility requirements

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. *All or a substantial portion* means at least 80%. For example, if you have a quarterly average of 1,000 employees performing the administrative and support functions during your tax year, then a quarterly average of at least 800 (1,000 x 80%) of them must be located in New York State. If you are claiming credit based on having met the 80% test, then you must complete Part 1. For more information on this eligibility test, see TSB-A-03(10)C.

Another method to meet this requirement is to maintain the requisite number of employees performing administrative and support functions in New York State during the tax year in which the property is placed in service and the credit claimed (the 95% *back-office test)*. A taxpayer is presumed to have maintained the requisite number of employees when the average number of employees performing the administrative and 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. The average number of employees must be computed on a quarterly basis. (If the property is used by an affiliate in qualifying activities, it is the affiliate that must meet the eligibility test.) If you are claiming credit based on the 95% back-office test, complete Part 2. For more information on this eligibility test, see TSB-M-98(06)I, *Tax Credits for the Financial Services Industry.*

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 will be presumed to be a broker, dealer, or investment advisor. However, if a taxpayer does not compensate those employees who are employed as brokers, dealers, or investment advisors on a commission basis, the taxpayer must specifically identify the employees performing those functions and must exclude those employees from the employment percentage calculation.

If you **do not meet the eligibility requirements** as stated above, **do not complete Part 3.** You are **not eligible** for the investment tax credit.

Part 1 — 80% test

Use Part 1 if you want to claim the credit using the 80% test eligibility method.

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 columns A through D; then divide by four to obtain the average number of employees in New York State for the current tax year.

Line 2 — Enter the number of employees who perform administrative and support functions everywhere for each date specified for the current tax year. Add columns A through D; then divide by four to obtain the average number of employees everywhere for the current tax year.

Line 3 — Divide line 1 by line 2 to obtain the percentage of employees who perform administrative and support functions in New York State for the current tax year. If your result equals or exceeds 80%, continue with Part 3. You qualify for the investment tax credit.

Part 2 — 95% back-office test

Use Part 2 if you want to claim the credit using the 95% back-office test eligibility method.

Line 4 — In columns A through D, enter the number of employees who perform administrative and support functions in New York State during the current tax year on the dates listed. Add columns A through D and enter total in column E.

Lines 5 through 7 — Enter the number of employees who perform administrative and support functions in New York State on each of the dates listed for the three years immediately preceding the year in which the investment tax credit is claimed. Add columns A through D (include ***0*** dates) and enter total in column E for each line.

If you provided employment in New York State for only part of the three-year test period, the three-year test period is deemed to refer to that part. If you did not provide employment in New York State at any time during the three-year test period, skip lines 5 through 10 and enter ***100*** on line 11. (There must be a positive entry on line 4.)

Line 11 — Divide line 8 by line 10. If the result equals or exceeds 95%, complete Part 3.

Example:

Part 2 — 95% back-office test (see instructions)

	Number of administrative and support employees in New York State on date specified				
	A 3/31	**B** 6/30	**C** 9/30	**D** 12/31	**E** Total (*A+B+C+D*)
4 Current tax year	*100*	*100*	*125*	*175*	*500*
5 First test year	*100*	*100*	*100*	*100*	*400*
6 Second test year	*50*	*75*	*75*	*100*	*300*
7 Third test year	*0*	*0*	*40*	*50*	*90*

Line 8 .... 500 ÷ 4 = 125
Line 9........... 400 + 300 + 90 = 790
Line 10..................... 790 ÷ 12 = 66
Line 11............. 125 ÷ 66 = (189%)

Part 3 — Computation of credit

Individual or fiduciary

Line 12 — Enter your credit for investments in qualified property from line 31. See Part 5 instructions.

Beneficiary

Line 13 — Enter your share of the credit for investments in qualified property made by estates and trusts (from fiduciary's Form IT-252, Part 7, column C).

Partner

Line 14 — Enter your share of the total credit for investments in qualified property made by partnerships (the total credit is shown on Form IT-204, line 19). This information should be provided to you by your partnership.

S corporation shareholder

Line 15 — Enter your share of the total credit for investments in qualified property made by S corporations. This information should be provided to you by your S corporation.

