1989

Instructions for Form IT-212 Investment Credit

IT-212-I

General Instructions

Who Must File

File Form IT-212 if you are an individual, a beneficiary or fiduciary of an estate or trust, a member of a partnership or a shareholder of an S corporation, and:

— you are claiming the investment credit; or

— you are claiming a carryover of unused investment credit, retail enterprise credit or research and development credit from a prior period; or

— you had an early disposition of property for which the investment credit, retail enterprise credit or research and development credit was allowed in a prior year.

An estate or trust that divides the credit or tax on early dispositions among itself and its beneficiaries must attach Form IT-212 to Form IT-205 showing each beneficiary's share of the credit or tax on early dispositions.

A partnership must file Form IT-212 with Form IT-204 showing the partnership's total investment in qualified property or total early dispositions of qualified property.

An S corporation does not have to file Form IT-212. It must file Form CT-42 or Form CT-46. If you are a shareholder in an S corporation that has made the election under section 660 of the Tax Law, obtain your share of the corporation's credit or tax on early dispositions of qualified property from the corporation.

The additional investment tax credit figured on Form CT-46, Schedules C and D, is not allowed to an electing New York S Corporation or its shareholders under Article 22 of the Tax Law.

Qualifying Investment Credit Property — The credit is allowed for investment in new or used tangible personal property or other tangible property (including buildings and structural components of buildings) that:

— is acquired, constructed, reconstructed or erected by the taxpayer after December 31, 1968;

— is depreciable under section 167 or section 168 of the Internal Revenue Code;

— has a useful life of 4 years or more;

— is acquired by purchase as defined in section 179(d) of the Internal Revenue Code;

— is located in New York State; and

— is one of the types of property defined as follows:

Manufacturing and Production Property — is property principally used by the taxpayer in the production of goods by manufacturing,* processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing.

* For this purpose, manufacturing means the process of working raw materials into wares suitable for use or of giving new shapes, new quality or new combinations to matter which has already gone through some artificial process by the use of machinery, tools, appliances and other similar equipment.

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

Retail enterprise property — if your business is a retail enterprise*, you may claim a credit for qualified rehabilitation expenditures paid or incurred on or after June 1, 1981, for a qualified rehabilitated building if:

— you are eligible to claim the federal investment credit solely by reason of Internal Revenue Code sections 46 (a) (3), 48(a)(1)(E) and 48(g), which provide for a credit for that portion of the basis of a qualified rehabilitated building that relates to qualified rehabilitation expenditures;

— the qualified rehabilitated building is located in New York State; and

— the expenditures are paid or incurred for the portion of the qualified rehabilitated building used by you in the retail sales activity of your retail enterprise.

Waste treatment property — is property used for the treatment, neutralization or stabilization of industrial waste and other waste (as defined by the Environmental Conservation Law) from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities. Waste treatment property does not include facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable.

Pollution control property — is property used to remove, reduce or render less noxious air contaminants emitted from an air contamination source (as defined by the Environmental Conservation Law) from a point immediately preceding the point of such removal, reduction or rendering to the point of discharge of air and meeting emission standards as established by the Department of Environmental Conservation. Pollution control property also includes acid deposition control equipment. Pollution control property does not include facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable, or facilities which rely for their efficiency on dilution, dispersion or assimilation of air contaminants in the surrounding air after emission.

Research and development property — is property used for the purpose of research and development in the experimental or laboratory sense. Do not include property used for the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

* For this purpose, retail enterprise means a taxpayer that is a registered vendor for New York State sales tax, is primarily engaged in the retail sale of tangible personal property and is eligible for the federal investment credit under Internal Revenue Code section 38. See section 606(a)(11) of the Tax Law.

Credits Not Allowed

You cannot claim the investment credit if:

— You are the lessor or lessee of qualifying property. If you made a safe harbor election (before January 1, 1984) under section 168(f)(8) of the Internal Revenue Code as it was in effect prior to January 1, 1984, you are not considered a lessee. **Exception:** If you are a lessee and in fact the beneficial owner of qualifying property, you may be able to claim the investment credit (section 606(a)(4) of the Tax Law).

