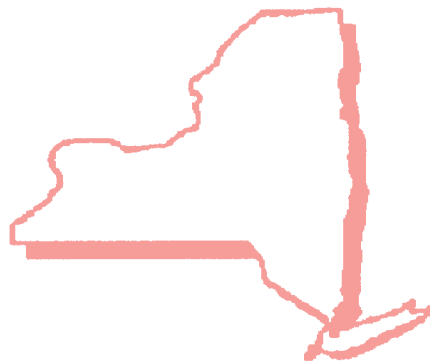


GENERAL INFORMATION ON NEW YORK STATE AND NEW YORK CITY INCOME TAX CREDITS FOR BUSINESSES

For tax year 2009



The information presented is current as of this publication's print date. Visit our Web site at www.nystax.gov for up-to-date information.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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New for 2009

Empire Zone Program

The Tax Law and the General Municipal Law were amended to provide changes to the Empire Zones Program. These changes affect taxpayers claiming Empire Zone (EZ) credits, including Qualified Empire Zone Enterprise (QEZE) credits under Tax Law Articles 9, 9-A, 22, 32, and 33 for tax years beginning on or after January 1, 2008. For more information regarding the changes to the Empire Zones Program, see TSB-M-09(5)C, (4)I, *Legislative Changes to the Empire Zones Program*.

Fuel cell electric generating equipment credit

The fuel cell electric generating equipment credit was allowed for the purchase and installation of fuel cell electric generating equipment used in New York State. Effective for tax years beginning on or after January 1, 2009, no new claims for this tax credit will be allowed. However, if you have a carryover of the credit from a prior year, you may continue to carry that credit forward for the following five years.

Introduction

New York State offers a number of significant tax incentives designed to promote economic development, create jobs, stimulate capital investment, and encourage revitalization of distressed areas. The broad ranges of these tax credits underscore the state's commitment to attract and foster growth in the business community. These credits provide significant tax relief to businesses to enhance New York State's economic climate and to ensure competitiveness in a global marketplace.

This publication contains information about the New York State and New York City business related income tax credits available to taxpayers who are taxable under Article 22 of the Tax Law (Personal Income Tax). The publication also describes the qualifications for the credits, whether or not the credits are refundable, the income tax credit forms involved, and where to get additional information.

For purposes of this publication, the term business refers to:

- A sole proprietor. A sole proprietor may claim a credit against their personal income tax for any business income tax credit that the sole-proprietorship is entitled to.

For information on filing a New York State personal income tax return, see the instructions for Form IT-201, *Resident Income Tax Return* (long form), Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*, or Form IT-205, *Fiduciary Income Tax Return*.

- A partnership. Partners in a partnership (including members of LLC's that are treated as partnerships for federal tax purposes) may claim a credit against their personal income tax for their distributive share of the credit(s) that the partnership is entitled to.

For information on filing a partnership return, see the instructions for Form IT-204, *Partnership Return*.

- A New York S corporation. New York S corporation shareholders may claim a credit against their personal income tax for their pro rata share of the credit(s) that the New York S corporation is entitled to. See *Credits available to New York S corporation shareholders*, on page 52.

For information on filing a franchise tax return (including claim forms for tax credits) for a New York S corporation, see the instructions for Form CT-3-S, *New York S Corporation Franchise Tax Return*.

For information on additional income tax credits available to individuals, see Publication 99-IND, *General Information on New York State and New York City Income Tax Credits for Individuals – For tax year 2009*.

Alternative fuels credit

Tax Law sections 606(p) and 606(i)

The alternative fuels credit is available for alternative-fuel vehicle refueling property used in a trade or business located in New York State. The property must be placed in service in tax years beginning after 2005 and before 2011.

Alternative-fuel vehicle refueling property, defined by Internal Revenue Code (IRC) section 30C, includes any property, other than buildings and structural components of buildings, used to store and dispense a clean-burning fuel into the tank of a motor vehicle propelled by the fuel. The storage or dispensing of the fuel must be located at the point where the fuel is delivered into the fuel tank of the motor vehicle. For the recharging of motor vehicles propelled by electricity, the property must be located at the point where the motor vehicles are recharged. The property must be eligible for the depreciation deduction, and the original use must commence with your business.

Leased property – If your business acquires property for use in your leasing business, and not for resale, you may qualify for the New York credit if the property qualifies for a federal credit. However, leases to public (governmental) or tax-exempt (charitable) organizations generally do not qualify for a federal credit, and therefore would not qualify for the New York credit.

The credit for alternative-vehicle refueling property is equal to 50% of the cost of the property that:

- is located in New York State, **and**
- is used 50% or more during the tax year in a trade or business carried on in New York State, **and**
- qualifies for a credit under IRC section 30C, but does not include alternative-fuel vehicle refueling property related to a qualified hybrid vehicle as this vehicle is defined in Tax Law section 606(p)(3)(B).

The alternative fuels credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years.

If you claim the alternative fuels credit on alternative-fuel vehicle refueling property, and that property ceases to qualify at any time before the end of the recovery period, you may have to recapture all or part of the credit you claimed.

To claim this credit, you must complete Form IT-253, *Claim for Alternative Fuels Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

Automated external defibrillator credit

Tax Law sections 606(s) and 606(i)

If your business purchases an automated external defibrillator, you may be entitled to the automated external defibrillator credit. However, the credit is not allowed for an automated defibrillator purchased for resale.

An *automated external defibrillator*, as defined under Public Health Law section 3000-b, is a medical device approved by the United States Food and Drug Administration that:

- is capable of recognizing the presence or absence, in a patient, of ventricular fibrillation and rapid ventricular tachycardia;
- is capable of determining, without intervention by an operator, whether defibrillation should be performed on the patient;
- upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to the patient's heart; and
- then, upon action by an operator, delivers an appropriate electrical impulse to the patient's heart to perform defibrillation.

The credit is equal to the lesser of the purchase cost of the unit, or \$500. There is no limit on the number of units purchased during the tax year for which the credit may be taken. However, the credit cannot exceed \$500 for **each** unit purchased.

The automated external defibrillator credit is not refundable, and any unused credit cannot be carried forward to a future year.

To claim this credit, you must complete Form IT-250, *Claim for Credit for Purchase of an Automated External Defibrillator*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

Biofuel production credit

Tax Law sections 28, 606(jj), and 606(i)

The biofuel production credit is available for biofuel produced at a biofuel plant located in New York State. The credit is available for tax years beginning on or after January 1, 2006, and before January 1, 2013.

Biofuel means a fuel which includes biodiesel and ethanol. Biofuel may also include any other standard approved by the New York State Energy and Research Development Authority.

Biodiesel means a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of the American Society of Testing and Materials designation D 6751-02.

Ethanol means ethyl alcohol manufactured in the United States and its territories and sold:

- for fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives for the production of ethanol for fuel, **or**
- as denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use.

Biofuel plant means a commercial facility located in New York State at which one or more biofuels are produced.

The credit allowed is fifteen cents (\$.15) per gallon of biofuel produced at a biofuel plant located in New York State, after the production of the first 40,000 gallons per year presented to market. The credit is claimed in the same tax year that the biofuel is produced and is limited to \$2.5 million per taxpayer per year. The credit can be claimed for four consecutive years per biofuel plant.

If the amount of any biofuel production credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

To claim this credit, you must complete Form IT-243, *Claim for Biofuel Production Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

Brownfield credits

The Brownfield Cleanup Program was created to encourage cleanup and redevelopment of brownfield sites in New York State (see Title 14 of Article 27 of the Environmental Conservation Law).

The brownfield tax credits are based on costs incurred for site preparation and property improvements, on-site groundwater cleanup costs, real property taxes, and environmental insurance premiums.

To qualify for the credits, your business must execute a Brownfield Cleanup Agreement (BCA) under the Environmental Conservation Law (ECL) and have a Certificate of Completion (CoC) issued by the Commissioner of Environmental Conservation. Your business may also qualify for the credits if the CoC was transferred to you from the person originally issued the CoC, upon the sale or transfer of the brownfield site to you.

Brownfields are any real property where redevelopment or re-use may be complicated by the presence or potential presence of a contaminant.

A *qualified site* means a site for which a CoC has been issued by the Commissioner of Environmental Conservation. None of the brownfield tax

credits are allowed with respect to a qualified site for which a CoC is issued after March 31, 2015.

For more information about the Brownfield Cleanup Program, contact the Department of Environmental Conservation (DEC) at (518) 402-9711 or visit their Web site (www.dec.ny.gov).

**Brownfield
redevelopment tax
credit**

Tax Law sections 21,
606(dd), and 606(i)

The brownfield redevelopment tax credit is available for the cleanup and redevelopment of a qualified brownfield site.

If your business executes a Brownfield Cleanup Agreement (BCA) under the Environmental Conservation Law (ECL) and receives a Certificate of Completion (CoC) issued by the Commissioner of Environmental Conservation, you may be entitled to the brownfield redevelopment tax credit. You may also be entitled to the credit if the CoC was transferred to you from the person or business originally issued the CoC, upon the sale or transfer of the brownfield site to you.

The brownfield redevelopment tax credit is equal to the sum of the three credit components, computed for each tax year, for costs incurred in the remediation or redevelopment of a qualified site:

- the site preparation credit component;
- the on-site groundwater remediation credit component; and
- the tangible property credit component.

For qualified sites accepted into the Brownfield Cleanup Program prior to June 23, 2008, the brownfield redevelopment tax credit is calculated by applying a percentage of the costs that qualify with respect to each credit component. The amount of the credit increases if at least 50% of the qualified site is located in an environmental zone (EN-zone), designated as such by the Commissioner of Economic Development, or if the site is remediated to the highest environmental standard track (designated as Track 1 under ECL section 27-1415).

For qualified sites accepted into the Brownfield Cleanup Program on or after June 23, 2008, the brownfield redevelopment tax credit is calculated by applying a percentage of the costs that qualify with respect to each credit component. The amount of the credit increases if at least 50% of the qualified site is located in an environmental zone (EN-zone), designated as such by the Commissioner of Economic Development, or if the qualified site is located in a brownfield opportunity area designated as such by the Secretary of State. For more information, see TSB-M-08(13)C, (8)I, *Revisions to Brownfield Cleanup and Remediation Program*.

The qualified costs used to calculate the amount of the credit components must be reduced by any grants received from a federal, state or local government, or an instrumentality of a public benefit corporation and used to pay for any of the qualified costs incurred, provided the amount of the grant was not included in the taxpayer's federal adjusted gross income.

The site preparation costs and on-site groundwater remediation costs paid or incurred with respect to a qualified site and the cost of tangible property used to compute the credit components only includes those costs paid or incurred by your business on or after the effective date of the BCA executed by your business and DEC (pursuant to ECL section 27-1409) or on or after the date the CoC was transferred to your business (pursuant to ECL section 27-1419).

Generally the credit is claimed in the tax year in which the CoC is issued. See the instructions for Form IT-611, *Claim for Brownfield Redevelopment Tax Credit for Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008*, or Form IT-611.1, *Claim for Brownfield Redevelopment Tax Credit for Sites Accepted into the Brownfield Cleanup Program on or after June 23, 2008*.

