New York State Department of Taxation and Finance

Instructions for Form IT-212

Investment Credit

IT-212-I

New for 2002

Investment tax credit relief for property destroyed as a direct result of the terrorist attack of September 11, 2001 — The Tax Law has been amended to provide taxpayers with an election by which they choose either to defer the required recapture for all qualifying property destroyed as a direct result of the terrorist attacks of September 11, 2001, or not to make the basis reduction required by the Internal Revenue Code (IRC) for property that replaces the destroyed property. The election is made when the return for the recapture event tax year (the year in which the destruction or cessation of qualified use occurred) is filed, by including or not including the recapture on that return. For more information, see TSB-M-02(7)I.

If you chose to defer the amount to be recaptured on last year's return, see *Early disposition of property and addback of credit on early dispositions as a direct result of the terrorist attacks of September 11, 2001,* on page 2.

If you chose not to defer the amount to be recaptured on last year's return and are now claiming the investment tax credit for any replacement property, see *Investment credit base for replacement property that is similar or related in service or use to property destroyed as a direct result of the terrorist attacks of September 11, 2001,* on page 2.

General information

Form IT-212 is used to claim an investment credit (including the employment incentive credit) for qualified property used in manufacturing and production, retail enterprise, waste treatment, pollution control, research and development, or for qualified expenditures incurred in the rehabilitation of a historic barn (attach Form IT-212-ATT to Form IT-212).

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 (including the historic barn or the employment incentive credit); or

— you are claiming a carryover of unused investment credit for manufacturing and production, retail enterprise, waste treatment, pollution control, and research and development property 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 addback of credit 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 addback of credit 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 file Form IT-212. It must file 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 addback of credit on early dispositions of qualified property from the corporation.

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 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

— 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 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 IRC sections 46(1) and 47, 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.

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 IRC section 38. See section 606(a)(11) of the Tax Law.

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 that 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 that are usable in the manufacturing process or are marketable, or facilities that 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.

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 IRC as it was in effect before 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 by 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 EZ investment tax credit under Tax Law section 606(j) for qualifying property placed in service in an empire zone (pursuant to Article 18-B of the General Municipal Law).

When allowed

The credit is allowed only for the tax 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 ten 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. Do not include any amount that was expensed under section 179(a) of the IRC. 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 an addback of credit on early dispositions (see Part IV 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.

Investment credit base for replacement property that is similar or related in service or use to property destroyed as a direct result of the terrorist attacks of September 11, 2001 — If replacement property is acquired that is similar or related in service or use to the property destroyed as a direct result of the terrorist attacks of September 11, 2001, and you chose not to defer the required amount to be recaptured, the investment credit base of the replacement property is computed without regard to any basis reduction required by IRC section 1033. For more information, see TSB-M-02(7)I.

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 49(a)(1) of the IRC. If, at the close of a tax year following the tax year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to the property, the net decrease is to be treated as the cost or other basis of qualified property acquired, constructed, reconstructed, or erected during the year of the decrease.

Carryover of unused investment credit

If you cannot claim all of your 2002 credit because it is more than your New York State tax less other credits, you can carry over the unused amount to the following ten 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 carried over from tax years prior to 1992 may not be claimed on your 2002 Form IT-212.

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 only during the first five years that you operate your new business.

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

— You have operated your new business in New York State for more than five years, excluding short years of the business, or

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

1. 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;
2. would have been subject to the New York State unincorporated business tax (as such tax was in effect on January 1, 1980); or
3. 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 that relates to your pro rata share of the corporation's credit refunded.

Early disposition of property — addback of credit 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 IV), 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 addbacks for credit and interest on early dispositions are not required. Disposition of property also includes:

— a sale of property;

— 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 or her interest in a partnership;

— a gift of property;

— 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; and

— an increase in nonqualified, nonrecourse financing (but the addback of credit only applies for the portion of such increase).

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

Early disposition of property and addback of credit on early dispositions as a direct result of the terrorist attacks of September 11, 2001 — If you chose to defer the amount to be recaptured on last year's return due to the terrorist attacks of September 11, 2001, the recapture amount must be augmented with interest computed at a rate equal to two times the underpayment interest rate in effect on the last day of the tax year in which the recapture occurs. However, a taxpayer making this election that meets the employment test (Worksheet A) is not required to recapture any investment tax credit for the qualifying property. In addition, if 50% or more of an electing taxpayer's employees died as a direct result of the terrorist attacks, the employer is not required to recapture any investment tax credit for the qualifying property. For more information, see TSB-M-02(7)I.

Worksheet A *(see instructions below)*

A Year	**B** March 31	**C** June 30	**D** Sept. 30*	**E** Dec. 31**	**F** Total (B+C+D+E)
1. Total employment number in NYS for the second year preceding the recapture event tax year. Year ______					
2. Total employment number in NYS for the year immediately preceding the recapture event tax year. Year ______					
3. Total employment number in NYS for the recapture event tax year. Year ______					
4. Three-year total (the total of column F).					

*If the tax year includes September 11, 2001, the total employment number is computed by substituting September 1, 2001, for September 30, 2001.

**If the tax year includes December 31, 2001, the total employment number is computed by excluding the total employment number on December 31, 2001.

Column A – Enter the recapture event tax year on line 3 of column A. Enter the two preceding tax years on line 1 and line 2 of column A.

Columns B through E – Enter the total employment number on each date.