— Your industrial waste treatment or air pollution control facilities have not been certified by the New York State Commissioner of Environmental Conservation or his or her designated representative as complying with the Environmental Conservation Law, the Public Health Law and the State Sanitary Code.

— You elected to claim an EDZ investment tax credit under Tax Law section 606(j) for qualifying property placed in service in an economic development zone (pursuant to Article 18-B of the General Municipal Law).

When Allowed

The credit is allowed only for the taxable year in which qualified property is placed in service. However, if all of the credit cannot be used in the year the property is placed in service you may carry over the unused amount to the following 7 years (see *Carryover of Unused Investment Credit* below).

Investment Credit Base

The investment credit is figured on the investment credit base. The investment credit base is the cost or other basis of the qualified property for federal income tax purposes. If you are required to reduce your federal basis by one-half of the federal investment credit, then you must use that reduced basis for computing your New York State investment credit. Do not include any amount that was expensed under section 179(a) of the Internal Revenue Code. The basis of qualified property must include the remaining basis of other property exchanged or traded in for it. If a credit was previously allowed on the property exchanged or traded in, a disposition of property has occurred and you may have to figure a tax on early dispositions (see Part III instructions).

If qualified property is acquired to replace insured property that was stolen or destroyed by fire, storm, shipwreck or other casualty, the basis of the replacement property is its cost reduced by any amount of gain not recognized for federal income tax purposes because the insurance proceeds were invested in the replacement property.

If the qualified property is purchased using nonqualified nonrecourse financing, the investment credit base must be reduced by the amount of financing that would be excludable from the credit base pursuant to section 46(c)(8) of the Internal Revenue Code. If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to the property, the net decrease is to be treated as the cost or other basis of qualified property acquired, constructed, reconstructed or erected during the year of the decrease.

Carryover of Unused Investment Credit

If you cannot claim all of your 1989 credit because it is more than your New York State tax less other credits, you can carry over the unused amount to the following 7 years, or, if you are the owner of a new business, you may qualify for a refund (see *Refundable Unused Investment Credit* below).

Any unused investment credit, retail enterprise credit or research and development credit carried over from tax years prior to 1987 may be carried over until the 1993 tax year.

Refundable Unused Investment Credit

If you are a sole proprietor or a partner in a new business, you can claim a refund of your unused credit instead of carrying over the unused amount to next year.

You can make this election in only one of the first four years that you operate your new business.

You **cannot** claim a refund of unused credit if:

— You have previously claimed a refund of unused credit; or

— You have operated your new business in New York State for more than four years before the day your tax year began; or

— Your new business is substantially similar in operation and ownership to a business that:

a. is (or was) subject to any of the following taxes:

- franchise tax on transportation and transmission corporations and associations;
- additional franchise tax on transportation and transmission corporations and associations;
- franchise tax on farmers, fruit growers and other like agricultural corporations organized and operated on a cooperative basis;
- franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies;
- franchise tax on business corporations;
- franchise tax on banking corporations; or
- franchise tax on insurance corporations;

b. would have been subject to the New York State unincorporated business tax (as such tax was in effect on January 1, 1980); or

c. had income or losses that are (or were) included in computing your New York State personal income tax.

If you are a shareholder of an S corporation that has an election in effect under section 660 of the Tax Law, and the S corporation qualifies as a new business as defined in section 210.12(j) of the Tax Law, you may qualify to have the excess credit which relates to your pro rata share of the corporation's credit refunded, provided you have not previously received a refund of any investment credit or retail enterprise credit.