If the amount of any brownfield redevelopment tax credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

If the CoC is revoked, or if qualified tangible property that is used in the basis for this credit ceases to be in qualified use prior to the end of its useful life, all or a portion of the credit must be recaptured.

Note: Property used to qualify for this credit may **not** be used as qualifying property for the investment tax credit (ITC) or the empire zone investment tax credit (EZ-ITC).

To claim this credit, you must complete Form IT-611, *Claim for Brownfield Redevelopment Tax Credit for Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008*, or Form IT-611.1, *Claim for Brownfield Redevelopment Tax Credit for Sites Accepted into the Brownfield Cleanup Program on or after June 23, 2008*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

**Environmental
remediation insurance
credit**

Tax Law sections 23,
606(ff), and 606(i)

If your business paid premiums for environmental remediation insurance with respect to a qualified brownfield site, you may be entitled to the environmental remediation insurance credit.

To qualify for the credit, your business must execute a Brownfield Cleanup Agreement (BCA) under the Environmental Conservation Law (ECL), and have a Certificate of Completion (CoC) issued by the Commissioner of Environmental Conservation for the qualified site for which the eligible

premiums are paid. Your business must also have a certification form issued by your insurer, certifying that the insurance coverages qualify for the credit.

Environmental remediation insurance, as described in the Insurance Law section 3447, must be written pursuant to the provisions of section 1113(a)(13) (personal injury liability insurance) or 1113(a)(14) (property damage liability insurance) of the Insurance Law. It must also contain any of the following (or substantially similar or combined) coverages:

- coverage for the costs of on-site cleanup of pre-existing pollution conditions from the insured property that are outside the scope of the remedial work plan pursuant to ECL section 27-1411 for the insured property;
- coverage for third party claims for on-site bodily injury and property damage resulting from pre-existing pollution conditions outside the scope of the remedial work plan for the insured property;
- coverage that caps cleanup costs relating to the remedial work plan;
- coverage for the costs of State re-openers pursuant to ECL section 27-1421 or modifications to the remedial work plan to fill any gap in any liability limitation provided pursuant to ECL section 27-1421 for environmental conditions.

The amount of the credit is the lesser of:

1. 50% of the eligible premiums paid by the business on or after the effective date of the BCA executed by the business and DEC; or
2. \$30,000.

The credit is allowed for the tax year in which the CoC is issued. The credit may be taken only once with respect to each CoC issued. However, if the date the CoC was issued occurred in a tax year that began prior to April 1, 2005, the date of issuance of the CoC is treated as if that date occurred in the business' first tax year beginning on or after April 1, 2005.

If the amount of any environmental remediation insurance credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

If the CoC is revoked, the credit must be added back in the tax year in which the determination is final and no longer subject to judicial review.

If the premiums paid for environmental remediation insurance were deducted in computing federal taxable income, to the extent a credit is taken relating to these premiums, the amount of the credit taken is required to be added back to federal adjusted gross income pursuant to section 612(b)(37) of the Tax Law.

To claim this credit, you must complete Form IT-613, *Claim for Environmental Remediation Insurance Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

Remediated brownfield credit for real property taxes

Tax Law sections 22,
606(ee), and 606(i)

If your business is the developer of a qualified brownfield site, you may be entitled to the remediated brownfield credit for real property taxes. The credit is available for up to ten consecutive tax years, beginning with the later of the tax year the Certificate of Completion (CoC) is issued or the first tax year beginning on or after April 1, 2005.

A *developer* is a business who has:

- executed a BCA under the ECL and has a CoC issued by the Commissioner of Environmental Conservation; **or**
- obtained by purchase or conveyance all or any portion of a qualified site for which a CoC has been issued. The purchase or conveyance must occur within seven years of the effective date of the CoC. The business that is purchasing all or any portion of the qualified site and the taxpayer and any other party who has been issued the CoC may not be related persons (as defined in Internal Revenue Code (IRC) section 465(b)(3)(C)).

The amount of the credit is 25% of the product of the following three factors:

1. the benefit period factor;
2. the employment number factor; and
3. the eligible real property taxes paid or incurred by the developer of the qualified site during the tax year.

For a qualified site that is located entirely in an environmental zone (EN-Zone), the amount of the credit is equal to the product of the above three factors. For purposes of calculating the credit for a qualified site in an EN-Zone, only taxes imposed on real property attributable to the qualified site located in an EN-Zone and owned by the developer qualify as eligible real property taxes. The credit for each tax year is limited to the product of \$10,000 and the average number of full-time employees employed by the developer of a qualified site and a lessee during the tax year.

If the amount of any remediated brownfield credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

If the eligible real property taxes, which were the basis for the brownfield real property tax credit, are subsequently reduced as a result of a final order in any proceeding under Article 7 of the Real Property Tax Law, or other provision of law, you must recapture a portion of the credit allowed in the tax year the final order is issued. The recapture amount is equal to the amount of credit originally taken, less the amount of credit recalculated using the reduced eligible real property taxes. If the taxes are reduced for more than one year, you must determine how much of the reduction is attributable to each year covered by the final order and calculate the amount of credit that is required to be recaptured for each year based on the reduction.

If the CoC is revoked, a recapture of the credit must be computed.

If the qualified site is located in whole or in part in an empire zone (EZ) and your business meets the eligibility requirements (with respect to all or a portion of the qualified site) for both the brownfield real property tax credit and the qualified empire zone enterprise (QEZE) real property tax credit, your business may not claim both credits.

You must make an irrevocable election to claim either the brownfield real property tax credit or the QEZE real property tax credit. The election is made by filing a tax return in the first tax year the site is eligible for the brownfield real property tax credit and claiming either of the credits.

To claim this credit, you must complete Form IT-612, *Claim for Remediated Brownfield Credit for Real Property Taxes*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information on the QEZE credit for real property taxes, see *QEZE credit for real property taxes* on page 30 of this publication.

Clean heating fuel credit

Tax Law sections 606(mm) and 606(i)

A business that purchases bioheat for space heating or hot water production for residential purposes within New York State may be entitled to the clean heating fuel credit. The credit is available for tax years beginning in 2006 through 2011 and applies to bioheat purchased on or after July 1, 2006, and before July 1, 2007; and on or after January 1, 2008, and before January 1, 2012. (The credit is not available for bioheat purchased on or after July 1, 2007, and before January 1, 2008.)

Bioheat means a fuel comprised of biodiesel blended with conventional home heating oil, which meets the specifications of the American Society of Testing and Materials (ASTM) designation D 396 or D 975.

Biodiesel means a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B 100 (pure biodiesel), which meets the specifications of ASTM designation D 6751.

Residential purposes means any use of a structure, or part of a structure, as a place of abode maintained by or for a person, whether or not owned by such person, on other than a temporary or transient basis. This includes multi-family dwelling units such as multi-family homes, apartment buildings, condominiums, and cooperative apartments. The structure must be located in New York State.

Residential purposes do not include the part of a structure used as a hotel, motel, or similar space, except for those units used by the same occupant for at least 90 consecutive days.

The credit amount equals \$0.01 per gallon for each percent of biodiesel included in the bioheat, not to exceed \$0.20 per gallon. If your business makes more than one purchase of bioheat that qualifies for this credit during the tax year and the percentage of biodiesel included in the bioheat varies, a separate calculation must be made for each purchase of bioheat.

Note: The percentage of biodiesel included in the bioheat is the number or numbers preceded by the letter *B* in the bioheat designation. For example, bioheat designated **B5** contains 5% biodiesel.

If your business purchases bioheat for a premises that has both residential and nonresidential space but has only one tank for the storage of the bioheat fuel, you will need to determine the percentage of the premises used for residential purposes in order to properly compute the credit.

The credit is claimed for the tax year in which the bioheat is purchased. In general, bioheat is deemed purchased on the date of delivery regardless of when the payment is made. For example, bioheat that is paid for through a budget payment plan whereby you make monthly payments to the supplier and the supplier charges your account for the cost of the bioheat delivered, will be deemed purchased on the date the delivery was made, even if your budget account does not contain sufficient funds to cover the cost of the delivery. However, bioheat that is purchased under a plan that requires you to prepay the supplier for a certain number of gallons of bioheat at a fixed price will be treated as purchased on the date the prepayment was made, not the date of delivery.

If the amount of any clean heating fuel credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

To claim this credit you must complete Form IT-241, *Claim for Clean Heating Fuel Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information, see TSB-M-08(5)C, (1)I, *Clean Heating Fuel Credit*.

**Conservation
easement tax
credit**

Tax Law section 606(kk)

If your business owns land in New York State that is subject to a conservation easement held by a public or private conservation agency, your business may be entitled to a credit of 25% of the allowable school district, county, and town real property taxes paid on the land subject to the conservation easement.

Conservation easement means a perpetual and permanent conservation easement as defined in Article 49 of the Environmental Conservation Law (ECL) on land located in New York State that:

- is held by a public or private conservation agency;
- serves to protect open space, biodiversity, or scenic, natural, agricultural, watershed, or historic preservation resources;
- is filed with the Department of Environmental Conservation (DEC) by the person causing the document to be so recorded, as provided for in ECL Article 49;
- complies with the provisions of ECL, Article 49, Title 3; and
- complies with the provisions of Internal Revenue Code (IRC) section 170(h).

Dedications of land for open space through the execution of conservation easements for the purpose of fulfilling density requirements to obtain subdivision or building permits are **not** considered conservation easements for purposes of this credit.

Note: You should maintain adequate records to substantiate the conservation easement's compliance with the provisions of IRC 170(h), including but not limited to a copy of federal Form 8283, *Noncash Charitable Contributions*, for the year of the donation. Under certain circumstances, a letter from the public or private conservation agency may also be adequate.

Land means a fee simple title to real property located in New York State, with or without improvements. This includes rights of way; water and riparian rights; easements; privileges, and all other rights or interests of any land or description in, relating to, or connected with real property, excluding buildings, structures, or improvements.

Public or private conservation agency means:

- any state, local, or federal government body; or
- any private not-for-profit charitable corporation or trust that is authorized to do business in New York State; organized and operated to protect land for natural resources, conservation or historic preservation purposes; is exempt from federal tax under IRC section 501(c)(3), and has the power to acquire, hold, and maintain land and/or interests in land for such purpose.

The conservation easement credit cannot exceed \$5,000 in any given year. Additionally, when this credit is combined with any other income tax credit claimed for school district, county, and town real property taxes, the amount of the combined credits cannot exceed the total amount of these taxes.

If the amount of any conservation easement tax credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

To claim this credit, you must complete Form IT-242, *Claim for Conservation Easement Tax Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205. This credit is not available to New York S corporations.

**Credit for
New York City
unincorporated
business tax**

Tax Law section 1310(e) and section 11-1706(c) of the Administrative Code of the City of New York

If you are a New York City resident or part-year resident individual, estate, or trust, you may be eligible for a credit on your personal income tax return for any New York City unincorporated business tax imposed on a business you operated. The credit is also available to partners in partnerships and beneficiaries of estates or trusts that are subject to the New York City unincorporated business tax.