A. Enter the amount from Worksheet A, line 4, column F A. ______

B. Enter the number of dates in the three-year period where an employment number was entered above (lines 1, 2, and 3, columns B, C, D, and E) B. ______

C. Divide line A by line B C. ______

D. Total employment number in New York State on the last day of the tax year next succeeding the recapture event tax year D. ______

E. Divide line D by line C E. ______

If line E is 75% (.75) or greater, no recapture is required. Attach Worksheet A to Form IT-212.

If line E is less than 75% (.75) you must compute a recapture in Part IV of Form IT-212.

Use Part IV of Form IT-212 to figure your addback of credit on early dispositions.

Line instructions

Individuals: complete Parts I, II, III, and IV.
Fiduciaries: complete Parts I, II, III, IV, and V.
Partnerships: complete Parts III and IV.
Beneficiaries of estates and trusts, partners, and shareholders of S corporations: complete Parts I and II.

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 III, column F. See Part III instructions.

Line 2 — Enter your credit for investment in research and development property from Part III, column G. See Part III 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 V, 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 V, column D).

Partner

Line 5 — Enter your share of the total credit for investments in manufacturing and production, retail enterprise, waste treatment, and pollution control property made by partnerships (the total credit is shown on Form IT-204, Schedule B, Part II, line 15). This information should be provided to you by your partnership.

Line 6 — Enter your share of the total credit for investments in research and development property made by partnerships (the total credit is shown on Form IT-204, Schedule B, Part II, line 16). This information should be provided to you by your partnership.

S corporation shareholder

Line 7 — Enter your share of the total credit for investments in manufacturing and production, retail enterprise, waste treatment, and pollution control property made by S corporations. This information should be provided to you by your S corporation.

Line 8 — Enter your share of the credit for investment in research and development property made by S corporations. This information should be provided to you by your S corporation.

Line 10 — Enter the amount of credit that was allocated to beneficiaries in Part V, columns C and D.

Line 12 — Enter the amount of net credit available for carryover to 2002. The net credit available for carryover is that portion of your prior year's investment credit from 2001 Form IT-201-ATT, line 46; 2001 Form IT-203-B, line 32; or 2001 Form IT-205, line 10 that was not applied to your 2001 tax and was allowed after 1991.

Line 14 — If you own a new business and want to claim a refund for the amount of your credit instead of carrying it over to the next year, enter the amount from line 13 on line 14 and on Form IT-201-ATT, line 69; Form IT-203-B, line 54; or Form IT-205, line 33. 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 2003.

Line 15 — Subtract line 14 from line 13. Enter the difference on line 15 and on Form IT-201-ATT, line 47; or Form IT-203-B, line 33; or Form IT-205, line 10. This is your nonrefundable investment credit available for 2002.

Part II — Summary of addback of credit on early dispositions

Individual

Line 16 — Enter your addback of credit on early dispositions from Part IV, line 6, column H. See Part IV instructions.

Beneficiary

Line 17 — Enter your share of addback of credit on early dispositions made by estates and trusts from the fiduciary's Form IT-212, Part V, column E, on line 17.

Partner

Line 18 — Enter your share of the total addback of credit on early dispositions made by partnerships (the total is shown on the partnership's Form IT-204, Schedule B, Part II, line 17). This information should be provided to you by your partnership.

S corporation shareholder

Line 19 — Enter your share of addback of credit on early dispositions made by S corporations. This information should be provided to you by your S corporation.

Fiduciary

Line 20 — Enter your share of addback of credit on early dispositions from Part V, *Fiduciary* line, column E.

Line 21 — Individuals — enter the amount from line 21 on Form IT-201-ATT, line 18, or Form IT-203-B, line 2. Fiduciaries — enter the amount from line 21 on Form IT-205, line 12.

Part III — Investments in qualified property

Fill in columns A through G for qualified property that was placed in service during 2002. Enter in column D the property's useful life under section 167 of the IRC even if the property is subject to the provisions of section 168 of the IRC.

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 tax year it was placed in service, figure the amount of credit to claim as follows:

— For depreciable property under section 167 of the IRC, 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 IRC, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is:

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

Part IV — Early dispositions of qualified property and addback of credit on early dispositions

Fill in columns A through H if you have claimed the credit on property that was disposed of or was removed from qualified use (a) during 2002, 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.

If you are not required to compute an addback of credit on property destroyed as a direct result of the terrorist attack of September 11, 2001, because you meet the employment test in Worksheet A or the 50% test (see *Early disposition of property and addback of credit on early dispositions as a direct result of the terrorist attacks of September 11, 2001,* on page 2), attach a copy of Worksheet A or a statement explaining that you meet the 50% test.

Enter in column D:

— For depreciable property under section 167 of the IRC, the number of months of useful life of property.

— For recovery property under section 168 of the IRC:

- 36 for three-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 4 — Enter on line 4 the applicable underpayment interest rate in effect on the last day of your tax year:

- If you are a 2002 calendar-year taxpayer, the underpayment rate is 6% (.06).
- If you are a fiscal-year taxpayer, you can obtain the underpayment interest rate in effect on the last day of your fiscal year by calling toll free 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.
- If you are computing an addback of credit on early dispositions because you elected to defer the amount to be recaptured on qualified property destroyed as a direct result of the terrorist attacks of September 11, 2001, and you failed to meet the employment test in *Worksheet A* or the 50% test (see *Early disposition of property and addback of credit on early dispositions as a direct result of the terrorist attacks of September 11, 2001,* on page 2), you must compute the underpayment interest rate at a rate equal to two times the underpayment interest rate in effect on the last day of the tax year in which the recapture occurs.

Part V — Beneficiary's and fiduciary's share of investment credit and addback of credit on early dispositions

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