Early Disposition of Property — Tax on Early Dispositions

If property on which the investment credit, retail enterprise credit, or research and development credit was taken is disposed of or removed from qualified use before its useful life or specified holding period ends (see instructions for Part III), 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 tax on early dispositions by the interest rate in effect on the last day of your tax year. The interest rate is not compounded. However, if the property was in qualified use for more than 12 consecutive years, the add-backs for tax and interest on early dispositions are not required. Disposition of property also includes:

— the contribution of property to a partnership or corporation, unless a substantial interest in the ownership of the trade or business is retained by the transferor;

— the sale by a partner of his interest in a partnership;

— a reduction in the proportionate stock interest of an electing New York S corporation shareholder;

— conversion of property to personal use;

— a change in use whereby the property is not used in the production of goods or as an air pollution control facility, a water pollution control facility, acid deposition control equipment or a research or development facility;

— a change in the location of the property to a situs outside New York State;

— an exchange of property for other property of like kind (including a trade-in of property);

— the theft or destruction of property;

— the revocation of a certificate of compliance for air pollution control property;

— an increase in nonqualified nonrecourse financing (but the tax only applies for the portion of such increase); and

— certain acquisition transactions (see Form IT-244).

Ordinarily, transfers by reason of death are **not** dispositions of property.

Use Part III of Form IT-212 to figure your tax on early dispositions.

Line-by-Line Instructions

Individuals: Complete Parts I, II and III
Fiduciaries: Complete Parts I, II, III and IV
Partnerships: Complete Parts II and III
Shareholders of S corporation: Complete Parts I, II and III

Part I — Computation of Investment Credit

Individual or fiduciary

Line 1 - Enter your credit for investment in manufacturing and production, retail enterprise, waste treatment and pollution control property from Part II, column F. See Part II instructions.

Line 2 - Enter your credit for investment in research and development property from Part II, column G. See Part II instructions.

Beneficiary

Line 3 - Enter your share of the credit for investments in manufacturing and production, retail enterprise, waste treatment and pollution control property made by estates and trusts (from fiduciary's Form IT-212, Part IV, column C).

Line 4 - Enter your share of the credit for investments in research and development property made by estates and trusts (from fiduciary's Form IT-212, Part IV, column E).

Partner

Line 5 - Enter your share of the credit for investments in manufacturing and production, retail enterprise, waste treatment and pollution control property made by partnerships (from Form IT-204, Schedule B, Part III, line 18).

Line 6 - Enter your share of the credit for investments in research and development property made by partnerships (from Form IT-204, Schedule B, Part III, line 19).

S corporation shareholder

Line 7 - Enter your share of the credit for investments in manufacturing and production, retail enterprise, waste treatment and pollution control property made by S corporations (from Form CT-3-S, Schedule B, Part II, line 34).

Line 8 - Enter your share of the credit for investment in research and development property made by S corporations (from Form CT-3-S, Schedule B, Part II, line 35).

Line 10 - Enter the amount of credit that was allocated to beneficiaries in Part IV, columns C and E.

Line 12 - Enter the amount of unused investment credit, retail enterprise credit or research and development credit from prior years.

Individual or fiduciary

Line 14 - Enter your tax on early dispositions from Part III, line 5, column J. See Part III instructions.

Beneficiary

Line 15 - Add together your share of tax on early dispositions made by estates and trusts from the fiduciary's Form IT-212, Part IV, columns D and F, and enter the total on line 15.

Partner

Line 16 - Enter your share of tax on early dispositions made by partnerships from the partnership's Form IT-204, Schedule B, Part III, line 20.

S corporation shareholder

Line 17 - Enter your share of tax on early dispositions made by S corporations from the S corporation's Form CT-3-S, Schedule B, Part II, line 36.

Line 19 - Enter the total amount of tax on early dispositions that was allocated to beneficiaries from columns D and F of Part IV.

Line 21 - If line 20 is more than line 13, subtract line 13 from line 20. Individuals — enter the difference on line 21 and also enter it on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12. Fiduciaries — enter the difference on line 21 and also add it to any amount shown on Form IT-205, front page, line 12. If line 13 is more than line 20, enter the difference on line 21 and continue to line 22.

Line 22 - Enter your New York State tax from Form IT-201, line 52, or Form IT-203, line 58; or Form IT-205, line 10 if a resident or line 11 if a nonresident or part-year resident. Do **not** include any amount of minimum income tax or separate tax on lump-sum distributions on line 22.

Line 23 - Individuals - Enter the total amount of other credits from worksheet, line 7, below.