The Unincorporated Business Tax (UBT) is imposed on the business income of every unincorporated business that is carried on, wholly or partly, in New York City.

Unincorporated businesses includes trades, businesses, professions, and occupations that are conducted by, engaged in, or in the process of being liquidated by an individual, partnership, limited liability company, fiduciary, association, estate or trust. The UBT is administered by the New York City Department of Finance (www.nyc.gov).

The amount of credit allowed to a New York City resident or part-year resident with city taxable income of \$42,000 or less is 100% of the UBT imposed. The credit decreases gradually from 100% to 23% if your city taxable income is more than \$42,000 but less than \$142,000. If your city taxable income is \$142,000 or more, the credit is 23% of the UBT imposed.

The credit for New York City unincorporated business tax is applied against the New York City personal income tax, the New York City separate tax on the ordinary income portion of a lump-sum distribution, and the New York City tax on the capital gain portion of a lump-sum distribution. The credit is not refundable and cannot be carried over to future years.

To claim this credit, you must complete Form IT-219, *Credit for New York City Unincorporated Business Tax*, and attach it to your Form IT-201, IT-203, or IT-205.

Credit for taxicabs and livery service vehicles accessible to persons with disabilities

Tax Law sections 606(oo) and 606(i)

If your business provides taxicab or livery services, you may be entitled to a credit for taxicabs and livery service vehicles accessible to persons with disabilities. The credit is allowed for the incremental cost associated with the purchase of a vehicle or the conversion of a motor vehicle to be accessible to persons with disabilities provided the vehicle is used for taxicab or livery services. The incremental costs must be incurred on or after January 1, 2006, and before January 1, 2011, and must be claimed in the year in which the incremental costs are incurred.

Taxicab means every motor vehicle, other than a bus, used in the business of transporting passengers for compensation and operated in that business under a license or permit issued by a local authority. However, it does not mean vehicles that are rented or leased without a driver.

Livery means every motor vehicle, other than a taxicab or bus, used in the business of transporting passengers for compensation. However, it does not mean vehicles that are rented or leased without a driver.

Bus means a motor vehicle having a seating capacity of fifteen or more passengers in addition to the driver and used for the transportation of persons.

Motor vehicle means every vehicle operated or driven upon a public highway and is propelled by any power other than muscular power, **except** for an electrically driven mobility assistance device operated or driven by a person with a disability, a vehicle that runs only upon rails or tracks, a snowmobile, and an all terrain vehicle.

Providing a taxicab or livery service means the operation of a taxicab or livery in New York State in accordance with required licenses, permits, or registrations issued by a local authority and the New York State Department of Motor Vehicles.

Local authority means every county, municipal or other local board, body or officer, county park commission, parkway authority, bridge authority, bridge and tunnel authority, the Office of Parks and Recreation, the New York State Thruway Authority, or similar body or person having

authority to enact laws or regulations relating to traffic under the constitution and laws of this state.

Incremental cost means the expenses specifically associated with:

- the excess purchase price of a vehicle accessible to persons with disabilities over the purchase price of a motor vehicle that is the same make and model except for the equipment necessary to convert it to a vehicle accessible to persons with disabilities; or
- in the case of a conversion of an existing motor vehicle, it includes the equipment and installation costs necessary to convert it to a vehicle accessible to persons with disabilities.

Vehicle accessible to persons with disabilities means a motor vehicle, less than 22 feet in length, that complies with federal regulations promulgated pursuant to the Americans with Disabilities Act applicable to vans under 22 feet in length by the federal Department of Transportation (49 CFR Parts 37 and 38) and the federal Architecture and Transportation Barriers Compliance Board (CFR title 36, section 1192.23); **and** with the Federal Motor Vehicle Safety Standards (CFR title 49, Part 571).

The amount of credit is equal to the incremental cost for a vehicle accessible to persons with disabilities used in providing taxicab or livery service. The credit can only be claimed once per vehicle and may not exceed \$10,000 per vehicle.

The credit for taxicabs and livery service vehicles accessible to persons with disabilities is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years.

To claim this credit, you must complete Form IT-239, *Claim for Credit for Taxicabs and Livery Service Vehicles Accessible to Persons with Disabilities*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

If your business is a qualified commercial production company, you may be entitled to the Empire State commercial production credit. This credit is available for tax years beginning on or after January 1, 2007, and expires on December 31, 2011.

The credit is administered by the Governor's Office for Motion Picture and Television Development which is responsible for determining both eligibility for the credit and the amount of credit. To qualify for this credit, you must file an application with the Governor's Office for Motion Picture and Television Development and receive an allocation of credit.

**Empire State
commercial
production credit**

Tax Law sections 28,
606(jj), and 606(i)

The credit is based on qualified production costs paid or incurred in the production of a qualified commercial in New York State and is allowed for the tax year in which the production of the qualified commercial is completed.

Qualified commercial production company means a corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the production of a qualified commercial and controls the production of the qualified commercial and is not the distributor or contracting entity for production of the commercial.

Qualified commercial means an advertisement that is recorded on film, audiotape, videotape, or digital medium in New York for multi-market distribution by way of radio, television networks, cable, satellite, or motion picture theaters.

Qualified commercial does not include: news or current affairs programs; interview or talk programs; network promos (for example commercials promoting television series or movies); how-to or instructional commercials or programs; commercials or programs consisting entirely of stock footage; trailers promoting theatrical films, sporting events or sporting programs, game shows, award ceremonies, daytime dramas (soap operas), reality programs or music videos; or a production for which records are required under section 2257 of Title 18 of the United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc., with respect to sexually explicit conduct).

There are three component credit programs. The three programs have different threshold requirements, annual allocations, and credit calculations.

1. **Upstate program** – The upstate program provides a 5% tax credit for qualified commercial companies which film or record qualified commercials outside the Metropolitan Commuter Transportation District (MCTD) but within New York State. (The MCTD includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)), and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.)
2. **Downstate program** – The downstate program provides a 5% tax credit for qualified commercial companies which film or record qualified commercials within the MCTD.
3. **Growth program** – The growth program provides a 20% tax credit based on year-to-year growth in a qualified production company's qualified production costs. It does not matter where in New York State the qualified costs were incurred.

If the amount of the credit(s) exceeds your tax for the year, 50% of the excess will be treated as an overpayment of tax to be credited or refunded (without interest) and the balance not credited or refunded will be carried over to the next succeeding tax year. Any amount of the credit(s) carried over to the next succeeding tax year that exceeds your tax for that year will be treated as an overpayment of tax to be credited or refunded (without interest).

If the commercial production credit is claimed for qualified production costs, no other income tax credit may be claimed for those costs.

To claim this credit you must complete Form IT-246, *Claim for Empire State Commercial Production Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For information on the application process, threshold requirements, and annual allocation amounts, visit the New York State Governor's Office for Motion Picture and Television Development Web site (www.nylovesfilm.com) or call (212) 803-2330.

Empire State film production credit

Tax Law sections 24, 606(gg), and 606(i)

If your business is a qualified film and television production company, you may be entitled to the Empire State film production credit. The state credit is administered by the Governor's Office for Motion Picture and Television Development which is responsible for determining both eligibility for the credit and the amount of credit. To qualify for this credit, you must file an application with the Governor's Office for Motion Picture and Television Development and receive an allocation of credit.

Qualified film production company means a corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the production of a qualified film and controls the qualified film during production.

Qualified film means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot, or episode is created or conveyed.

Qualified film does not include: a documentary film; a news or current affairs program; an interview or talk program; a how-to or instructional film or program; a film or program consisting primarily of stock footage, sporting event, or sporting program; a game show, an award ceremony, a film or program intended primarily for industrial, corporate, or institutional end-users; a fund-raising film or program; a daytime drama (soap opera); a commercial; a music video or reality program; or a production for which records are required under section 2257 of Title 18 of the United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc., with respect to sexually explicit conduct).

The credit is based on the qualified production costs and can equal up to 30% of the qualified production costs paid or incurred in the production of certain qualified films and television shows. The amount of credit allowed is allocated by the New York State Governor's Office for Motion Picture and Television Development.

For tax years beginning on or after January 1, 2009, the tax year in which the credit may be claimed has changed for credits of one million dollars or more, as described below:

- If the amount of the credit shown on your certificate of tax credit received from the New York State Governor's Office for Motion Picture and Television Development is at least one million dollars but less than five million dollars, the credit must be claimed over a two-year period.
- If the amount of the credit shown is five million dollars or more, the credit must be claimed over a three-year period.

If the amount of the credit allowable for any tax year exceeds your tax for that year, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

If the film production credit is claimed for qualified production costs, no other income tax credit may be claimed for those costs.

To claim this credit you must complete Form IT-248, *Claim for Empire State Film Production Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For definitions, rules and regulations regarding the credit, visit the New York State Governor's Office for Motion Picture and Television Development's Web site (www.nylovesfilm.com) or call (212) 803-2330.

**Empire zone (EZ)
and qualified
empire zone
enterprise (QEZE)
credits**

New York State's Empire Zone (EZ) Program was created to stimulate economic growth through a variety of state tax incentives designed to attract new businesses to New York State and to encourage existing businesses to expand and create more jobs. As part of the program, certain tax credits are available for businesses that are certified under Article 18-B of the General Municipal Law (GML), a process administered by Empire State Development. Additional credits are available to qualified empire zone enterprises (QEZEs).

Note: Effective for tax years beginning on or after January 1, 2008, certain provisions of the Tax Law and the General Municipal Law affecting the Empire Zones Program have been amended. As part of these changes, Empire State Development is required to review all certified EZ business enterprises and apply new criteria for continued certification of businesses

wishing to retain EZ benefits, including the claim for new credits and the carryover of EZ credits from prior tax years. For more information, see TSB-M-09(4)I, *Legislative Changes to the Empire Zones Program*.

An *empire zone* (EZ) is an area within New York State that has been designated as an empire zone according to Article 18-B of the GML. The area must be characterized by pervasive poverty, high unemployment, and general economic distress.

A *qualified empire zone enterprise* (QEZE) is a business certified as eligible to receive benefits under Article 18-B of the GML prior to July 1, 2010, that annually meets an employment test during its business tax benefit period. A QEZE also includes a clean energy enterprise (CEE) certified under Article 18-B of the GML that annually meets an employment test.

For more information, see:

- TSB-M-06(2)I, *Qualified Empire Zone Enterprise (QEZE) Tax Credits*
- Publication 26, *A Guide to Business Tax and Personal Income Tax Credits Within Empire Zones*
- The instructions for the applicable EZ or QEZE tax credit form(s).

EZ capital tax credit

Tax Law sections 606(l) and 606(i)

If your business made certain qualified investments and contributions during the tax year that are certified by the Commissioner of Economic Development, you may be entitled to the EZ capital tax credit. The credit is equal to 25% of the sum of the following:

- *Qualified investments* in certain certified EZ businesses; and
- Contributions of money to community development projects, as defined in the regulations issued by the Commissioner of Economic Development.

