Department of Taxation and Finance

Instructions for Form CT-46

Claim for Investment Tax Credit (Includes Employment Incentive Credit)

CT-46-I

NEW YORK STATE 2024

General information

General business corporations may claim an investment tax credit (ITC) under section 210-B.1 against the tax imposed by Article 9-A for the tax year during which they placed qualified property in service.

Compute the ITC on the investment credit base. The *investment credit base* is the cost, or other basis when placed in service in New York State for federal income tax purposes, of qualified tangible property, including buildings and structural components of buildings, less the amount of nonqualified nonrecourse financing with respect to such property. A corporate partner may claim an ITC for its allocable share of the cost or other basis of qualified property purchased by the partnership. Do not include in the investment credit base any:

- amount that was expensed under Internal Revenue Code (IRC) section 179(a)
- property used to claim the Empire State film production credit
- property used to claim the Empire State commercial production credit
- property used to claim the brownfield redevelopment credit

Section 210-B.2 allows an employment incentive credit (EIC) for property if the acquisition, construction, reconstruction, or erection began on or after January 1, 1987. For details, see instructions for completing Schedule C of Form CT-46.

These credits may not reduce the tax liability to less than the fixed dollar minimum tax, and are not allowed against the metropolitan transportation business tax (MTA surcharge) under Article 9-A.

Any portion of these credits you cannot use to reduce current year tax liability may be carried forward for 15 tax years (10 tax years for shareholders of a New York S corporation).

Qualified property for the ITC is tangible property, including buildings and structural components of buildings, that:

- was acquired, constructed, reconstructed, or erected by the taxpayer after December 31, 1968 (Exception: Property principally used as a qualified film production facility must be placed in service on or after January 1, 2005. Buildings principally used as a qualified film production facility must have received a final certificate of occupancy after January 1, 2005.);
- is depreciable under IRC section 167 or 168;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase under IRC section 179(d);
- is located in New York State; **and**
  - is principally used by the taxpayer in producing goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing; or
  - is an industrial waste treatment facility or air pollution control facility, used in the taxpayer's trade or business; or
  - is research and development (R&D) property; or
  - is principally used as a qualified film production facility.

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.

If 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 with respect to 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.

You must compute the recapture of ITC previously allowed if the property was stolen, destroyed, or disposed of prior to the end of its useful life, or if there is an increase in nonqualified nonrecourse financing.

Types of property that **do not** qualify for the ITC include:

- property leased to others (Exception: The use of a qualified film production facility by a qualified film production company is not considered a lease.)
- retail equipment, office furniture, and office equipment
- excavating and road building equipment
- public warehouses used to store the taxpayer's goods
- electricity-generating equipment

Definitions

Nonqualified nonrecourse financing is any amount for which you are 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 you) who has an interest in the activity. Nonrecourse financing is nonqualified where it is not qualified commercial financing, as defined in IRC section 49(a)(1). The reduction in computing the investment credit base, in the amount of nonqualified nonrecourse financing, is required only to the extent that such an exclusion would be warranted under IRC section 49(a)(1). Thus, the subtraction is required in the case of a corporation meeting the personal holding company stock ownership criteria contained in IRC section 542(a)(2), for property used in connection with an activity in which any loss is subject to limitation under IRC section 465.

Manufacturing is the process of working raw materials into wares suitable for use, or giving new shapes, new qualities, or new combinations to matter that already has gone through some artificial process by the use of machinery, tools, appliances, and other similar equipment.

Property used in the production of goods includes machinery, equipment, or other tangible property principally used in the repair and service of other machinery, equipment, or other tangible property used principally in the production of goods and includes all facilities used in the production operation, including storage of material to be used in production and of the products that are produced. However, automobiles, trucks, and other transportation vehicles or equipment used on public roads are not generally considered qualified property.

Property principally used in the production or distribution of electricity, natural gas after extraction from wells, steam, or water delivered through pipes and mains does **not** qualify as property used in the production of goods.

Life or useful life (of property) means the depreciable life provided by IRC section 167 or 168.

