



Instructions for Form IT-640

START-UP NY Telecommunication Services Excise Tax Credit

Tax Law – Sections 39 and 606(yy)

IT-640-I

General information

For tax years beginning on or after January 1, 2014, the telecommunication services excise tax credit is available to taxpayers who are approved to participate in the SUNY Tax-Free Areas to Revitalize and Transform Upstate New York (START-UP NY) Program. This program provides tax benefits to approved businesses that locate in vacant space or land of approved public and private colleges and universities, approved strategic state assets, and New York incubators affiliated with private universities or colleges that are designated as tax-free NY areas. The program is administered by Empire State Development (ESD). Approved businesses will be issued a Form DTF-74, *Certificate of Eligibility*, by the sponsoring campus, university, or college. For additional information about the START-UP NY Program, visit ESD's Web site at www.esd.ny.gov and the Tax Department's Web site (see www.tax.ny.gov).

The credit is equal to the amount of excise tax on telecommunication services imposed under Tax Law, Article 9, section 186-e that is passed through to and paid by approved businesses for such services rendered within a tax-free NY area during the tax year, to the extent not otherwise deducted in computing federal adjusted gross income.

The tax must be separately stated on a bill from the telecommunications service provider to qualify for the credit. Any unused amount of credit for the current tax year will be treated as a refund or overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

Eligibility

A taxpayer that is a business, or an owner of a business in the case of a business taxed as a sole proprietorship, partnership (including a limited liability company (LLC) taxed as a partnership), or New York S corporation, that is subject to tax under Tax Law Article 9-A (corporation franchise tax) or Article 22 (personal income tax), is eligible for the credit if the business:

- is approved to participate in the START-UP NY program under Economic Development Law (EDL) Article 21 by ESD;
- operates in a tax-free NY area at a location approved under EDL Article 21;
- creates and maintains net new jobs as required by EDL section 433.1(b); and
- meets an annual employment test beginning with the first year of operation as required by EDL section 433.1(b).

Note: A business that has successfully completed residency in a New York State incubator pursuant to Urban Development Corporation Act section 16-v is **not** required to create or maintain net new jobs as required by EDL section 433.1(b) to claim the tax benefits under the START-UP NY program. However, to qualify for the credit, the business must at least maintain the number of employees of the business in New York State as shown on their application for entry into the program. For more information on New York State incubators, see ESD's Web site.

An eligible taxpayer subject to tax under Tax Law Article 22 may claim the credit for 10 consecutive tax years beginning with the tax year during which the business locates in a tax-free NY area. These taxpayers should complete Form IT-640. Eligible taxpayers subject to tax under Tax Law Article 9-A should complete Form CT-640, *START-UP NY Telecommunication*

Services Excise Tax Credit. An approved business may not claim any other tax credit allowed under the tax law other than those under Tax Law section 39, with respect to its activities or employees in a tax-free NY area.

If the approved START-UP NY business is notified by ESD that it is subject to a recovery of tax benefits for the current tax year due to not meeting its performance benchmarks outlined in its application, the business must reduce the current year tax credit by the percentage reduction in net new jobs as set by the performance benchmarks.

Penalties for fraud

If the Commissioner of Economic Development makes a final determination that an approved business participating in the START-UP NY program has acted fraudulently in connection with its participation in the program, the business will be:

- immediately terminated from the program;
- subject to criminal penalties, including but not limited to the felony crime of offering a false instrument for filing in the first degree in accordance with Penal Law section 175.35; and
- required in that year to add back to tax the total value of all the tax benefits provided under the START-UP program that the business and the employees of the business have received up to the date of the final determination. The amount required to be added back is reported on the business's corporation franchise tax return if the business is taxed as a corporation or is a corporate partner of a partnership. If the owner of the business is a sole proprietor, an individual partner in a partnership, or a shareholder of a New York S corporation, the amount required to be added back is reported on their personal income tax return.

How to claim the credit

File Form IT-640 if you are an individual, a partnership, or an estate or trust and you qualify for the credit. In addition, if you are a partner in a partnership (including members of an LLC treated as a partnership for federal tax purposes), a shareholder of a New York S corporation, or a beneficiary of an estate or trust, file Form IT-640 to claim your share of the credit from the entity.