Qualified investment means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions to a business entity not in a corporate or partnership form in exchange for an ownership interest in that entity.

The total amount of credit you will be allowed for all years may not exceed \$300,000, and the total credit allowed for each of the above listed qualified investments and contributions may not exceed \$100,000. However, if you are married and required to file a separate return, the \$100,000 limitation is reduced to \$50,000, and the \$300,000 limitation is reduced to \$150,000, unless your spouse has no credit allowable for the tax year that ends with or within your tax year.

The EZ capital tax credit may not exceed your personal income tax due, and the credit and carryover of credit cannot exceed 50% of your personal income tax before subtracting certain credits.

The EZ capital tax credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years. However, if the business was subject to the recertification process in 2009 and did **not** receive an EZ retention certificate as part of that process, you are not allowed any carryover from a prior tax year.

If you sell, transfer, or otherwise dispose of stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if you recover a contribution or investment that was the basis for the allowance of the credit, and the disposal or the recovery occurs during the tax year or within 36 months from the close of the tax year when the credit was allowed, the difference between the credit taken and the credit allowed must be added back.

To claim this credit, you must complete Form IT-602, *Claim for EZ Capital Tax Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

EZ wage tax credit

Tax Law sections 606(k) and 606(i)

If your business is certified under Article 18-B of the General Municipal Law (GML) and meets certain increased employment levels in New York State and in an EZ during the tax year, you may be entitled to the EZ wage tax credit.

The wage tax credit is based on your number of full-time employees who receive empire zone wages (for more than one-half of the tax year) for employment in a job created in an area designated or previously designated as an EZ.

However, the requirement that an employee must receive EZ wages for more than half of the tax year is not applicable in the first tax year, provided the business:

- acquires real or tangible personal property during its first year from an entity, which is not a related person as defined in Internal Revenue Code (IRC) section 465(b)(3)(C);
- has a short tax year of not more than seven months; and
- has on the last day of the tax year, at least 190 full-time employees, the majority of whom were previously employed by the entity whose assets the business purchased.

Empire zone (EZ) wages are wages paid by a certified business for full-time employment during the tax year in an area designated or previously designated as an EZ, if such employment is in a job created in the EZ during the period of its designation as an EZ or within four years of the expiration of such EZ designation.

EZ wages for purposes of clean energy enterprises (CEE) are wages paid by a certified business for full-time employment in New York State during the tax year, if the employment is in a job created in New York State during the period of designation for CEEs, which is on or after June 23, 2006.

If certification under Article 18-B of the GML is revoked, any wages paid by the business on or after the effective date of such revocation will not constitute EZ wages.

Wages paid to individuals employed before an EZ is designated do not qualify as EZ wages.

The *date of designation* of the EZ is the date the zone was created. In the case of a business that was included as a result of a boundary amendment, the date of designation is the date the boundary was amended to include the business in the EZ.

A *qualified targeted employee* is an employee who:

- is employed full time; and
- received EZ wages for more than half of the current tax year; and
- is working in a job created in the EZ since the EZ was designated CEE's period of designation began June 23, 2006); and
- received an hourly wage that is at least 135% of the minimum wage (as specified in section 652 of the Labor Law) for more than half of the employee's period of employment during the current tax year; and
- meets the definition of targeted employee.

A *targeted employee* is a New York State resident who received EZ wages during the current tax year and who is **one or more** of the following:

- an eligible individual under the provisions of the federal targeted jobs tax credit (IRC section 51);
- an individual eligible for benefits under the provisions of the Workforce Investment Act as a dislocated worker or low-income individual (Public Law 105-220, as amended);

- a recipient of public assistance benefits at any time during the previous two years;
- an individual whose income is below the most recently established poverty rate promulgated by the U.S. Department of Commerce, Bureau of Census;
- a member of a family whose family income is below the most recently established poverty rate promulgated by the U.S. Department of Commerce, Bureau of Census; **or**
- an honorably discharged member of any branch of the armed forces of the United States.

Any employee who qualified as a targeted employee at the time of initial employment will qualify as a targeted employee for subsequent years as long as he or she continues to receive EZ wages and remains a resident of New York State.

The Department of Labor (DOL) is required to provide a certificate verifying the targeted status of an individual for use by an employer seeking wage tax credits under the EZ program. The Tax Department will only recognize Form ES-450B, *Empire Zones Targeted Status Certification*, issued by the DOL and signed by a DOL representative as proof of targeted status under the Wage Tax Credit program. For more information, contact the Department of Labor by calling 1 800 HIRE-992 (1 800 662-1220 for TTY/TDD users only) or access the DOL Web site (www.labor.state.ny.us).

The EZ wage tax credit is allowed for up to five consecutive tax years beginning with the first tax year in which all three of the following eligibility requirements are met:

- EZ wages are paid; and
- the average number of full-time employees in New York State for the current tax year exceeds the average number of full-time employees in New York State during the four years immediately preceding the first tax year for which the EZ wage tax credit is claimed; and
- the average number of full-time employees in the EZ for the current year exceeds the average number of full-time employees in the EZ or area comprising the EZ during the four years immediately preceding the first tax year for which the EZ wage tax credit is claimed.

The amount of the credit is the sum of the following:

- the average number of qualified targeted employees multiplied by \$3,000; and
- the average number of qualified employees multiplied by \$1,500.

A CEE certified under GML Article 18-B is deemed to be located in an investment zone and may be eligible for the increased EZ wage tax credit for both qualified targeted employees and qualified employees that earn wages in excess of \$40,000 for the tax year.

For businesses certified in an investment zone (including CEEs), the amount of the credit is increased for employees whose wages are greater than \$40,000. For these employees, the amount of credit is increased to \$3,500 for each qualified targeted employee and \$2,000 for each qualified employee.

An *investment zone* (IZ) is an empire zone designated by Empire State Development based on census tract statistics or location in a municipality. Clean energy enterprises are considered to be located in an IZ.

The total credit used in the current tax year may not exceed 50% of the tax due for the current tax year. Any amount of EZ wage tax credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years. However, if the business was subject to the recertification process in 2009 and did **not** receive an EZ retention certificate as part of that process, you are not allowed any carryover from a prior tax year.

If you qualify as the owner of a new business, you may elect to treat 50% of the EZ wage tax credit available as a carryforward to following years as an overpayment to be refunded without interest or applied as a payment against next year's tax.

To claim the EZ wage tax credit, you must complete Form IT-601, *Claim for EZ Wage Tax Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

EZ investment tax credit (EZ-ITC) and EZ-ITC for the financial services industry

Tax Law sections 606(j) and 606(i)

If your business is certified under Article 18-B of the General Municipal Law (GML) and places qualified property in service in an EZ, you may be entitled to the EZ investment tax credit (EZ-ITC) or the EZ-ITC for the financial services industry.

Additionally, in order to claim the EZ-ITC for the financial services industry, all, or a substantial portion, of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property must be located in New York State. For

more information, see *Schedule A* on Form IT-605, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*.

Both EZ investment tax credits are computed by multiplying the credit rate of 8% by the investment credit base of *qualified property* that was acquired, constructed, reconstructed, or erected in an EZ after its date of designation and before its date of expiration as an EZ. (For the definitions of *qualified property*, see the instructions for Form IT-603, *Claim for EZ Investment Tax Credit and EZ Employment Tax Credit*, or Form IT-605, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*.)

The EZ-ITC may not reduce your personal income tax liability to less than zero. Any amount of either EZ-ITC or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years. If the business was subject to the recertification process in 2009 and did **not** receive an EZ retention certificate as part of that process, you are not allowed any carryover of EZ-ITC from a prior tax year.

However, if the business was decertified prior to the recertification process in 2009, you may only carry forward either credit for seven years.

If you qualify as the owner of a new business, you may elect to treat 50% of the current EZ investment tax credit available to be carried forward as an overpayment of tax to be refunded.

When property on which either EZ investment tax credit has been allowed is disposed of or ceases to be in qualified use before the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be recaptured in the year of disposition or disqualification. The decertification of a business enterprise in an EZ constitutes a disposal or cessation of qualified use on the effective date of the decertification.

Note: For tax years beginning on or after December 20, 2005, the EZ investment tax credit recapture provisions do not apply with respect to manufacturing property where a partner disposes of a partnership interest, or the partnership disposes of the manufacturing property, if:

- the basis of the manufacturing property (or a project that includes such property) was \$300 million or more for federal income tax purposes at the time it was placed in service by the partnership in the EZ, and
- the partner owned the partnership interest for at least three years from the date the property was placed in service by the partnership in the EZ.

However, if the property ceases to be in qualified use by the partnership after it is placed in service, the recapture provisions do apply to such partner in the year the property ceases to be in qualified use.

To claim the EZ-ITC credit, you must complete Form IT-603, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

To claim the EZ-ITC for the financial services industry, you must complete Form IT-605, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

EZ employment incentive credit (EZ-EIC) and EZ-EIC for the financial services industry

Tax Law sections 606(j-1) and 606(i)

If your business acquires, constructs, reconstructs, or erects property for which an EZ investment tax credit (EZ-ITC) or an EZ-ITC for the financial services industry is allowed, you may be entitled to the EZ employment incentive credit (EZ-EIC) or the EZ-EIC for the financial services industry for each of the three years following the year you qualified for the EZ-ITC or the EZ-ITC for the financial services industry.

The amount of either EZ-EIC allowed is 30% of the original tax credit for each of the three years following the year for which the original EZ investment tax credit was allowed. However, the credits are allowed only for those years during which your average number of employees in the EZ is at least 101% of the average number of employees in the EZ during the tax year immediately preceding the tax year for which the original EZ-ITC or the EZ-ITC for the financial services industry was allowed.

A recapture of either EZ employment incentive credit previously allowed must be computed if the property is disposed of or ceases to be in qualified use prior to the end of its useful life.

The EZ employment incentive credits may not reduce your personal income tax liability to less than zero. Any amount of either EZ-EIC or carryover of the credits not deductible in the current tax year may be carried over to be deducted for the following year or years. However, if the business was subject to the recertification process in 2009 and did **not** receive an EZ retention certificate as part of that process, you are not allowed any carryover from a prior tax year.

If you qualify as the owner of a new business, you may elect to have 50% of the excess of the current year EZ employment incentive credit refunded.

To claim the EZ-EIC, you must complete Form IT-603, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit*, and attach it to your Form IT-201, IT-203, IT-204 or IT-205.

Qualified empire zone enterprise (QEZE) credit for real property taxes

Tax Law sections 15, 606(bb), and 606(i)

To claim the EZ-EIC for the financial services industry, you must complete Form IT-605, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

If your business is a QEZE and has paid eligible real property taxes on real property located in the EZ in which the QEZE is certified, you may be entitled to the QEZE credit for real property taxes.

Note: The information in this section applies to a QEZE certified on or after April 1, 2005. For information on a QEZE first certified prior to April 1, 2005, see the instructions for Form IT-606, *Claim for QEZE Credit for Real Property Taxes*.

A *development zone (DZ)* is an empire zone, usually located within a county, as designated by Empire State Development (ESD).