Industrial waste treatment facilities are facilities for the treatment, neutralization, or stabilization of industrial waste and other wastes (as defined in section 17-0105 of the Environmental Conservation Law [ECL]) from a point immediately preceding such treatment, neutralization, or stabilization, to the point of disposal. Such property includes the necessary pumping and transmitting facilities, but excludes facilities installed for the primary purpose of salvaging materials that are usable in the manufacturing process or are otherwise marketable. Attach the certificate of compliance concerning industrial waste treatment facilities and industrial waste treatment controlled process facilities (section 17-0707 of the ECL).

Air pollution control facilities are facilities that remove, reduce, or render less noxious, air contaminants emitted from an air contamination source (as defined in section 19-0107 of the ECL) from a point immediately preceding such removal, reduction, or rendering, to the point of discharge of air meeting emission standards as established by the Department of Environmental Conservation. Also included are flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities, or other facilities. Not included are facilities installed primarily to salvage materials that are usable in the manufacturing process, or that are otherwise marketable; or facilities that rely for their effectiveness on dilution, dispersion, or assimilation of air contaminants into the surrounding air after emission. Attach the certificate of compliance concerning air pollution control facilities and air pollution controlled process facilities (section 19-0309 of the ECL).

Research and development (R&D) property is used for research and development in the experimental or laboratory sense, but not for the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or for research in connection with literary, historical, or similar projects.

Qualified film production property is property principally used as a qualified film production facility, including qualified film production facilities located in an empire zone (EZ) (as designated by General Municipal Law Article 18-B), when a taxpayer is providing three or more services to any qualified film production company using the facility. The services included are providing a studio lighting grid, lighting and grid equipment, multiline phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation, and air conditioning.

Qualified film production facility means a film production facility in New York State that contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.

Qualified film production company is a corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the production of a qualified film [as defined in Tax Law, Article 1, section 24(b)(3)] and controls the qualified film during production.

Eligible farmer means a taxpayer whose federal gross income from farming is at least two-thirds of excess federal gross income. *Excess federal gross income* means the amount of federal gross income from all sources for the taxable year in excess of $30,000. To determine if you meet the two-thirds of excess federal gross income test, visit our website at *www.tax.ny.gov* (search: *investment)*.

Line instructions

Summary of tax credits

Complete Schedules A through D, as appropriate, before completing this section.

Additional forms: If you have more entries than will fit on the lines provided in Schedules A or D, submit additional Forms CT-46, completing only the necessary schedules. Include your name and taxpayer identification number on each form and include the totals from all additional Forms CT-46 on the indicated lines. Place the extra forms behind the first Form CT-46 and submit them with your return.

Line 6 – Any portion of the ITC and EIC that you earned in prior periods and did not use can be carried forward for only 15 tax years. Enter on line 6 any unused tax credit included on line 5 that expired prior to the beginning of this tax year and is no longer available for your use.

Lines 8 and 9 – New York S corporations: Transfer these amounts to Form CT-34-SH, *New York S Corporation Shareholders' Information Schedule.*

Line 10 – New York S corporations: Make no entry on this line.

C corporations: Subtract line 9 from line 8. This is the net ITC available for use this period. If the amount on line 9 is greater than line 8, you have a net recaptured tax credit; continue with line 10 instructions. Subtract line 8 from line 9 and enter the result as a negative number with a minus (-) sign. Enter this negative amount in the appropriate box of the tax credits section of your franchise tax return.

Computation of investment tax credit used, refunded, or carried forward (New York S corporation do not complete this section)

Line 11 – Enter the amount from Form CT-3 or CT-3-A, Part 2, line 2, **plus** any net recapture of other tax credits.

Line 12 – If you are claiming more than one credit, you must apply certain credits before the ITC. Refer to Form CT-600-I, *Instructions for Form CT-600, Ordering of Corporation Tax Credits,* for the proper ordering of your credits. If filing as a member of a combined group, include any amount of tax credits, including ITCs, being claimed by another member of the combined group that you wish to apply before the ITC claimed on this form. Enter the amount of the credits being claimed before the ITC. Otherwise, enter ***0***.

Line 14 – Enter your fixed dollar minimum tax from Form CT-3 or the designated agent's fixed dollar minimum tax from Form CT-3-A.

Line 16 – Enter the lesser of line 10 or line 15. Transfer this amount to your franchise tax return.

