



New York State Depreciation Schedule for IRC Section 168(k) Property

IT-398

Use this form only for tax years beginning after December 31, 2002, and only for property placed in service inside or outside New York State after May 31, 2003.

Name(s) as shown on return	Identifying number as shown on return
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Mark an X in one box to show the income tax return you are filing and attach this form to that return.

IT-201, Resident IT-203, Nonresident and part-year resident IT-204, Partnership IT-205, Fiduciary

Part 1 — Depreciation information for Internal Revenue Code (IRC) section 168(k) property (except for resurgence zone property and New York liberty zone property described in IRC section 1400L(b)(2)) placed in service inside or outside New York State, beginning after May 31, 2003 (see instructions)

A Description of property <i>(attach schedule if needed)</i>	B Date placed in service	C Depreciable basis	D Convention	E Method	F New York depreciation deduction	G Federal depreciation deduction

1 Enter column F and column G totals **1.**

If you are filing Form:	transfer the column F total to:	transfer the column G total to:
IT-201	line 31	line 23
IT-203	line 29	line 22
IT-204	line 109	line 107
IT-205	line 68	line 65

Part 2 — Year-of-disposition adjustment for IRC section 168(k) property (except for resurgence zone property and New York liberty zone property described in IRC section 1400L(b)(2)) placed in service inside or outside New York State, beginning after May 31, 2003 (see instructions)

A Description of property <i>(attach schedule if needed)</i>	B Date of disposition	C Method of disposition	D Total New York depreciation deduction	E Total federal depreciation deduction

2 Enter column D and column E totals **2.**

3 Enter amount from line 2, column D or column E, whichever is larger **3.**

4 Enter amount from line 2, column D or column E, whichever is smaller **4.**

5 Subtract line 4 from line 3 **5.**

If you are filing Form:	and column D is larger than column E, transfer line 5 amount to:	and column E is larger than column D, transfer line 5 amount to:
IT-201	line 23	line 31
IT-203	line 22	line 29
IT-204	line 107	line 109
IT-205	line 65	line 68



Instructions

General instructions

For tax years beginning after December 31, 2002, New York State (NYS) does not allow the federal 30%/50% special depreciation deduction for Internal Revenue Code (IRC) section 168(k) property (except for resurgence zone property and New York liberty zone property described in IRC section 1400L(b)(2)), placed in service inside or outside NYS after May 31, 2003. Instead, you are allowed a NYS depreciation deduction determined under IRC section 167, as that section would have applied to the property if it had been acquired on September 10, 2001. You may take the deduction for NYS depreciation until the property is disposed of or fully depreciated.

If you claimed ACRS depreciation on your federal return for property placed in service beginning after May 31, 2003 (except for resurgence zone property and New York liberty zone property described in IRC section 1400L(b)(2)), complete Part 1.

Use this form to compute your NYS adjustments for NYS depreciation and federal depreciation deductions.

As described in IRC section 168(k)(2), *resurgence zone property* is defined as qualified property if **all** of the following apply:

- substantially all use of the property is in the resurgence zone; **and**
- the use is in the active conduct of a trade or business by the taxpayer in the resurgence zone; **and**
- the original use by the taxpayer commences after December 31, 2002.

The *resurgence zone* is defined as the area of New York County bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, running east to Canal Street, then running along the centerline of Canal Street to the intersection of Bowery and Canal Street. It then runs in a southeasterly direction diagonally across the Manhattan Bridge Plaza to the Manhattan Bridge, along the centerline of the Manhattan Bridge to the point where the centerline would intersect with the east bank of the East River. It is bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel, running north along West Avenue to the intersection of Clarkson Street. It then runs east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street. It continues east along the centerline of West Houston Street, then at the intersection of Avenue of the Americas, continues east along the centerline of East Houston Street to the east bank of the East River.

If you have an interest in a passive activity, the modifications required under Tax Law sections 612(b)(8) and (c)(16) for federal depreciation and NYS depreciation must be made for the full amounts allowable as a federal depreciation deduction (100%), even though the activity may be subject to federal loss deduction limitations. It is only under IRC section 469 (*Passive Activity Losses and Credits Limited*) that there is a limitation on passive loss deductions.

In the case of a partnership using IRC section 168 to determine depreciation, the individual partners should make the adjustments to income on their personal income tax returns. The adjustments for partners are their distributive share of NYS depreciation and federal depreciation, determined by the partnership as of the end of the partnership year ending within the partner's tax year. Form IT-398 should be completed only by the partnership, and not by each individual partner. This treatment is the same for a beneficiary of an estate or trust that is on a fiscal-year basis.

If you are a shareholder of an electing New York State S corporation, the S corporation should provide your proportionate share of the S corporation's depreciation deduction.

If you are a nonresident or part-year resident, you must complete Form IT-398 as if you were a NYS resident for the entire year. Transfer the amounts from Part 1 and Part 2 to Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*. For more information on the addition and subtraction modifications for federal and NYS depreciation, see Form IT-203-I, *Instructions for Form IT-203*.

If you are married and file a joint federal return but are required to file separate NYS returns, complete only one Form IT-398 showing the amounts from your joint federal return. Attach a schedule to each return showing each spouse's separate amounts, as if separate federal returns were filed, and explain any differences.

Specific instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Enter your name and identifying number (your social security number or employer identification number) in the spaces provided on the front of this form. Mark an **X** in the box that indicates which NYS income tax return you are filing and attach this form to that return.

Part 1 — Depreciation

Depreciation is the annual deduction allowed to recover the cost or other basis of business or investment property having a useful life substantially beyond the tax year. However, land is never depreciable. Depreciation starts when you first use the property in your business or for the production of income. It ends when you take the property out of service, deduct all your depreciable cost or other basis, or no longer use the property in your business or for the production of income. (See Part 2 for the deduction to be taken in the year you dispose of the property.)

Column C — Enter the depreciable basis of the assets you place in service in the same year. *Depreciable basis* is the cost or other basis reduced by the part of the basis you elected to amortize or expense under IRC section 179, and any federal investment credit subtracted when computing the federal unadjusted basis of the asset.

Column D — The applicable convention determines the portion of the tax year for which the depreciation is allowable during a year property is either disposed of or placed in service. Enter in column D the convention you used from federal Form 4562, column E.

Column E — Indicate the depreciation method selected for the computation of the NYS allowable depreciation deduction. Any consistent depreciation method that would have been allowed under IRC section 167, as that section would have applied to the property if it had been acquired on September 10, 2001, without regard to section 168(k), is acceptable.

Column F — Enter your NYS depreciation deduction in column F, based on the method you elected in column E.

Column G — Enter the depreciation deduction you took on your federal return.

Part 2 — Year-of-disposition adjustment

If you dispose of IRC section 168(k) property (except for resurgence zone property and New York liberty zone property described in IRC section 1400L(b)(2)) that you placed in service inside or outside NYS after May 31, 2003, you **must** adjust your NYS income by the difference between the total NYS depreciation deduction and the total federal depreciation deduction claimed on that property.

Column C — Enter the method used to dispose of the property. *Disposition* includes, but is not limited to, sale, exchange, transfer, and obsolescence.

Column D — Enter the total NYS depreciation deduction you claimed on the property you disposed of.

Column E — Enter the total federal depreciation deduction you claimed on your federal return for the disposition of your property.

Please file this original scannable attachment with the Tax Department.

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