Please Note: Recent legislation requires all taxpayers filing this form to attach a retention certificate issued by Empire State Development.

See TSB-M-09(5)C, (4)I, *Legislative Changes to the Empire Zones Program*, for details.

Form IT-605-I, *Instructions for Form IT-605 Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*, continues below.

New York State Department of Taxation and Finance

2008

Instructions for Form IT-605

Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry

IT-605-I

Changes for 2008

Chapter 637 of the Laws of 2008 amends the empire zone (EZ) investment tax credit (EZ-ITC) for the financial services industry. These new amendments codify the previous employment tests (the 80% current-year test and the 95% three-year back-office test) and add a new employment test, the 90% end-of-year test. Also, for purposes of determining whether property is principally used in qualifying usage, the property used by brokers, dealers, and registered investment advisors may now be aggregated.

In addition, the EZ-ITC has been extended to include property placed in service before October 1, 2011.

General information

For property placed in service on or after October 1, 1998, and on or before October 1, 2011, the Tax Law allows an empire zone (EZ) investment tax credit (EZ-ITC) for the financial services industry against the tax imposed by Article 22, for the tax year during which qualified property is placed in service in an EZ designated as such under Article 18-B of the General Municipal Law. The EZ-ITC allowed under Article 22 is computed at the rate of 8%. Compute the EZ-ITC by multiplying the credit rate by the cost (or other federal basis) 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. The taxpayer claiming this credit must also be certified under Article 18-B of the General Municipal Law. A copy of the documentation or certificate proving certification must be submitted by the taxpayer when claiming this credit.

In addition, to claim this credit, 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. See Schedule A for more information.

When an acquisition, construction, reconstruction, or erection is started during the period of designation and completed after the expiration of such period, the credit is computed based on the expenditures paid or incurred during the period of designation. Expenditures paid or incurred after the designated period may qualify for the ITC under Tax Law section 606(a).

Also, an EZ employment incentive credit (EZ-EIC) for increasing employment is allowed. See the instructions for completing Schedule B on page 3.

The EZ-ITC and EZ-EIC used may not reduce the personal income tax liability under Article 22 to less than zero.

Any portion of EZ-ITC or EZ-EIC that cannot be used to reduce the current year tax liability may be carried over to the following year or years until it is used up. However, a taxpayer who has been decertified may carry forward the EZ-ITC for only seven years.

An individual who pays personal income tax and qualifies as an owner of a new business may elect to have 50% of the excess EZ-ITC and EZ-EIC refunded.

Qualified property

Qualified property for the EZ-ITC is tangible property, including buildings and structural components of buildings, that:

A. was acquired, constructed, reconstructed, or erected by the taxpayer on or after the date of designation of the EZ and prior to the expiration of such designation, and on or after October 1, 1998, and on or before October 1, 2011; and

B. is depreciable according to Internal Revenue Code (IRC) section 167; and

C. has a useful life of four years or more; and

D. was acquired by the taxpayer by purchase according to IRC section 179(d); and

E. is located in an EZ; and

F. is principally used in the ordinary course of the taxpayer's business:
- 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)), 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).

It is not necessary for the users of the property to be located in the EZ. For example, a computer system placed in service in an EZ would qualify for the credit even if the brokers accessing the system are located outside the EZ.

Property leased to a broker, dealer, or registered investment advisor who is an affiliate of the taxpayer, that principally uses the property in the qualifying activities listed above, qualifies for the credit provided the broker or dealer otherwise meets the criteria for qualified property. Any contract or agreement to lease or rent, or for a license to use the property, is considered a lease. In addition, property qualifies if it meets the criteria and is purchased by the taxpayer but is principally used by a broker, dealer, or registered investment advisor who is an affiliate of the taxpayer, in the qualifying activities listed above.

For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer, the affiliated broker, dealer, and registered investment advisor may be aggregated.

A recapture of EZ-ITC and EZ-EIC 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.

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

You may elect to take the EZ-ITC on qualified property in lieu of the ITC.

Definitions

An *affiliate* is any of the following:
- A partnership in which 80% or more of the interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation in which 80% or more of the voting stock is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.
- A corporation in which 80% or more of the voting stock is owned or controlled, directly or indirectly, by the entity that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.