An estate or trust that divides the credit among itself and its beneficiaries must submit Form IT-640 with Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit.

Partnerships must file Form IT-640 with Form IT-204, *Partnership Return*, showing the total amount of credit.

An S corporation does not file Form IT-640; it must file Form CT-640. If you are a shareholder in an S corporation that made the election under Tax Law, Article 22, section 660, obtain your share of the corporation's credit from the S corporation and report it on Form IT-640.

Definitions

Approved START-UP NY business is a taxpayer who is a business or owner of a business that operates within a tax-free NY area and who is approved to participate in the START-UP NY program pursuant to EDL Article 21.

Eligible telecommunication services excise tax is an excise tax on telecommunication services imposed under Tax Law section 186-e that is separately stated on a bill from the telecommunications provider and that has been paid by an approved START-UP NY business with respect to such services rendered within a tax-free NY area during the tax year.

A *net new job* means a job created by a business participating in the START-UP NY program in a tax-free NY area that satisfies all of the following criteria:

- the job is new to the state;
- the job has not been transferred from employment with another business located in this state through an acquisition, merger, consolidation, or other reorganization of businesses, or through the acquisition of assets of another business, or transferred from existing employment with a related person, as defined in Internal Revenue Code (IRC) section 465(b)(3)(C), located in the state, to similar employment with the business, unless the business has received approval for such transfers from the Commissioner of Economic Development;
- the job is not filled by an individual employed within the state within the preceding 60 months by a related person;
- the job is either a full-time wage-paying job or two or more part-time jobs which together constitute the equivalent of a full-time wage-paying job (a full-time wage-paying job requires at least 35 hours of work per week); and
- the job is filled for more than six months during each year for which the tax benefits are being granted.

The annual *employment test* is satisfied if the average number of employees of the business and its related persons in the state during the year equals or exceeds the sum of:

- the average number of employees of the business and of its related persons in the state during the tax year immediately preceding the year in which the business submits its application to locate in a tax-free NY area; and
- the average number of net new jobs of the business in the tax-free NY area during the tax year.

The average number of employees of the business and of its related persons in the state is determined by adding the total number of employees of the business and of its related persons in the state on March 31, June 30, September 30, and December 31 during the applicable tax year and dividing the sum by the number of these dates occurring within the applicable tax year.

The average number of net new jobs of the business in the tax-free NY area is determined by adding the total number of net new jobs of the business in the tax-free NY area on March 31, June 30, September 30, and December 31 during the applicable tax year and dividing the sum by the number of these dates occurring within the applicable tax year.

The information below represents the Internal Revenue Service (IRS) interpretation of the definition of *related person* in IRC section 465(b)(3)(C) as contained in IRS Publication 925, *Passive Activity and At-Risk Rules*. When preparing your tax return, you should refer to section 465(b)(3)(C) to see if the definition of related person has been amended.

Related person includes the following:

- members of a family, but only an individual's brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.);
- two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test;

- the fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts;
- a tax-exempt educational or charitable organization and a person who directly or indirectly controls it (or a member of whose family controls it);
- a corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation;
- a trust fiduciary and a corporation of which more than 10% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust;
- the grantor and fiduciary, or the fiduciary and beneficiary, of any trust;
- a corporation and a partnership if the same persons own over 10% in value of the outstanding stock of the corporation and more than 10% of the capital interest or the profits interest in the partnership;
- two S corporations if the same persons own more than 10% in value of the outstanding stock of each corporation;
- an S corporation and a regular corporation if the same persons own more than 10% in value of the outstanding stock of each corporation;
- a partnership and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership;
- two partnerships if the same persons directly or indirectly own more than 10% of the capital or profits of each;
- two persons who are engaged in business under common control; and
- an executor of an estate and a beneficiary of that estate.

To determine the direct or indirect ownership of the outstanding stock of a corporation, apply the following rules:

1. Stock owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries.
2. Stock owned directly or indirectly by or for an individual's family is considered owned by the individual. The family of an individual includes only brothers and sisters, half-brothers and half-sisters, a spouse, ancestors, and lineal descendants.
3. Any stock in a corporation owned by an individual (other than by applying rule 2) is considered owned directly or indirectly by the individual's partner.