Line 17 — Enter the amount of credit that was allocated to beneficiaries in Part 7, column C.

Line 19 — Enter the amount of net credit available for carryover to 2005. The net credit available for carryover is that portion of your prior year's credit from 2004 Form IT-201-ATT, line 48, 2004 Form IT-203-B, line 34, or 2004 Form IT-205, line 10, that was not applied to your 2004 tax.

Line 21 — If you own a new business and want to claim a refund for the amount of your credit instead of carrying it over to the next year, enter the amount from line 20 on line 21 and transfer as indicated below line 21. Do not include a carryover from a previous year; you cannot have a refund of that portion. If you claim a refund of the credit, you cannot carry the credit over to 2006.

Line 22 — Subtract line 21 from line 20. Enter the difference on line 22 and transfer as indicated below line 22. This is your nonrefundable investment tax credit available for 2005.

Part 4 — Summary of addback of credit on early dispositions

Individual or fiduciary

Line 23 — Enter your addback of credit on early dispositions from Part 6, line 36, column H. See Part 6 instructions.

Beneficiary

Line 24 — Enter your share of the addback of credit on early dispositions made by estates and trusts from the fiduciary's Form IT-252, Part 7, column D, on line 24.

Partner

Line 25 — Enter your share of the total addback of credit on early dispositions made by partnerships (the total is shown on the partnership's Form IT-204, line 20). This information should be provided to you by your partnership.

S corporation shareholder

Line 26 — Enter your share of the addback of credit on early dispositions made by S corporations. This information should be provided to you by your S corporation.

Fiduciary

Line 27 — Enter your share of the addback of credit on early dispositions from Part 7, *Fiduciary* line, column D.

Line 28 — This is your total addback of credit on early dispositions. Transfer it as indicated on the form.

Part 5 — Investments in qualified property

Fill in columns A through F for qualified property that was placed in service. Enter in column D the property's useful life under IRC section 167, even if the property is subject to the provisions of IRC section 168 on or after October 1, 1998.

Column F — Multiply column E amount by the credit rate of 4%.

If qualifying property was disposed of or was not in qualified use at the end of the tax year it was placed in service, figure the amount of credit to claim as follows:

— For depreciable property under IRC section 167, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is the number of months of useful life of the property.

— For property subject to the provisions of IRC section 168, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is:
  - 36 for three-year property;
  - the number of months you chose for buildings or structural components of buildings; or
  - 60 for all other classes of property.

Part 6 — Early dispositions of qualified property and addback of credit on early dispositions

Fill in columns A through H if you have claimed the credit on property that was disposed of or was removed from qualified use (a) during 2005, and (b) prior to the end of its useful life or specified holding period. Do **not** include property that has been in qualified use for more than 12 consecutive years.

Enter in column D:

— For depreciable property under IRC section 167, the number of months of useful life of property.

— For recovery property under IRC section 168:
  - 36 for three-year property;
  - the number of months you chose for buildings or structural components of buildings; or
  - 60 for all other classes of property.

Enter in column E the number of months that the property was not in qualified use (cannot be greater than the amount in column D).

Line 34 — Enter on line 34 the applicable underpayment interest rate in effect on the last day of your tax year:
  - If you are a 2005 calendar-year taxpayer, the underpayment rate is 8% (.08).
  - If you are a fiscal-year taxpayer, you can obtain the underpayment interest rate in effect on the last day of your fiscal year by calling toll free 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

Part 7 — Beneficiary's and fiduciary's share of investment tax credit and addback of credit on early dispositions

If an estate or trust allocates or assigns the credit or addback of credit on early dispositions to its beneficiaries, base the division on each beneficiary's proportionate share of qualified investments made by the estate or trust.

Part 8 — Application of credit and computation of carryover

You must first complete Form IT-201-ATT, *Other Tax Credits and Taxes*, or Form IT-203-ATT, *Other Tax Credits and Taxes*, before you can complete this schedule. Follow the instructions for Section B of Form IT-201-ATT or Section B of Form IT-203-ATT to determine the amount of credit to enter on line 38.