An *investment zone (IZ)* is an empire zone designated by ESD based on census tract statistics or location in a municipality. Clean energy enterprises are considered to be located in an IZ.

Manufacturer means a business that during the tax year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, or a business engaged in emerging technologies under Public Authorities Law section 3102-e.

Net new employees is equal to the QEZE's current year employment number in the EZ(s) in which it is certified for the tax year less the QEZE's employment number in the EZ(s) for the base period.

Development zone (DZ) employment increase factor is an amount which cannot exceed one, based on the QEZE's net new employees.

Eligible real property taxes refers to taxes for the current tax year imposed on real property located in an EZ in which the QEZE is certified, provided that:

1. the property is owned by the QEZE,
2. the taxes are imposed in a tax year in which the owner is certified and qualifies as a QEZE, and
3. the owner paid the real property taxes, or a tenant paid the real property taxes. If a tenant paid the real property taxes, the owner may take the credit for those taxes paid by the tenant if the tenant does not qualify as a QEZE or if the taxes do not constitute eligible real property taxes for the tenant (see *Lessees* below).

Lessees – Eligible real property taxes include taxes paid by a QEZE that is a lessee if:

- the taxes are paid under a written lease agreement executed or amended on or after June 1, 2005; and
- the taxes become a lien on the property during a tax year in which the lessee is both certified and a QEZE; and
- the lessee made direct payment to the taxing authority and has received a receipt for the payment from the authority.

Payments in lieu of taxes (PILOT) – Eligible real property taxes include PILOT payments made by the QEZE to the state, a municipal corporation, or a public benefit corporation. PILOT payments made by the QEZE under a written agreement executed or amended on or after January 1, 2001, are not eligible real property taxes in any tax year beginning on or after January 1, 2005, to the extent that the payment exceeds:

- the greater of the basis for federal income tax purposes on the certification date of real property (including buildings and structural components of buildings) owned by the QEZE and located in EZs for which it is certified or the basis on the last day of the tax year multiplied by,
- the county's full-value tax rate (see, *Full-value tax rates by county*, in the instructions for Form IT-606, *Claim for QEZE Credit for Real Property Taxes*),
- divided by 1,000.

Note: The basis is calculated without regard to depreciation. If the basis is adjusted pursuant to any Internal Revenue Code (IRC) provisions, the QEZE may petition the Tax Department, the Department of Economic State Development, and the Office of Real Property Services to disregard the adjustment for purposes of this calculation.

The amount of the credit is the greater of the following two amounts:

1. the credit amount, or
2. the capital investment amount.

However the credit shall not exceed the amount of the business' eligible real property taxes for the tax year (see page 30 for the definition of *eligible real property taxes*).

The credit amount for a **QEZE certified only in an area or areas designated as an investment zone** (see page 30 for the definition of *investment zone*), or which is a *manufacturer* (see page 30 for the definition of *manufacturer*), is the product of the following factors:

1. 25%; **and**
2. the total wages, health benefits, and retirement benefits of net new employees for the taxable year. (The total wages, health benefits and retirement benefits for each net new employee cannot exceed \$40,000.)

In the case of a **QEZE which is certified only in an area or areas designated as an investment zone** or which is a *manufacturer*, the capital investment amount shall be the product of (1) and (2):

1. 10% of the greater of:
 - a. the cost or other basis of real property for federal income tax purposes (determined on the later of January 1, 2002, or on the effective date of the certification); **or**
 - b. the cost or other basis for federal income tax purposes of such real property referenced in (a) above on the last day of the taxable year.
2. The greater of:
 - a. the percentage of the real property referenced in (1a) above, physically occupied and used by the QEZE or by a *related person* to the QEZE; **or**
 - b. the percentage of the cost or other basis attributable to the construction, expansion or rehabilitation of the real property referenced in (1a) above (as opposed to the acquisition) by the QEZE. If such percentage is 50% or greater, then the percentage shall be deemed to be 100%.

The credit amount for a **QEZE certified in an area designated as a development zone**, (see page 30 for the definition of *development zone*) with the exception of *manufacturers*, **or a QEZE which is certified in both a development zone and an investment zone**, is the product of the following factors:

- 25%;

- the total wages and health and retirement benefits of net new employees for the taxable year (The total wages, health benefits, and retirement benefits for each net new employee cannot exceed \$40,000.); **and**
- the corresponding *development zone employment increase* factor based upon *net new employees*.

In the case of a **QEZE which is certified in an area designated as a development zone** with the exception of *manufacturers*, or a **QEZE which is certified in both a development zone and an investment zone** with the exception of *manufacturers*, the capital investment amount is the product of (1)x(2)x(3):

1. 10%; and
2. the amount of such cost or other basis which is attributable to the construction, expansion or rehabilitation (as opposed to the acquisition) of real property, including buildings and structural components of buildings, owned by the QEZE and located in empire zones in which the QEZE is certified; and
3. the percentage of the real property physically occupied and used by the QEZE or by a *related person* to the QEZE. If 50% or more of the cost or other basis is attributable to the construction, expansion or rehabilitation of the real property (as opposed to the acquisition), then the occupancy percentage shall be deemed to be 100%.

Note: Effective for taxpayers who are first certified under Article 18-B of the General Municipal Law on or after April 1, 2009, the QEZE real property tax credit calculation is changed. These QEZEs will compute the QEZE real property tax credit in the same manner as an entity first certified on or after April 1, 2005. However, the total amount of credit allowed, after applying all limitations, will be multiplied by 75% (.75).

A business enterprise certified on or after April 1, 2005, may be a QEZE for up to 10 years provided the employment test is met. (Owners of a qualified investment project and/or a significant capital investment project may qualify for an extended business tax benefit period. During the entire business tax benefit period, the benefit factor will be 1.0.)

A business enterprise that becomes a certified empire zone business under Article 18-B of the General Municipal Law and subsequently has its certification revoked under that article will cease to be a QEZE on the first day of the taxable year in which the business enterprise's certification is revoked.

If the amount of any QEZE credit for real property taxes is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

If the eligible real property taxes which were the basis for a QEZE credit for real property taxes are subsequently reduced as a result of a final order in any proceeding under the Real Property Tax Law Article 7 or other provision of law, the QEZE must recapture a portion of the credit allowed in the year the final order is issued. Recapture is required only if the credit claimed in a tax year exceeds the amount of real property taxes paid after taking into account the reduction.

To claim this credit, you must complete Form IT-606, *Claim for QEZE Credit for Real Property Taxes*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

**Qualified empire zone
enterprise (QEZE)
tax reduction credit**

Tax Law sections 16,
606(cc), and 606(i)

If your business is a QEZE, you may be entitled to the QEZE tax reduction credit for a percentage of your taxes attributable to the QEZE.

Note: The information in this section applies to a QEZE certified on or after April 1, 2005. For information on a QEZE first certified prior to April 1, 2005, see the instructions for Form IT-604.

The amount of the credit is the product of the following:

- the *benefit period factor* (for a QEZE first certified on or after April 1, 2005, the benefit period factor is always 1.0),
- the *employment increase factor*,
- the *zone allocation factor*, and
- your *tax factor*.

The following definitions relate to the QEZE tax reduction credit:

- The *employment increase factor* is an amount which cannot exceed 1, but that is the greater of the excess of the QEZE's employment number in EZs in which the QEZE is certified for the current tax year over the QEZE's test year employment number in those zones, divided by:
 - the QEZE's test year employment number in those zones; **or**
 - 100.
- The *zone allocation factor* is the percentage that represents the economic presence in EZs in which your business is certified. For a clean energy enterprise (CEE) the zone allocation factor equals 100%.

- Your *tax factor* is the portion of tax due under Tax Law Article 22 (Personal Income Tax) that is attributable to the income of the QEZE.

A business may be a QEZE for up to 10 years provided the employment test is met. (Owners of qualified investment project and/or a significant capital investment project may qualify for an extended business tax benefit period. During the entire business tax benefit period, the benefit factor will be 1.0.)

A business enterprise that becomes a certified empire zone business under Article 18-B of the General Municipal Law and subsequently has its certification revoked under that article will cease to be a QEZE on the first day of the taxable year in which the business enterprise's certification is revoked.

The QEZE tax reduction credit is not refundable, and any unused credit may not be carried forward to a future year.

To claim this credit, you must complete Form IT-604, *Claim for QEZE Tax Reduction Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

Employment of persons with disabilities credit

Tax Law sections 606(o) and 606(i)

If your business employs qualified persons with disabilities, you may be entitled to the employment of persons with disabilities credit. The qualified employee must be certified by the New York State Department of Labor's Economic Development Services Unit.

The credit amount is 35% of the first \$6,000 of qualified first-year wages **or** qualified second-year wages. A credit of up to \$2,100 per employee is available.

As long as the federal work opportunity credit for vocational rehabilitation referrals under Internal Revenue Code (IRC) section 51 (see federal Form 5884) is in effect for an employee, the New York credit is 35% of the first \$6,000 of the employee's qualified **second-year** wages.

If the federal work opportunity credit for vocational rehabilitation referrals under IRC section 51 (see federal Form 5884) is not in effect for an employee, the New York credit is based on 35% of the first \$6,000 of the employee's qualified **first-year** wages.

The employment of persons with disabilities credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years.

To claim this credit, you must complete Form IT-251, *Credit for Employment of Persons with Disabilities*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information, see TSB-M-98(1)I, *Credit for Employment of Persons with Disabilities*.

Farmers' school tax credit

Tax Law sections 606(n) and 606(i)

An individual, estate, or trust engaged in the business of farming may be entitled to an income tax credit for the amount of eligible school district property taxes paid on qualified agricultural property. In addition, if a partnership (including a limited liability company treated as a partnership), a New York S corporation, a New York C corporation that has a special gross income from farming election on Form CT-47.1, *Election or Termination of Election to Deem Income for Purposes of the Farmers' School Tax Credit*, or an estate or a trust is engaged in the business of farming or owns qualified agricultural property, an individual, estate, or trust that is a partner, member, shareholder or beneficiary of the entity may be entitled to the credit.

You are *engaged in the business of farming* if you cultivate, operate, or manage a farm for gain or profit, even though the operation may not produce a profit every year.

You are *engaged in the business of farming* if you are a partner in a partnership, a shareholder in a New York S corporation, a shareholder in a New York C corporation that has a special gross income from farming election, or the beneficiary of an estate or trust that operates or manages a farm for gain or profit.

You are also *engaged in the business of farming* if you rent your farm property to another person who uses the property in agricultural production, and the rental arrangement meets certain conditions (see the instructions for Form IT-217, *Claim for Farmers' School Tax Credit*).

Qualified agricultural property includes land and land improvements located in New York State that are used in agricultural production. It also includes structures and buildings (except for buildings used by the taxpayer for residential purposes) that are located on the land and used or occupied to carry out agricultural production. Qualified agricultural property you purchased under a land sales contract is considered owned by you if you are obligated under the land sales contract to pay the school district property taxes on the purchased property and you are entitled to deduct those taxes as a tax expense for federal income tax purposes.