Lines 18a through 18e – If you are **not** a qualified new business or eligible farmer, skip lines 18a through 18e. Enter your line 17 amount on line 19.

Qualified new business

A corporation that is eligible to claim an ITC and is also a new business as defined in Article 9-A, section 210-B.1(f), may elect to receive a refund of its unused ITC instead of carrying the credit forward. We will not pay interest on a refund of the ITC. Section 210-B.1(f) defines a *new business* as any corporation except:

- 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 by a taxpayer subject to the tax under Tax Law Article 9-A; Article 9 section 183, 184, 185, or 186; or Article 33.
- A corporation that is substantially similar in operation and in ownership to a business entity or entities taxable or previously taxable under either Tax Law Article 9-A; Article 9 section 183, 184, former section 185, or former section 186; Article 33; former Article 23 (or that would have been subject to the tax under Article 23 as it was in effect on January 1, 1980); former Article 32 (or that would have been subject to tax under Article 32 as it was in effect December 31, 2014); or the income (or losses) of which is (or was) includable under Article 22.
- A corporation that has been subject to tax under Article 9-A (or former Article 32) for more than five tax years (excluding short tax years).

Eligible farmer

An *eligible farmer* may elect to receive a refund of its unused credit earned on property placed in service on or after January 1, 2023, instead of carrying the credit forward.

Line 18a – Enter the lesser of line 3 or line 17.

Lines 18b and 18c – Mark an ***X*** in box 18b if you are a qualified new business, or in box 18c if you are an eligible farmer. Only mark **one** box, **not** both.

Line 18d – Enter the amount of line 18a you would like to have refunded. Transfer this amount to your franchise tax return. An eligble farmer may not claim a refund of any unused credit earned on property that was placed in service prior to January 1, 2023. They must continue to carry forward any unexpired amounts.

Line 18e – Transfer this amount to your franchise tax return.

To avoid the unnecessary exchange of funds, we will apply this refund against the minimum tax due and refund any balance.

Line 19 – Qualified new businesses and eligible farmers: Subtract line 18a from line 17.

All other businesses: Enter the amount from line 17 on line 19.

Schedule A – Investment tax credit

Corporate partners include your allocable share of the qualified property purchased by the partnership. These amounts are provided to you on Form IT-204-CP, lines 77a through 77f.

- Code 218 is your share of R & D investment credit base
- Code B12 is your share of eligible farmer investment credit base
- Code 212 is your share of investment credit base (excluding R & D property and eligible farm property)

If you received the investment credit base on Form IT-204-CP, code B12, use 20% (0.2) to compute the credit amount, and do not include that base amount into the $350,000,000 threshold when computing.

Columns A and B – Describe qualified property placed in service during this tax period. **List individual items of machinery and equipment separately;** do not list them as one general category such as *machinery.* Describe the property in terms that a layman will understand. If needed, see *Additional forms.*

Column D – Enter the useful life of each item claimed. See the definition of *life* or *useful life*. **Do not** use the recovery period for depreciation under the accelerated cost recovery system (ACRS) or the modified accelerated cost recovery system (MACRS).

Column H – You may claim an investment credit of 20% of the investment credit base for all qualifying properties placed in service on or after April 1, 2022 which was principally used by the farmer in the production of goods by farming, agriculture, horticulture, floriculture or viticulture, if you are an *eligible farmer*. Multiply the column E amount by 20% (0.2).

Rate schedule 1 – Rates for Schedule A

Standard rate: 5% (0.05) on first $350,000,000 of investment credit base
4% (0.04) on excess of $350,000,000 of investment credit base

Eligible farmers rate: 20% (0.2) on qualifying properties (see instructions for column H)

Optional rate: 9% (0.09) on R&D property

A New York S corporation must compute its ITC at the rate of 4% (0.04) on property other than R&D property and eligible farm property. Use 7% (0.07) on R&D property and 20% (0.20) on eligible farm property. The pro rata share of the ITC, computed at these rates, will be allowed to each individual shareholder

A C corporation may compute the ITC on R&D property at either the standard rate or the optional rate. However, only R&D property on which the ITC was computed at the standard rate may be included in the investment credit base when computing the EIC.