When applying rule 1, 2, or 3, stock considered owned by a person under rule 1 is treated as actually owned by that person. However, if a person constructively owns stock because of rule 2 or 3, he or she does not own the stock for purposes of applying either rule 2 or 3 to make another person the constructive owner of the same stock.

Specific instructions

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

Individual (including sole proprietor) and partnership: Complete lines A and B, and Schedules A, B, and E.

A married couple in a business enterprise that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business. Complete lines A and B, and Schedules A, B, and E.

Partner in a partnership, shareholder of a New York S corporation, and beneficiary of an estate or trust: Complete lines A and B, and Schedules C and E.

Fiduciary: Complete lines A and B, and Schedules A, B, D, and E. If you are an estate or trust that divides the credit among itself and its beneficiaries, submit all Forms IT-640 with Form IT-205 showing each beneficiary's share of credit.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-640.

Line A – Enter the number from the *Certificate of Eligibility* issued to the approved START-UP NY business. Partners, shareholders, and beneficiaries will receive this information from the partnership, S corporation, estate, or trust.

Partnerships: submit a copy of the *Certificate of Eligibility* with Form IT-640.

Line B – You may claim the credit for 10 consecutive tax years, starting with the first tax year the approved business that was issued the *Certificate of Eligibility* locates in a tax-free NY area. Enter a number 1 through 10 representing the tax year of the START-UP NY business tax benefit period for which the credit is being claimed on this form.

Schedule A – Employment test

Compute your employment number within New York State for the current tax year and the tax year immediately preceding the year in which the business submitted its application to locate in a tax-free NY area.

For purposes of these instructions, all references to *current tax year* mean the tax year covered by this claim.

Line 1 – For each date specified of the current tax year, enter the number of employees of the business and of its related persons who are located within New York State. Divide the total number of employees for the current tax year by the number of the dates occurring during the current tax year (even if you had no employees on those dates) to obtain the current tax year employment number. Make no entries for any dates that did not occur during your tax year and do not include those dates in the calculation.

Line 2 – For each date specified of the tax year immediately preceding the year in which the business submitted its application to locate in a tax-free NY area, enter the number of employees of the business and of its related persons who were located within New York State. Divide the total number of employees for the tax year immediately preceding the year of application by the number of dates occurring during that tax year (even if you had no employees on those dates). Make no entries for any dates prior to the date you began business in New York, and do not include those dates in the calculation.

Line 3 – For each date specified of the current tax year, enter the number of net new jobs (see *Definitions*) of the business in the tax-free NY area. Divide the total net new jobs for the current tax year by the number of the dates occurring during the current tax year (even if you had no net new jobs on those dates) to obtain the current year net new jobs. Make no entries for any date that did not occur during your tax year and do not include those dates in the calculation.

If this line equals 0 and it is the first year of the START-UP NY business tax benefit period (line B is 1), you **do not** qualify for the credit. **Do not** complete the rest of this form.

Line 5 – The employment number for the current tax year (line 1) must equal or exceed the employment number in the

year immediately preceding application (line 2) plus the number of net new jobs (line 3) to qualify for the credit.

Schedule B – Individual (including sole proprietor), partnership, and estate or trust

Line 6 – Enter the total eligible telecommunication services excise tax imposed and paid during the tax year. The tax must be separately stated on a bill from the telecommunication services provider to qualify for the credit.

Schedule C – Partnership, New York S corporation, and estate and trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust from which you received a share of the credit. You may obtain this information from the partnership, New York S corporation, estate or trust.

Line 7 – If you need more space, enter your name and taxpayer identification number, and complete only Schedule C on additional Forms IT-640. Place the extra forms behind the first Form IT-640. Include on line 7 of the first Form IT-640 the total of column F from all additional Forms IT-640.

Schedule D – Beneficiary's and fiduciary's share of credit

An estate or trust must complete this schedule.

If an estate or trust allocates or assigns the credit to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust. Provide your beneficiaries with their proportionate amount of the credit.

Schedule E – Computation of credit

Complete lines 12, 13, or 14 (whichever apply to you).

Fiduciaries: Do not enter any amounts on line 12 or 13.

Line 15 – Enter the amount and code **640** on Form IT-201-ATT, line 12; Form IT-203-ATT, line 12; or Form IT-204, line 147; or include it on Form IT-205, line 33.