Land used in agricultural production includes land under structures or buildings which are qualified agricultural property and land in support of a farm operation, such as farm ponds, drainage swamps, wetlands, and access roads. It also includes land set aside or retired under a federal supply

management or soil conservation program and land that at the time it becomes subject to a conservation easement would have been qualified agricultural property.

A *land sales contract*, commonly referred to as an *installment land contract*, is an agreement to transfer land ownership in exchange for a series of principal and interest payments. The seller does not transfer formal title to the property to the buyer until all or a certain number of payments are made. In addition to an *installment land contract*, a land sales contract may also be referred to as *contract for deed*, *bond for deed*, *conditional sale of real estate*, *contract for sale of land*, and *land contract*. A lease with an option to purchase type arrangement is **not** a land sales contract.

If you are an eligible farmer, you will be able to claim the credit for eligible school district property taxes paid on qualified agricultural property **owned by your father, mother, grandfather, grandmother, brother or sister**, provided that (a) you have entered into a written agreement expressing your intent to eventually purchase that qualified agricultural property and (b) the owner(s) has given you a document stating that the owner(s) is waiving his or her right to claim the credit, if any, on the qualified agricultural property that is subject to the written agreement.

If the amount of any farmers' school tax credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

If all or a portion of your qualified agricultural property is converted to nonqualified use before the end of the second tax year following the year in which you first claimed a credit, you may be required to recapture all or part of the credit you claimed.

To claim this credit, you must complete Form IT-217, *Claim for Farmers' School Tax Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information see Publication 51, *Questions and Answers on New York State's Farmers' School Tax Credit*, and TSB-M-03(7)C, (8)I, *Farmer's School Tax Credit Eligibility Enhanced*.

Fuel cell electric generating equipment credit

Tax Law sections 606(g-2) and 606(i)

The fuel cell electric generating equipment credit was allowed for the purchase and installation of fuel cell electric generating equipment used in New York State. Effective for tax years beginning on or after January 1, 2009, no new claims for this tax credit will be allowed. However, if you have a carryover of the credit from a prior year, you may continue to carry that credit forward for the following five years. To claim a carryover credit, you must complete Form IT-259, *Claim for Fuel Cell Electric Generating Equipment Credit*, and attach it to your Form IT-201 or IT-203.

Green building credit

Tax Law sections 19, 606(y) and 606(i)

If your business constructs, rehabilitates, and maintains a building with high environmental standards and energy efficiency, you may be entitled to the green building credit. This will be accomplished through the use of environmentally preferable building materials and the utilization of technologies that focus on renewable and clean energy and which also provide energy efficiency. The credit will be administered by the New York State Department of Environmental Conservation (DEC) which is responsible for determining both eligibility for the credit and the amount of credit. The credit is allowed for tax years beginning in 2001 through 2014.

To qualify for this credit, you must obtain an initial credit component certificate from DEC. The initial credit component certificate will state the first tax year for which the credit may be claimed, an expiration date, and the maximum amount of credit component allowable for each year. Additionally, for each year the credit is claimed, you or your business must obtain an eligibility certificate, issued by a licensed architect or engineer, certifying that the project meets the standards for green buildings.

The credit is the sum of the following credit components specified in the component certificate:

- green whole building credit component;
- green base building credit component;
- green tenant space credit component;
- fuel cell credit component;
- photovoltaic module credit component; **and**
- green refrigerant credit component.

The credit may be claimed for five years starting with the first tax year allowed according to the initial credit component certificate, and includes the four succeeding tax years (as set forth in the initial credit component certificate). If a credit is allowed to an owner who sells the building or to a tenant who terminates his or her lease within the five-year period of allowance of such credit, the successor owner or successor tenant would be allowed the credit for the remainder of the five-year period, provided that the property continues to meet the applicable environmental and energy efficient standards.

The green building credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current year may be carried over to the following year or years.

To claim this credit, you must complete Form DTF-630, *Claim for Green Building Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

More information on the green building credit can be found on the Department of Environmental Conservation's Web site (www.dec.ny.gov).

Historic barn rehabilitation credit

Tax Law sections 606(a)(12) and 606(i)

If your business makes qualified rehabilitation expenditures, as defined in section 47(c)(2) of the Internal Revenue Code (IRC), you may be entitled to the historic barn rehabilitation credit. The expenditures must be paid or incurred for any barn located in New York State that is a qualified rehabilitated building, as defined in section 47(c)(1) of the IRC.

The barn must be a building originally designed and used for storing farm equipment or agricultural products, or for housing livestock. No rehabilitation credit is allowed for a barn converted to a residence or for a barn whose historic appearance has been altered. A barn that is newly constructed to replace one that had existed on a site and was destroyed is not a qualified rehabilitated building.

Qualifying rehabilitated building is a barn (and its structural components) as defined in section 47(c)(1) of the IRC, which is located in New York State, and satisfies the following criteria:

- The barn is a certified historic structure or was first placed in service before 1936 (for exceptions, see item 4, below).
- The barn has been substantially rehabilitated. A barn will be considered *substantially rehabilitated* only if the expenditures incurred during the 24-month period you selected, and ending with or within the tax year, exceed the greater of the adjusted basis of the barn or \$5,000.

Under certain circumstances, the rehabilitation work may extend over a number of tax years.

- The barn was placed in service before the beginning of the rehabilitation. A barn qualifies for the credit if it had been placed in service as a barn by any person prior to the rehabilitation, even if it is not in service at the time the rehabilitation is done.
- For barns that are not certified historic structures and which were placed in service before 1936:
 - fifty percent or more of the existing external walls of the barn are retained in place as external walls;
 - seventy-five percent or more of the existing external walls of the barn are retained in place as internal or external walls; and

- seventy-five percent or more of the existing internal structural framework of the barn is retained in place.
- Depreciation (or amortization in lieu of depreciation) is allowable for the barn.

Qualified rehabilitation expenditures is defined in section 47(c)(2) of the IRC. A qualified *rehabilitation expenditure* must, among other things, be properly chargeable to a capital account for property which qualifies for depreciation under section 168 of the IRC.

The amount of the credit is 25% of the qualifying rehabilitation expenditures paid or incurred for any barn located in New York State that is a qualified rehabilitated building.

If the historic barn rehabilitation credit exceeds your tax, the unused amount may be carried over to the following ten years. If you qualify as the owner of a new business, you may elect to have the excess historic barn rehabilitation credit refunded.

If a rehabilitated historic barn for which this credit has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life (that is the number of months you or your business have chosen to depreciate the property for purposes of the IRC), the difference between the credit taken and the credit allowed for actual use must be added back to the tax otherwise due in the year the qualified use ceased or the year of disposition.

To claim this credit, you must complete Form IT-212-ATT, *Claim for Historic Barn Rehabilitation Credit and Employment Incentive Credit*, and attach it to your Form IT-212, *Investment Credit*, which must be filed with your Form IT-201, IT-203, IT-204, or IT-205.

For more information, see TSB-M-97(1)I, *A Credit for Rehabilitation of Historic Barns*.

**Industrial or
manufacturing
business (IMB)
credit**

Tax Law sections 14-a and
606(t-1)

Tax year 2006 was the last year you could claim the industrial or manufacturing business (IMB) credit.

Investment credit and investment tax credit for the financial services industry

Tax Law sections 606(a) and 606(i)

If your business purchases qualified property, you may be entitled to the investment credit or investment tax credit for the financial services industry.

Additionally, for the investment tax credit for the financial services industry, all, or a substantial portion, of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property must be located in New York State.

There are three eligibility tests you can use to determine if your business meets the requirement to maintain the requisite number of employees performing administrative and support functions in New York State in order to claim the investment tax credit for the financial services industry: the 80% current-year test, the 95% three-year back-office test, and the 90% end-of-year test. (For more information, see the instructions for Form IT-252, *Investment Tax Credit for the Financial Services Industry*.)

Qualifying investment credit property is new or used tangible personal property or other tangible property (including buildings and structural components of buildings) that:

- For purposes of the investment credit is acquired, constructed, reconstructed, or erected 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. A building principally used as a qualified film production facility must have received its final certification of occupancy after January 1, 2005).
- For purposes of the investment tax credit for the financial services industry is acquired, constructed, reconstructed, or erected on or after October 1, 1998 and before October 1, 2011.
- Is depreciable under section 167 or section 168 of the Internal Revenue Code (IRC).
- Has a useful life of four years or more.
- Is acquired by purchase as defined in section 179(d) of the IRC.
- Is located in New York State; and:
 - for purposes of the investment credit, manufacturing and production property, retail enterprise property, waste treatment property, pollution control property, research and development property, or qualified film production facility property; or
 - for purposes of the investment tax credit for the financial services industry, is principally used in the ordinary course of your business in one of the following capacities:

- as a broker or dealer in connection with the purchase or sale of stocks, bonds, other securities (IRC section 475(c)(2)), or of commodities (IRC section 475(e)(2)), or in providing lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale of securities (IRC section 475(c)(2)); or
- of providing investment advisory services for a regulated investment company (IRC section 851).

The *investment credit base* is the cost or other basis of the qualified property for federal income tax purposes.

The credits are a percentage of the investment credit base. The percentage is based on the date the qualified property was acquired and can be up to 4% (7% for research and development property) of the investment credit base.

Both credits are allowed only for the tax year in which the qualifying property is placed in service. However, if either credit exceeds your tax, the unused amount may be carried over to the following ten years. If you qualify as the owner of a new business, you may elect to have the excess investment credit refunded.

If property on which the investment credit or investment tax credit for the financial services industry was taken is disposed of or removed from qualified use before its useful life or specified holding period ends, the difference between the credit taken and the credit allowed for actual use must be added to your income tax in the year of disposition. You must also add to your income tax an additional amount computed by multiplying the addback of credit on early dispositions by the underpayment interest rate in effect on the last day of your tax year. The underpayment interest rate is not compounded. However, if the property was in qualified use for more than 12 consecutive years, the add backs for credit and interest on early dispositions are not required.

To claim the investment credit, you must complete Form IT-212, *Investment Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

To claim the investment tax credit for the financial services industry, you must complete Form IT-252, *Investment Tax Credit for the Financial Services Industry*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information, see TSB-M-98(6)I, *Tax Credits for the Financial Services Industry*, and TSB-M-02(7)I, *Investment Tax Credit (ITC) Relief for Property Destroyed as a Direct Result of the Terrorist Attacks of September 11, 2001*.

Employment incentive credit and employment incentive credit for the financial services industry

Tax Law sections 606(a-1) and 606(i)

If your business places property in service on or after January 1, 1997, and that property qualifies for the investment credit (other than at the optional rate applicable to research and development property) or the business placed property in service on or after October 1, 1998 and before October 1, 2011, and that property qualifies for the investment tax credit for the financial services industry, you may be entitled to the employment incentive credit or the employment incentive credit for the financial services industry. If you qualify, the credits are allowed for each of the two years immediately following the tax year in which the investment tax credit was allowed.