Line A

If you are claiming a credit based on costs passed through to you from a partnership, mark an ***X*** in the box.

Schedule B – Eligibility for employment incentive credit

When you are allowed an ITC, other than at the optional rate applicable to R&D property, you may be eligible for an EIC for the two succeeding years. However, the credit is not allowed for those years if your average number of employees in New York State is not at least 101% of the average number of employees in New York State during the employment base year. Complete Schedule B to see if you qualify for the EIC.

Section 210-B.2(b) defines the *average number of employees* as the total number of employees that are employed within New York State on March 31, June 30, September 30, and December 31 (unless you have a short tax year and one or more of the dates do not occur), divided by the number of these dates occurring during the tax period. Employees must be located in New York State. Do not include general executive officers.

Complete Schedule B for each period listed in Schedule C for which you are claiming an EIC. **Exclude** from lines 23 and 25 any employee for whom you claimed a wage tax credit, based on employment within a zone equivalent area (ZEA). However, **include** such employees for the employment base year on lines 22 and 24.

For the purposes of these instructions, the term *employment base year* means the calendar year or fiscal year immediately preceding the ITC year, or, if you were not taxable in New York State in such preceding year, the year in which the ITC was allowed.

Column A – Enter the base year and the current tax year. The *current tax year* is the tax year covered by this claim.

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

> **Example:** *A taxpayer filing for a fiscal year beginning September 1, 2023, and ending August 31, 2024, would enter the number of employees employed in New York State on the following dates: September 30, 2023, December 31, 2023, March 31, 2024, and June 30, 2024.*

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 in the current tax year by the average number of employees in the base year (column G), and carry the result to two decimal places; do not round. If the percentage in column H is at least 101% (1.01), complete Schedule C. If the percentage in column H is less than 101%, **stop**. You do not qualify for the EIC for this year.

Schedule C – Employment incentive credit computation

General

The amount of EIC is a percentage of the original investment credit base on which the ITC was allowed for each of the two years immediately following the year the ITC was allowed. The percentage for computing the EIC will vary depending on the level of employment (see *Rate schedule 2)*.

Schedules B and C – Examples

Your corporation was allowed an ITC for calendar year 2022. The investment credit base was $450,000,000. The following year, 2023, your corporation was also allowed an ITC. The investment credit base was $200,000,000.

*Based on your ITC for the tax year **2022**, you may be eligible for an EIC in 2023 (first succeeding tax year after the 2022 ITC), and 2024 (second succeeding tax year after the 2022 ITC). Based on your ITC for the tax year **2023**, you may be eligible for an EIC in 2024 (first succeeding tax year after the 2023 ITC), and 2025 (second succeeding tax year after the 2023 ITC).*

Your average number of New York State employees was 200 for 2021 (employment base year for the 2022 ITC); 204 for 2022 (employment base year for the 2023 ITC); and 208 for 2024 (current tax year).

*In 2024 (current tax year), you would fill out Schedules B and C as follows: lines 26, 22, and 23 would be completed based on the ITC allowed for **2023**; its employment base year is 2022 and its first succeeding year is 2024, the current tax year. Lines 27, 24, and 25, would be completed based on the ITC allowed for **2022**; its employment base year is 2021 and the current tax year, 2024, would be its second succeeding year. The correct way to complete Schedules B and C is illustrated below:*

Schedule B – Example

A. Use with Schedule C, line 26, first succeeding year	**A** Year	**B** March 31	**C** June 30	**D** September 30	**E** December 31	**F** Total *(B+C+D+E)*	**G** Average	**H*** Percent %
22 Number of New York State employees in employment base year	*2022*	*204*	*204*	*204*	*204*	*816*	*204*	
23 Number of New York State employees in the current tax year	*2024*	*208*	*208*	*208*	*208*	*832*	*208*	*101*
B. Use with Schedule C, line 27, second succeeding year	**A** Year	**B** March 31	**C** June 30	**D** September 30	**E** December 31	**F** Total *(B+C+D+E)*	**G** Average	**H** Percent %
24 Number of New York State employees in employment base year	*2021*	*200*	*200*	*200*	*200*	*800*	*200*	
25 Number of New York State employees in the current tax year	*2024*	*208*	*208*	*208*	*208*	*832*	*208*	*104*