Worksheet:

1. Resident credit *(from Form IT-201-ATT, line 1)* 1. ____________
2. Accumulation distribution credit *(from Form IT-201-ATT, line 2, or Form IT-203-ATT, line 2)* 2. ____________
3. NY State child and dependent care credit *(from Form IT-201, line 53, or Form IT-203, line 53)* 3. ____________
4. Household credit *(from Form IT-201, line 54 or Form IT-203, line 54)* 4. ____________
5. EDZ capital corporation credit *(from Form DTF-602, Schedule B, line 9)* 5. ____________
6. EDZ wage tax credit *(from Form DTF-601, Schedule E, line 38)* 6. ____________
7. **Total other credits** *(add lines 1 through 6; enter here and on Form IT-212, line 23)* 7. ____________

Fiduciaries - Enter the total of resident credit and accumulation distribution credit.

Line 25 - Enter the smaller of line 21 or line 24. Transfer this amount to Form IT-201-ATT, line 3; Form IT-203-ATT, line 3, or Form IT-205, front page, line 12.

Line 26 - If line 21 is larger than line 24, enter the difference on this line. This is your investment credit carryover.

Line 27 - If you own a new business and want to claim a refund for the amount of your unused credit instead of carrying it over to the next year, enter the amount from line 26 on line 27 and on Form IT-201-ATT, line 20; Form IT-203-ATT, line 20; or Form IT-205, front page, line 29. Do not include a carryover from a previous year; you cannot have a refund of that portion. If you claim a refund of the credit, you cannot carry the credit over to 1989.

Line 28 - Subtract line 27 from line 26. Enter the difference on line 28 and on Form IT-201-ATT, line 21 or Form IT-203-ATT, line 21. This is your investment credit carryover available for 1990.

Part II — Investments in Qualified Property

Fill in columns A through G for qualified property that was placed in service during 1989. Enter in column D the property's useful life under section 167 of the Internal Revenue Code even if the property is subject to the provisions of section 168 of the Internal Revenue Code.

Column F - Multiply column E amount by the credit rate from Table **A.**

Column G - Multiply column E amount by the credit rate from Table **B.**

Use the rate that was in effect when the qualified property was acquired, constructed, reconstructed or erected. If acquisition of property began in one rate period and ended in another, apply to the investment credit base of the property acquired in each rate period the rate in effect for that period. Show your computations on an attached schedule.

If qualifying property was disposed of or was not in qualified use at the end of the taxable year it was placed in service, figure the amount of credit to claim as follows:

— For depreciable property under section 167 of the Internal Revenue Code, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is the number of months of useful life of the property.

— For property subject to the provisions of section 168 of the Internal Revenue Code, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is:

- 36 for 3-year property;
- the number of months you chose for buildings or structural components of buildings; or
- 60 for all other classes of property.

Part III — Early Dispositions of Qualified Property and Tax on Early Dispositions

Fill in columns A through J if you have claimed the credit on property that was disposed of or was removed from qualified use (a) during 1989, and (b) prior to the end of its useful life or specified holding period. Do **not** include property that has been in qualified use for more than 12 consecutive years.

Enter in column D:

— For depreciable property under section 167 of the Internal Revenue Code, the number of months of useful life of property.

— For recovery property under section 168 of the Internal Revenue Code:

- 36 for 3-year property;
- The number of months you chose for buildings or structural components of buildings; or
- 60 for all other classes of property.

Enter in column E the number of months that the property was not in qualified use.

Line 3 - Multiply the amount on line 2 of columns H and J by the interest rate in effect on the last day of your tax year. The interest rate is not compounded. For 1989 calendar-year taxpayer(s), the rate is 9% (.09). Fiscal-year taxpayers — obtain the interest rate in effect on the last day of your fiscal year by calling toll free (from New York State only) 1 800 CALL TAX (1 800 225-5829). From areas outside New York State call (518) 438-8581.

Part IV — Beneficiary's and Fiduciary's Share of Investment Credit and Tax on Early Dispositions

If an estate or trust allocates or assigns the credit or tax on early dispositions to its beneficiaries, base the division on each beneficiary's proportionate share of qualified investments made by the estate or trust.