The amount of the credit is a percentage of the original investment credit base on which the investment credit or investment tax credit for the financial services industry was allowed. The percentage used to compute the credit is based upon the level of employment in each of the two years during which the credit may be claimed compared to the level of employment in the base year. However, the credit will not be allowed for a year your average number of employees in New York State during that year is not at least 101% of your average number of employees in New York State during the base year.

Generally, the *base year* is the tax year immediately preceding the tax year in which the original investment credit was claimed. However, if the business was not in operation in New York State during that year, the base year is the tax year in which the original investment credit was claimed.

If the employment incentive credit or the employment incentive credit for the financial services industry exceeds your tax, the unused amounts may be carried over to the following ten years. If you qualify as the owner of a new business, you may elect to have the excess refunded.

To claim the employment incentive credit, you must complete Form IT-212-ATT, *Claim for Historic Barn Rehabilitation Credit and Employment Incentive Credit*, and attach it to your Form IT-212, *Investment Credit*, which must be filed with your Form IT-201, IT-203, IT-204, or IT-205.

To claim the employment incentive credit for the financial services industry, you must complete Form IT-252-ATT, *Employment Incentive Credit for the Financial Services Industry*, and attach it to your Form IT-252, *Investment Tax Credit for the Financial Services Industry*, which must be filed with your Form IT-201, IT-203, IT-204, or IT-205.

Long-term care insurance credit

Tax Law sections 606(aa) and 606(i)

If your business pays premiums for qualified long-term care insurance, you may be entitled to the long-term care insurance credit.

A *qualified long-term care insurance policy* is one that is:

- approved by the New York State Superintendent of Insurance under section 1117(g) of the Insurance Law; **and**
- a qualified long-term care insurance contract under section 7702B of the Internal Revenue Code (IRC). (Note: Section 7702B relates to policies for which a federal itemized deduction is allowed); **or**
- a group contract delivered or issued for delivery outside New York State; **and**
- the group contract is a qualified long-term care insurance contract under section 7702B of the IRC. The premiums paid for this insurance qualify for the credit even if the policy is not approved by the New York State Superintendent of Insurance.

A *qualified long-term care insurance contract* under section 7702B of the IRC is an insurance contract that provides only coverage of qualified long-term care services. The contract must:

- be guaranteed renewable;
- not provide for cash surrender value or other money that can be paid, assigned, pledged, or borrowed;
- provide that refunds, other than refunds on the death of the insured or complete surrender or cancellation of the contract, and dividends under the contract must be used only to reduce future premiums or increase future benefits; **and**
- generally not pay or reimburse expenses incurred for services or items that would be reimbursed under Medicare, except where Medicare is a secondary payer, or the contract makes per diem or other periodic payments without regard to expenses.

The insurance company that issued your policy should be able to tell you if the policy qualifies under section 7702B of the IRC.

The credit is equal to 20% of the premiums paid during the tax year for the purchase of or for continuing coverage under a qualifying long-term care insurance policy.

The credit is limited for part-year and nonresident individuals, estates, and trusts to the amount determined by multiplying the total credit amount by your income percentage.

The long-term care insurance credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years.

To claim this credit, you must complete Form IT-249, *Claim for Long-Term Care Insurance Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

Low-income housing credit

Tax Law sections 18, 606(x), and 606(i)

The New York State low-income housing tax credit program was established to promote the construction and rehabilitation of low-income housing in New York State. The credit program coordinates with and builds upon the federal low-income housing credit, which is provided for in section 42 of the Internal Revenue Code (IRC). The state credit, like the federal credit, is administered by the New York State Division of Housing and Community Renewal (DHCR).

The amount of the credit for each building is determined by the Commissioner of the Division of Housing and Community Renewal under Article 2-A of the Public Housing Law. The credit amount allocated to a project by the commissioner is allowed each year for 10 years. However, the project must continue to qualify as low-income housing for a 15-year compliance period to avoid a partial recapture of the credit.

If, as of the close of any tax year in the compliance period, there is a reduction in the qualified basis of the building from the previous year, you may have to recapture a part of the credit you have taken. Similarly, you may have to recapture part of the credits taken in previous years upon certain dispositions of the building or interests therein (see Form DTF-626, *Recapture of Low-Income Housing Credit*).

Effective April 7, 2009, to conform to recent changes to the federal low-income housing credit, the security bond in lieu of recapture provision has been eliminated for New York State purposes. Taxpayers will no longer be required to post a bond upon disposition of an interest in a low-income housing building if it is reasonably expected that the building will continue to qualify as an eligible low-income building for the remaining compliance period for that building.

If a building is disposed of and there is any reduction in the qualified basis of the building that results in an increase in tax for the current or subsequent tax years, the period to issue a deficiency assessment relating to a credit recapture is extended three years from the date the Commissioner of the New York State Division of Housing and Community Renewal is notified by the taxpayer that the building is no longer in compliance. For more information see the form and instructions for DTF-626, *Recapture of Low-Income Housing Credit*.

The low-income housing credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current year may be carried over for the following year or years.

To qualify for this credit the building owner must obtain a New York State low-income housing credit allocation from DHCR on Form DTF-625, *Low-Income Housing Credit Allocation and Certification*. The building owner also completes Form DTF-625-ATT, *Low-Income Housing Credit Annual Statement*. To claim the credit you must file Form DTF-624, *Claim for Low-Income Housing Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information, see the instructions for Forms DTF-625, DTF-625-ATT, DTF-624, and DTF-626. Additional information on this credit is also available from the New York State Division of Housing and Community Renewal, call 1 866-275-3427 or access the DHCR Web site at www.dhcr.state.ny.us.

Qualified emerging technology company (QETC) tax credits

The qualified emerging technology company (QETC) tax credits have been created to enhance emerging technology industries in New York State. Three tax credits are available for personal income tax taxpayers: the QETC employment credit, the QETC capital tax credit, and the QETC facilities, operations, and training credit.

A *qualified emerging technology company* is, as defined by section 3102-e of the Public Authorities Law (PAL), a company located in New York State that has a total annual product sales of \$10 million or less, and meets **either** of the following criteria:

- its primary products or services are classified as emerging technologies under section 3102-e(1)(b) of the PAL; or
- it has research and development activities in New York State and its ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified (as determined by the National Science Foundation in the most recently published results from its survey *Research and Development in Industry* or a comparable successor survey as determined by the Tax Department).

For the definition of *emerging technologies*, see the instructions for Form DTF-621, *Claim for QETC Employment Credit*, Form DTF-622, *Claim for QETC Capital Tax Credit*, or Form DTF-619, *Claim for QETC Facilities, Operations, and Training Credit*.

QETC employment credit

Tax Law sections 606(q) and 606(i)

If your business creates jobs in qualified emerging technology companies in New York State, you may be entitled to the QETC employment credit.

To qualify for the credit the average number of individuals employed full-time by the QETC in New York State, during the tax year, must be at least 101% of the QETC's base-year employment.

Base-year employment means the average number of individuals employed full-time by the company in New York State during the three tax years immediately preceding the first year in which the credit is claimed.

The amount of the credit is equal to the average number of full-time employees in New York State for the current tax year, minus the base-year employment, multiplied by \$1,000.

The credit is available for three consecutive tax years selected by your business and may be claimed for each of the three years that the eligibility requirements are met.

If the amount of any QETC employment credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

To claim this credit, you must complete Form DTF-621, *Claim for QETC Employment Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information, see TSB-M-00(2)I, *Qualified Emerging Technology Company Tax Credits (Personal Income Tax)*, and the instructions for Form DTF-621.

QETC capital tax credit

Tax Law sections 606(r) and 606(i)

If your business invests in qualified emerging technology companies in New York State, you may be entitled to the QETC capital tax credit.

The credit is computed on each qualified investment made during the tax year in a certified QETC.

A qualified investment means:

- the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest; and
- the contribution of property to a partnership in exchange for an interest in the partnership; and
- similar contributions to a business entity not in corporate or partnership form in exchange for an ownership interest in the entity.

Qualified investments **do not** include investments made by or on behalf of an owner of the QETC, including, but not limited to, a sole proprietor,

stockholder, partner, or any related person (as defined in section 465(b)(3)(C) of the Internal Revenue Code).

A certified qualified emerging technology company means a QETC that filed Form DTF-620, *Application for Certification of a Qualified Emerging Technology Company*, and has been certified as a QETC by the Commissioner of Taxation and Finance.

The QETC capital tax credit is computed on each qualified investment made during the tax year in a certified QETC and is equal to the sum of:

- ten percent of qualified investments in certified QETCs, if you certify to the Commissioner of Taxation and Finance at the time the credit is claimed that the qualified investment will not be sold, transferred, traded, or disposed of within four years from the close of the tax year in which the QETC capital tax credit is first claimed; **and**
- twenty percent of qualified investments in certified QETCs if your business certifies to the Commissioner of Taxation and Finance at the time the credit is claimed that the qualified investment will not be sold, transferred, traded, or disposed of within nine years from the close of the tax year in which the QETC capital tax credit is first claimed.

The QETC capital tax credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years.

You may have to recapture a portion of the credit originally allowed if:

- you sell, transfer, or otherwise dispose of corporate stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, **or**
- you recover an investment that was the basis for the allowance of the QETC capital tax credit.

Recapture is required if the disposal or recovery occurs during the tax year or within 48 months (for a credit at the rate of 10% of qualified investments) or 108 months (for a credit at the rate 20% of qualified investments) from the close of the tax year when the credit was allowed.

To claim this credit, you must complete Form DTF-622, *Claim for QETC Capital Tax Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information, see TSB-M-00(2)I, *Qualified Emerging Technology Company Tax Credits (Personal Income Tax)*, and the instructions for Form DTF-622.

**QETC facilities,
operations, and
training credit**Tax Law sections 606(nn)
and 606(i)

If your business incurs costs for certain facilities, operations, and employee training, you may be entitled to the QETC facilities, operations, and training credit.

To qualify for the credit the QETC must:

- have 100 full-time employees or less, with at least 75% of those employees employed in New York State;
- have a ratio of research and development funds to net sales which equals or exceeds six percent (6%) during its tax year; **and**
- have gross revenues, along with the gross revenues of its affiliates and related members, that did not exceed twenty million dollars for the immediately preceding tax year.

The amount of the credit is the sum of the following amounts:

- 18% of research and development property and costs and fees incurred in connection with emerging technology activities;
- 9% of qualified research expenses paid or incurred by your business during the tax year; **and**
- 100% of qualified high-technology training expenses paid or incurred by your business, limited to \$4,000 per employee per year.

The total amount of credit allowable to your business cannot be more than \$250,000 per year.

The credit may be claimed for four consecutive tax years; however, a business that relocates from an academic incubator facility may claim the credit for five consecutive tax years and may elect to defer the credit to the first tax year after the business relocates from the incubator facility.

Research and development (R & D) property for purposes of the research and development credit component is property that is:

- acquired by purchase as defined in section 179(d) of the IRC,
- placed in service during the tax year, and
- used in research and development in the experimental or laboratory sense.

Qualified research expenses means expenses associated with in-house research and processes, and costs associated with the dissemination of the results of the products that directly result from such research and development activities. Such costs do not include expenses for advertising or promotion through media, litigation or the challenge of another entity's intellectual property rights, or for contract expenses involving outside paid consultants.

