



Instructions for Form IT-640

START-UP NY Telecommunication Services Excise Tax Credit

IT-640-I

General information

This 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).

You may be eligible for this credit if you or your business:

- is approved to participate in the START-UP NY Program under Economic Development Law (EDL) by ESD;
- received a Form DTF-74, *Certificate of Eligibility*, by the sponsoring campus, university, or college;
- operates in a tax-free NY area;
- creates and maintains net new jobs; **and**
- meets an annual employment test beginning with the first year of operation.

For additional information about eligibility and the application process, visit *Empire State Development: START-UP NY Program*.

Credit calculation

- The credit is equal to the amount of excise tax on telecommunication services that is passed through to and paid by the approved businesses for such services rendered within a tax-free NY area during the tax year, to the extent not otherwise deducted in calculating New York adjusted gross income.
- The excise tax must be separately stated on a bill from the telecommunications service provider.
- If eligible, you may claim the credit for ten consecutive tax years beginning with the tax year during which the business locates in a tax-free NY area.
- If you do not use the full amount of the credit against your tax liability this year, you may request a refund or apply the overpayment to next year's tax. However, the Tax Department will not pay interest on the refund or overpayment.
- You may not claim any tax credit with respect to its activities or employees in a tax-free NY area, other than START-UP NY credits.
- If you fail to meet the eligibility requirements, you or your business are disqualified from claiming tax benefits and may receive an assessment for previous benefits claimed.

Note: A business that has successfully completed residency in a New York State incubator is **not** required to create or maintain net new jobs to claim the tax benefits under the START-UP NY Program. However, to qualify for the credit, the business must maintain at least the number of employees of the business in New York State as shown on their application for entry into the program.

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

information, see Form IT-645, *Recapture of START-UP NY Tax Benefits*, and its instructions.

Penalties for fraud

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

- immediately terminate the business from the program;
- subject the business to criminal penalties; and
- require the business in that year to add back to tax the total value of all the tax benefits provided under the START-UP NY Program that the business and the employees of the business have received up to the date of the final determination. You must report any amount required to be added back on Form IT-645.

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.

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.

How to claim the credit

If you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in a partnership (including members of an LLC treated as a partnership for federal tax purposes), or a shareholder of an S corporation, and you are claiming the START-UP NY Telecommunication Services Excise Tax Credit, file Form IT-640 with your income tax return.

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

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, calculate your credit amount as if you were filing one federal Schedule C for the business.

An **estate or trust** that divides the credit between 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.

A **partnership** must file Form IT-640 with Form IT-204, *Partnership Return*, showing the total credit.

A **New York S corporation** does **not** file Form IT-640. It must file Form CT-640, *START-UP NY Telecommunication Services Excise Tax Credit*.

If you are a **shareholder of an S corporation**, obtain your share of the credit from the S corporation and follow the instructions on this form for claiming the credit on your income tax return.

Line instructions

Line A: Mark an **X** in the appropriate box to determine the parts of this form you need to complete.

Line B: Enter the number from Form DTF-74, *Certificate of Eligibility*, issued to the approved START-UP NY business. Partners, shareholders, and beneficiaries will receive this information from the partnership, S corporation, or estate or trust. Submit a copy of Form DTF-74, *Certificate of Eligibility*, with Form IT-640.

Line C: You may claim the credit for 10 consecutive tax years, starting with the first tax year the approved business 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 you are claiming the credit on this form.

Additional forms: If you have more entries than will fit on the lines provided in Schedule B or C, submit additional Forms IT-640, completing only the necessary schedules. Include your name and taxpayer identification number on each form. On the indicated lines of the first Form IT-640, include the totals from all additional Forms IT-640. Place the extra forms behind the first Form IT-640 and submit them with your return.

Schedule A: Individual (including sole proprietor), partnership, and estate or trust

Line 1: 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 B: Partnership, New York S corporation, and estate or trust information

Enter the requested information for each partnership, New York S corporation, or estate or trust from which you received a share of the credit. You may obtain this information from the partnership, S corporation, or estate or trust. If needed, see *Additional forms*.

Schedule C: Beneficiary's and fiduciary's share of credit

An estate or trust must complete Schedule C.

If an estate or trust allocates or assigns the credit to its beneficiaries, it must base the division on each beneficiary's share of the income of the estate or trust. Provide the beneficiaries with their share of the credit amount. If needed, see *Additional forms*.

Schedule D: Calculation of credit

Individuals: Enter the amount from line 9 and code **640** on:

- Form IT-201-ATT, line 12; or
- Form IT-203-ATT, line 12.

Partnerships: Enter the amount from line 9 and code **640** on Form IT-204, line 147.

Fiduciaries: Do **not** enter any amounts on lines 6 or 7. Include the amount from line 9 and code **640** on Form IT-205, line 33.
