2005

New York State Department of Taxation and Finance

Instructions for Form CT-46

CT-46-I

Claim for Investment Tax Credit (Includes Employment Incentive Credit)

Tax Law — Section 210.12 and 210.12-D

Important reminder to file a complete return: You must complete all required schedules and forms that make up your return, and include **all pages** of those forms and schedules when you file. Returns that are missing required pages or that have pages with missing entries are considered incomplete and cannot be processed, and may subject taxpayers to penalty and interest.

General instructions

Form CT-46 is used to claim an investment tax credit (ITC) and an employment incentive credit (EIC). If you are claiming a credit for the rehabilitation expenses for retail enterprises or historic barns, you must also complete Form CT-46-ATT, *Credit for Rehabilitation Expenses for Retail Enterprises and Historic Barns*, and attach it to Form CT-46 when you file.

Depending on the type of business you have, you may need to file one of the following forms instead of Form CT-46:

Form CT-44, *Claim for Investment Tax Credit for the Financial Services Industry*

Form CT-603, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit*

Form CT-605, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*

For more information concerning which form to file, see the instructions for the forms listed above.

Investment tax credit (ITC)

General business corporations may claim an ITC under section 210.12 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 the following:

- any amount that was expensed under Internal Revenue Code (IRC) section 179(a)
- any property used to claim the Empire State film production credit on Form CT-248, *Claim for Empire State Film Production Credit*.

Section 210.12-D allows an 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 greater of the tax on minimum taxable income (MTI) or the fixed dollar minimum tax.

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 acquired to replace property destroyed as a direct result of the terrorist attacks of September 11, 2001, and you did not elect to defer recapture, or escape recapture because you met the employment test, you may compute the investment credit base of the replacement property without regard to any basis reduction required by IRC section 1033.

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.

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) 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 Environmental Conservation Law).

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 Environmental Conservation Law) 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 Environmental Conservation Law).

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 the 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 section 24(b)(3)) and controls the qualified film during production.

Line instructions

Summary of tax credit(s)

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

Line 7b — 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 7b any unused tax credit included on line 7a 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.

New York 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 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 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,* or the instructions for your corporation franchise tax return, for the proper ordering of your credits. If filing as a member of a combined return, include any amount of tax credit(s), including ITC(s), 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 credit(s) being claimed before the ITC. Otherwise, enter ***0***.

Lines 18a, 18b, and 18c — If you are **not** a new business, skip lines 18a, 18b, and 18c. Enter your line 17 amount on line 19.

A corporation that is eligible to claim an ITC and is also a new business as defined in Article 9-A, section 210.12(j), 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 210.12(j) 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; Article 32; 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, 185, or 186; Article 32; or Article 33; or that would have been subject to the tax under Article 23 as it was in effect on January 1, 1980; 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 for more than five tax years (excluding short tax years).

Line 18a — Enter the amount from line 5 or line 17, whichever is less.

Line 18b — Enter amount of line 18a that you want refunded. Transfer this amount to your franchise tax return.

Line 18c — Enter amount of line 18a that you want applied to next year's tax. Transfer this amount to your franchise tax return.

Note: The sum of the amounts on lines 18b and 18c must equal the amount on line 18a.

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: Subtract line 18a from line 17. All other businesses: Enter the amount from line 17 on line 19.

Schedule A — Investment tax credit

Columns A and B — Describe qualified property placed in service during this tax period. Corporate partners include your allocable share of the qualified property purchased by the partnership. **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. Attach additional sheet(s) as necessary.

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

Column G — Use *Rate schedule 1* below to determine the ITC on R&D property and enter the result on the appropriate line in column G. Attach additional sheets as necessary.

Rate schedule 1 — Rates for Schedule A and Form CT-46-ATT

Standard rate: 5% (.05) on first $350,000,000 of investment credit base
4% (.04) on excess of $350,000,000 of investment credit base

A New York S corporation must compute its ITC at the rate of 4% (.04) on property other than R&D property and at 7% (.07) on R&D property. The pro rata share of the ITC, computed at these rates, will be allowed to each individual shareholder.

Optional rate: 9% (.09) on R&D property

A New York 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.

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 210.12-D(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 an EZ 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, 2004, and ending August 31, 2005, would enter the number of employees employed in New York State on the following dates: September 30, 2004, December 31, 2004, March 31, 2005, and June 30, 2005.*

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. 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* on page 4).

Schedules B and C — Examples

Your corporation was allowed an ITC for calendar year 2003. The investment credit base was $450,000,000. The following year, 2004, your corporation was also allowed an ITC. The investment credit base was $200,000,000.

*Based on your ITC for the tax year **2003**, you may be eligible for an EIC in 2004 (first succeeding tax year after the 2003 ITC), and 2005 (second succeeding tax year after the 2003 ITC). Based on your ITC for the tax year **2004**, you may be eligible for an EIC in 2005 (first succeeding tax year after the 2004 ITC), and 2006 (second succeeding tax year after the 2004 ITC).*

Your average number of New York State employees was 200 for 2002 (employment base year for the 2003 ITC); 204 for 2003 (employment base year for the 2004 ITC); and 208 for 2005 (current tax year).

*In 2005 (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 **2004**; its employment base year is 2003 and its first succeeding year is 2005, the current tax year. Lines 27, 24, and 25, would be completed based on the ITC allowed for **2003**; its employment base year is 2002 and the current tax year, 2005, 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	*2003*	*204*	*204*	*204*	*204*	*816*	*204*	
23 Number of New York State employees in the current tax year	*2005*	*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	*2002*	*200*	*200*	*200*	*200*	*800*	*200*	
25 Number of New York State employees in the current tax year	*2005*	*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	*2004*	*$200,000,000*	*$3,000,000 ($200,000,000 × 1.5%)*
27 Information for second succeeding year	*2003*	*$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% (.015) of investment credit base
102% but less than 103%	2% (.02) of investment credit base
103%	2½% (.025) of investment credit base

New York C corporations — The EIC may not reduce the tax liability to an amount less than the higher of the tax on MTI or the fixed dollar minimum tax.

You may carry the credit forward for up to 15 tax years. A New York 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.

You may carry forward any excess EIC that cannot be used to reduce a shareholder's 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, 18b, and 18c.)

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

If property on which an ITC, retail enterprise credit, or rehabilitation credit 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.

Section 210.12(g) 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:

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

For tax years beginning on or after January 1, 1987, property that is depreciated under IRC section 168 for federal tax, 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.

For tax years beginning in 1987, property that is disposed of, or ceases to be in qualified use, is recaptured as follows:

- If the property was depreciated for New York State corporation franchise tax under IRC section 167, use the life of the property as depreciated under IRC section 167; **or**
- If the property was depreciated for New York State corporation franchise tax under IRC section 168, use the life of the property as depreciated under IRC section 168.

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 Environmental Conservation Law, and that certificate is revoked under subdivision 3 of section 19-0309 of the Environmental Conservation Law, 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 Web site and click on *Interest rates*, or call the Business Tax Information Center (see *Need help?* below).

Example: *$1,000 recaptured ITC × 6% interest rate for 2005 = $60 additional recapture.*

Privacy notification — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?

Internet access: *www.nystax.gov* (for information, forms, and publications)

Fax-on-demand forms: 1 800 748-3676

Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications:	1 800 462-8100
Business Tax Information Center:	1 800 972-1233
From areas outside the U.S. and outside Canada:	(518) 485-6800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only):	1 800 634-2110

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.