

Business Tax Reform and Rate Reduction Act of 1987
Credits

Introduction

The Business Tax Reform and Rate Reduction Act of 1987 (Chapter 817) has had a major impact on tax credits. A number of credits have been repealed, a new credit has been created and existing credits have been significantly modified. Tax Credits are now permitted to reduce a taxpayer's liability to the higher of the tax on the minimum taxable income base or the fixed dollar minimum of \$250.

Credits Repealed

Chapter 817 Repeals the DISC export credit, the credit for sales taxes paid on catalytic and bleaching agents, the three year employment incentive credit (replaced by a new two year tax credit), the credit for research and development property (now part of the investment tax credit).

* the three year employment incentive tax credit for property, the acquisition, construction, reconstruction or erection which commenced prior to January 1, 1987 remains available.

Credit Added

A new minimum tax credit similar to that allowed for federal purposes has been added. The purposes of this credit is to prevent double taxation which might otherwise result from the treatment of certain timing adjustments in the computation of minimum taxable income as New York moves closer to federal conformity in 1990. A separate Technical Services Bureau Memorandum detailing the computation of this credit will be issued at a later date.

Credits Changed

The investment tax credit has been modified in several ways. The starting point for computing the credit, now termed the "investment credit base", is the cost or other basis for federal income tax purposes reduced, in the case of certain closely held corporations, by the amount of non-qualified, non-recourse financing excludible from the credit base pursuant to Section 46(c)(8) of the Internal Revenue Code (applicable to partners in partnerships subject to Section 465 of the Internal Revenue Code and to closely held C Corporations involved in activities subject to Section 465 of the Code). Decreases in such financing give rise to an additional credit while increases in such financing trigger recapture.

For purposes of the investment tax credit for taxable years beginning in 1987, qualified property now includes production property, industrial waste treatment property, air pollution control facilities and research and development property. Previously, such property could be treated as investment tax credit property only at the option of the taxpayer. The expensing of such property has

been repealed effective for 1987, with a termination of carryforwards commencing with taxable years beginning in 1994. A similar limitation has been placed on carryforwards of the now repealed research and development credit.

The investment tax credit is subject to a seven-year limit on carry-forwards. Credits accruing prior to 1987 may not be carried forward to taxable years beginning in or after 1994. Credits accruing after 1987 may not be carried forward for more than seven taxable years subsequent to the year for which the investment tax credit is first claimed.

For purposes of computing recapture of any investment tax credit, New York depreciable life will now be used to calculate recapture amounts. Where recapture occurs, such amounts will be augmented by an amount, without compounding, at the rate in effect on the last day of the taxable year.

Prior to the new legislation the investment tax credit was available at a rate of 6%, while the rate applicable to the research and development credit was 10%. These rates have been modified as follows:

Tax years beginning in 1987, 88, 89	5% with respect to the 1st \$500 million of the investment credit base	4% with respect to excess over \$500 million
Tax years beginning in 1990	5% with respect to the 1st \$425 million of the investment credit base	4% with respect to excess over \$425 million
Tax years beginning in 1991 and thereafter	5% with respect to the 1st \$350 million of the investment credit base	4% with respect to excess over \$350 million

Property acquired during 1987, for taxpayers whose fiscal years end in 1987, would be eligible for the 6% investment tax credit rate. Property acquired during 1987, for taxpayers who have short periods begun on or after January 1, 1987, would receive the 5% investment tax credit rate.

For all taxable years beginning in 1987 and thereafter, there is an optional 9% rate applicable to research and development property. If this rate is elected a taxpayer may not avail itself of the employment incentive credit.

The new employment incentive credit, which is a two-year rather than a three-year credit, applies to property acquired on or after January 1, 1987. Like the former employment incentive credit it is conditioned on (1) entitlement to an investment tax credit and (2) the maintenance of employment of at least 101% of that during the "employment base year", normally the year immediately prior to the year in which the taxpayer became entitled to the investment tax credit. The rates applicable to this credit are as follows:

ITC allowed in taxable years beginning in:	Percentage of investment credit base (as related to amount of investment credit base or employment in employment base year)
1987, 1988, 1989	2% (first \$500 million) 2½% (excess over \$500 million)
1990	2% (if employment at least 101% but less than 101.5%) 2½% (if employment greater than or equal to 101.5%)
1991 and after	1.5% (if employment at least 101% but less than 102%) 2% (if employment greater than or equal to 102% and less than 103%) 2.5% (if employment equal to or greater than 103%)

Carryforwards of the new employment incentive credit are limited to seven years.

Credits Unchanged

The eligible business facility credit, economic development zone investment tax credit, additional investment tax credit (EIC), wages, and venture capital, and the credit for additional mortgage recording taxes paid (with amendments) remain intact. However, these and all other available credits remain subject to the limitation that any such credits may not reduce a taxpayer's liability for any taxable year to less than the higher of the tax computed on the minimum taxable income base or the fixed dollar minimum of \$250.

Order Of Application Of Tax Credits

The proper order of application of tax credits for tax years begun on or after January 1, 1987 is as follows:

1. Eligible Business Facility Tax Credit (section 210.11)
2. Economic Development Zone Capital Corporation Tax Credit (section 210.20)
3. Economic Development Zone Wage Tax Credit (section 210.19)
4. Investment Tax Credit Carryforwards - Pre 1987 (section 210.12)
5. Employment Incentive Tax Credit Carryforwards - Pre 1987 (section 210.12-A)

6. Research and Development Tax Credit Carry forwards - Pre 1987 (section 210.18)
7. Employment Incentive Tax Credits (section 210.12-A)
8. Investment Tax Credit (1987) (section 210.12)
9. Economic Development Zone Investment Tax Credit (section 210.12-B)
10. Mortgage Recording Tax Credit (section 210.17)