Qualified high-technology training includes a course or courses taken and satisfactorily completed by an employee of the business at an accredited, degree-granting, post-secondary college or university in New York State that directly relate to emerging technologies and are intended to upgrade, retrain, or improve the productivity or theoretical awareness of the employee. Such course or courses may include, but are not limited to, instruction or research relating to techniques, meta, macro, or microtheoretical or practical knowledge bases or frontiers, or ethical concerns related to such activities. Such course or courses do not include classes in the disciplines of management, accounting, or the law, or any class designed to fulfill the associate, baccalaureate, graduate, or professional level of these disciplines.

If the amount of any QETC facilities, operations, and training credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

To claim this credit, you must complete Form DTF-619, *Claim for QETC Facilities, Operations, and Training Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

Rehabilitation of historic properties credit

Tax Law sections 606(oo) and 606(i)

If your business has expenses related to the rehabilitation of a depreciable certified historic structure located in New York State, you may be entitled to the rehabilitation of historic properties credit. The New York State credit is based on the federal credit allowed for the qualified rehabilitation expenditures, as defined by section 47(c)(2) of the Internal Revenue Code (IRC), related to the rehabilitation of the same certified historic structure.

A *certified historic structure*, for purposes of this credit, is defined under section 47(c)(3) of the Internal Revenue Code (IRC). Under that section, a certified historic structure is a building (and its structural components) that is listed in the National Register of Historic Places or is located in a registered historic district and certified to be of historic significance to the district.

The amount of the credit is equal to 30% of the federal credit allowed for the same tax year for a certified historic structure located in New York State. However, the total amount of New York State credit allowed cannot exceed \$100,000 per structure per tax year. There is no limit on the number of structures for which the credit may be taken.

The rehabilitation of historic properties credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current year may be carried over for the following year or years.

If the federal credit allowed for a structure in New York State is subject to federal recapture under section 50(a) of the IRC, you must recapture all or a portion of the New York State credit allowed for that structure.

To claim this credit, you must complete Form IT-238, *Claim for Rehabilitation of Historic Properties Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

Security officer training tax credit

Tax Law sections 26, 606(ii), and 606(i)

Qualified building owners employing qualified security officers may be entitled to the security officer training tax credit. The credit is administered by the New York State Office of Homeland Security (NYSOHS) which is responsible for determining the eligibility for the credit and the amount of the credit.

To qualify for this credit, the building owner must file an application with NYSOHS and receive a certificate of tax credit. The certificate will state the amount of the security officer tax credit that the building owner has qualified for.

The credit amount equals \$3,000 multiplied by the sum of the number of qualified security officers providing protection for a building or buildings owned by a qualified building owner. In the case of a qualified security officer not employed for a full year, the amount of the credit is prorated to reflect the length of employment.

If the amount of any security officer training credit is in excess of your New York State tax liability, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).

To claim this credit you must complete Form IT-631, *Claim for Security Officer Training Tax Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

For more information, visit the New York State Office of Homeland Security Web site (www.security.state.ny.us).

Special additional mortgage recording tax credit

Tax Law section 606(f)(3)

If your business paid the special additional mortgage recording tax to record a mortgage on real property located in New York State you may be entitled to the special additional mortgage recording tax credit for the amount of the special additional mortgage recording tax paid.

No credit is allowed for the special additional mortgage recording tax paid on residential mortgages if the real property is located in Erie county or any

of the counties within the Metropolitan Commuter Transportation District (MCTD). The MCTD includes New York City (the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island)), and the counties of Rockland, Nassau, Suffolk, Orange, Putnam, Dutchess, and Westchester.

A *residential mortgage*, for purposes of this credit, means a mortgage of real property principally improved by one or more structures containing a total of not more than six **residential** dwelling units, each with its own separate cooking facilities.

If the amount of the special additional mortgage recording tax credit exceeds your tax for the tax year, any amount of credit exceeding the tax may be carried over to the following year or years, or you can elect to treat the unused amount of credit as an overpayment of tax to be credited or refunded (without interest). However, you cannot receive a refund of any credit carried over from a prior year.

To claim this credit, you must complete Form IT-256, *Claim for Special Additional Mortgage Recording Tax Credit*, and attach it to your Form IT-201, IT-203, IT-204, or IT-205.

**Credits available
to New York S
corporation
shareholders**

Tax Law section 606(i)

Shareholders in a New York S corporation may claim a credit against their personal income tax for their distributive share or pro rata share of the following credits that the New York S corporation is entitled to:

- alternative fuels credit
- automated external defibrillator credit
- biofuel production credit
- brownfield credits
- clean heating fuel credit
- Empire State commercial production credit
- Empire state film production credit
- empire zone (EZ) and qualified empire zone enterprises (QEZE) credits
- employment of persons with disabilities credit
- farmers' school tax credit
- green buildings credit

- handicapped-accessible taxicabs and livery service vehicles credit
- historic barn rehabilitation credit
- investment tax credits
- employment incentive credits
- long-term care insurance credit
- low-income housing credit
- qualified emerging technology company (QETC) credits
- rehabilitation of historic properties credit
- security officer training tax credit
- special additional mortgage recording tax credit *

***Note:** A New York S corporation may claim a credit for this tax directly on its New York State S corporation tax return. Therefore, a shareholder of an S corporation may **not** claim the credit on his or her personal income tax return.

A New York S corporation must provide its shareholders with information to enable the shareholders to claim the credit. For more information, see the instructions for Form CT-3-S, *New York S Corporation Franchise Tax Return*.

To claim any of these credits, or to carry over these credits from prior years, the New York S corporation shareholder must use the forms identified under the appropriate subject headings on the preceding pages.

New York State tax credits and the taxes they are applied against			
Credit	NYS personal income tax	NYS minimum income tax	NYS separate tax on lump-sum distributions
Alternative fuels credit ⁴	X		
Automated external defibrillator credit ¹	X		
Biofuel production credit ²	X	X	X
Brownfield Credits:			
Redevelopment tax credit ²	X	X	X
Remediated brownfield credit for real property taxes ²	X	X	X
Environmental remediation insurance credit ²	X	X	X
Clean heating fuel credit ²	X	X	X
Conservation easement tax credit ²	X	X	X
Empire State commercial production credit ³	X	X	X
Empire State film production credit ²	X	X	X
Empire zone (EZ) credits:			
EZ capital tax credit ¹⁰	X	X	X
EZ wage tax credit ⁹	X		
EZ wage tax credit - refundable portion ⁵	X		
EZ investment tax credit ⁶	X	X	X
EZ investment tax credit - refundable portion ⁵			
EZ investment tax credit - financial services industry ⁶	X		
EZ investment tax credit - financial services industry - refundable portion ⁵	X	X	X
EZ employment incentive credit ¹⁰	X		
EZ employment incentive credit - refundable portion ⁵		X	X
EZ employment incentive credit - financial services industry ¹⁰	X		
EZ employment incentive credit - financial services industry - refundable portion ⁵	X	X	X
Employment of persons with disabilities credit ⁴	X		
Employment incentive credit ⁷	X		
Employment incentive credit - refundable portion ⁵	X	X	X
Employment incentive credit - financial services industry ⁷	X		
Employment incentive credit - financial services industry - refundable portion ⁵	X	X	X
Farmers' school tax credit ²	X	X	X
Fuel cell electric generating equipment credit ⁷	X		
Green buildings credit ⁴	X		
Credit for taxicabs and livery service vehicles accessible to persons with disabilities ⁴	X		
Historic barn rehabilitation credit ⁷	X		
Historic barn rehabilitation credit - refundable portion ⁵	X	X	X
Investment credit ⁷	X		
Investment credit - refundable portion ⁵	X	X	X
Investment credit - financial services industry ⁷	X		
Investment credit - financial services industry - refundable portion ⁵	X	X	X
Long-term care insurance credit ⁴	X		
Low-income housing credit ⁴	X		
Qualified emerging technology company (QETC) tax credits:			
QETC employment credit ²	X	X	X
QETC capital tax credit ⁴	X		
QETC facilities, operations, and training credit ²	X	X	X

New York State tax credits and the taxes they are applied against

Credit	NYS personal income tax	NYS minimum income tax	NYS separate tax on lump-sum distributions
Qualified empire zone enterprise (QEZE) tax credits: QEZE credit for real property taxes ² QEZE tax reduction credit ¹	X X	X	X
Rehabilitation of historic properties credit ⁴	X	X	X
Security officer training credit ²	X	X	X
Special additional mortgage recording tax credit ⁸	X	X	X

1. If the credit exceeds the tax, the excess will not be refunded and cannot be carried forward to future years.
2. If the credit exceeds the tax, the excess will be treated as an overpayment of tax to be credited or refunded (without interest).
3. If the amount of the credit(s) exceeds the taxpayer's tax for the year, 50% of the excess will be treated as an overpayment of tax to be credited or refunded (without interest) and the balance not credited or refunded will be carried over to the next succeeding tax year. Any amount of the credit(s) carried over to the next succeeding tax year that exceeds the taxpayer's tax for that year will be treated as an overpayment of tax to be credited or refunded (without interest).
4. If the credit exceeds the tax, the excess will not be refunded but may be carried over to future years for an unlimited duration.
5. If the credit exceeds the tax, a taxpayer in a new business may qualify to claim a refund.
6. If the credit exceeds the tax, the excess will not be refunded but may be carried over to future years for an unlimited duration. However, if the business is decertified prior to 2009, the carry forward is limited to 7 years. If the business is decertified during the recertification process in 2009, there is no carryover allowed from a prior tax year.
7. If the credit exceeds the tax, the excess will not be refunded but may be carried forward for a limited duration.
8. If the credit exceeds the tax, the excess is eligible to be refunded or carried forward to future years. Carryover amounts from previous years are not eligible to be refunded and must be carried forward to future years.
9. The total credit used in the current tax year may not exceed 50% of the tax due for the current year. Any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted for the following year or years. However, if the business is decertified, there is no carryover allowed from a prior tax year.
10. If the credit exceeds the tax, the excess will not be refunded but may be carried over to future years for an unlimited duration. However, if the business is decertified, there is no carryover allowed from a prior tax year.



The New York State Department of Taxation and Finance

The place for all electronic services

Visit our Online Tax Center, your gateway to all electronic services.

Use the Online Tax Center to make payments, file certain returns, view account information, and more. Access is available 24 hours a day, 7 days a week (except for scheduled maintenance).

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Notes

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Need help?



Internet access: www.nystax.gov

Access our Answer Center for answers to frequently asked questions; check your refund status; check your estimated tax account; download forms, publications; get tax updates and other information.



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



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

Refund status: (518) 457-5149
In-state callers without free long distance: 1 800 443-3200
(Automated service for refund status is available 24 hours a day, 7 days a week.)

Personal Income Tax Information Center: (518) 457-5181
In-state callers without free long distance: 1 800 225-5829
To order forms and publications: (518) 457-5431
In-state callers without free long distance: 1 800 462-8100



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



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, call the information center.