* Divide the average number of employees in the current tax year by the average number of employees in the base year (Column G)

Schedule C – Example

	A Tax year in which investment tax credit was allowed	**B** Amount of investment credit base upon which original investment tax credit was allowed (excluding R&D property at optional rate)	**C** Employment incentive credit *(multiply column B by the appropriate rate from* Rate schedule 2 *in Form CT-46-I)*
26 Information for first succeeding year	*2023*	*$200,000,000*	*$3,000,000 ($200,000,000 × 1.5%)*
27 Information for second succeeding year	*2022*	*$450,000,000*	*$11,250,000 ($450,000,000 × 2.5%)*

Rate schedule 2 – Rates for Schedule C

Employment requirement at least	**Rates**
101% but less than 102%	1½% (0.015) of investment credit base
102% but less than 103%	2% (0.02) of investment credit base
103%	2½% (0.025) of investment credit base

C corporations: The EIC may not reduce the tax liability to an amount less than the fixed dollar minimum tax.

You may carry the credit forward for up to 15 tax years. A C corporation cannot claim a refund of the EIC.

New York S corporations: The shareholders of a New York S corporation may claim an EIC. The EIC applies to any ITC computed on property placed in service on or after January 1, 1997, whether or not deductible in the year placed in service.

A shareholder may carry forward any excess EIC that cannot be used to reduce their current year's tax liability for up to **10** tax years. However, a shareholder that qualifies as an owner of a new business may elect to have the excess EIC refunded. (See the definition of *new business* in the instructions for lines 18a, 18d, and 18e.)

Schedule D – Recapture of investment tax credit, including rehabilitation expenditures for retail enterprises and historic barns

If property on which an ITC (including the retail enterprise credit or rehabilitation credit [Form CT-46-ATT] claimed for tax years beginning before January 1, 2015) has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life, you must add the difference between the original credit allowed and the credit allowed for actual use back to the tax otherwise due in the year of disposition or disqualification. If needed, see *Additional forms*.

Section 210-B.1(e) provides different formulas for computing the amount of recaptured ITC for property depreciated under IRC sections 167 and 168.

1. For property depreciated solely under IRC section 167, the formula is:

$$\frac{\text{months of unused life}}{\text{months of useful life}} \quad \text{x} \quad \text{ITC allowed}$$

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

$$\frac{\text{36 minus the number of months of qualified use}}{36} \quad \text{x} \quad \text{ITC allowed}$$

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 IRC section 168, other than three-year property or buildings or structural components of buildings, the formula is:

$$\frac{\text{60 minus the number of months of qualified use}}{60} \quad \text{x} \quad \text{ITC allowed}$$

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 a building or structural component of a building placed in service after December 31, 1980, and depreciated under IRC section 168, the formula is:

$$\frac{\text{months of unused life}}{\text{number of months allowed by IRC and used by taxpayer}} \quad \text{x} \quad \text{ITC allowed}$$

Property that is depreciated under IRC section 168 for federal tax purposes, but that is required to be depreciated under IRC section 167 alone for New York State tax *(decoupled property)*, is subject to the first recapture formula set out above.

If qualified property has a useful life of more than 12 years, and has been in use for more than 12 consecutive years, no recapture is necessary.

If an air pollution control facility was allowed an ITC on the basis of a certificate of compliance, issued under the ECL, and that certificate is revoked under subdivision 3 of section 19-0309 of the ECL, the revocation will constitute a disposal or cessation of qualified use, and a recapture of ITC is required (unless the property otherwise qualifies).

Recapture of ITC will be increased by an additional recapture amount, equal to the original recapture amount multiplied by the interest rate for underpayments in effect (without compounding) on the last day of the tax year.

If, at the end of any tax year, there is a net increase in nonqualified nonrecourse financing, recapture the decrease in the ITC that would have resulted from the net increase in nonqualified nonrecourse financing.

Line 31 – The additional recapture is equal to the recaptured ITC multiplied by the interest rate for underpayments in effect on the last day of the tax year. For applicable rate information, visit our website at *www.tax.ny.gov* (search: *interest)*.