Commodities as referred to in these instructions are defined in IRC section 475(e)(2).

Cost is the basis of property as defined in IRC section 1012.

Life or useful life (of property) means the depreciable life as provided by IRC section 167 or 168.

Other basis means the adjusted basis for determining gain or loss used as the basis for depreciation under IRC section 167(g).

Principally used means more than 50%. A building or an addition to a building is principally used in qualifying activities when more than 50% of its usable business floor space is used in qualifying activities. Floor space used for bathrooms, cafeterias, and lounges is not usable business floor space. Equipment is principally used in qualifying activities when it is used in such activities more than 50% of its operating time. Operating time may be determined based on actual time, cost allocations to individual business units, or any other reasonable method that accurately reflects operating time.

Purchase or sale of stocks, bonds, commodities, or other securities includes, but is not limited to, the issuance, entering into, assumption offset, assignment, termination, or transfer of stocks, bonds, commodities, or other securities.

A *security* is defined in IRC section 475(c)(2).

Line instructions

See the instructions for your tax return for the *Privacy notification* or if you need help in contacting the Tax Department.

Individuals (including sole proprietors): Complete Schedule A, Schedule B, and Schedule G. If applicable, also complete Schedule F and Schedule H. Schedule H should only be completed if you elect to claim the refund for a new business. For the definition of an *owner of a new business,* see the instructions for line 33.

Fiduciaries: Complete Schedule A, Schedule B, Schedule E, and Schedule G. If applicable, also complete Schedule F and Schedule H. Schedule H should only be completed if you elect to claim the refund for a new business. For the definition of an *owner of a new business,* see the instructions for line 33.

Partnerships: Complete Schedule A, Schedule B, and Schedule G. If applicable, also complete Schedule F.

Husband and wife business that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Complete Schedule A, Schedule B, and Schedule G. If applicable, also complete Schedule F and Schedule H. Schedule H should only be completed if you elect to claim the refund for a new business. For the definition of an *owner of a new business,* see the instructions for line 33.

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust: Complete Schedule C, Schedule D, and Schedule G. If applicable, also complete Schedule F and Schedule H. Schedule H should only be completed if you elect to claim the refund for a new business. For the definition of an *owner of a new business,* see the instructions for line 33.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-605.

Schedule A — Eligibility and investment tax credit

To claim this credit, taxpayers must meet one of the three eligibility tests described below. However, if this is your first tax year, do not complete Schedule A, Parts 1, 2, and 3. Begin with Part 4.

1. **80% current-year test —** 80% or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of the property must be located in New York State. For example, if you have a quarterly average of 1,000 employees performing the administrative and support functions during your tax year, then a quarterly average of at least 800 (1,000 x 80%) of the employees must be located in New York State. (If the property is used by an affiliate in qualifying activities, it is the affiliate that must meet the eligibility test.) If you are claiming credit based on having met the 80% current-year test, complete Schedule A, Part 1. For more information on this eligibility test, see TSB-A-03(10)C, *Morgan Stanley & Co. Incorporated.*

2. **95% three-year back-office test —** The average number of employees located in New York State performing administrative and support functions resulting from or related to the qualifying uses of such equipment during the tax year in which the property is placed in service and the credit is claimed is equal to or greater than 95% of the average number of employees performing these functions during the 36 months immediately preceding the year in which the credit is claimed. The average number of employees must be computed on a quarterly basis. (If the property is used by an affiliate in qualifying activities, it is the affiliate that must meet the eligibility test.) If you are claiming credit based on the 95% three-year back-office test, complete Schedule A, Part 2. For more information on this eligibility test, see TSB-M-98(06)I, *Tax Credits for the Financial Services Industry.*

3. **90% end-of-year test —** The number of New York State employees employed during the current tax year must be equal to or greater than 90% of your New York State employees on
   a) December 31, 1998 (if you were a calendar year filer taxable in New York in 1998); or
   b) the last day of your first tax year ending after December 31, 1998.

If a taxpayer aggregates its uses of property for the purpose of the principally used test, each affiliate may satisfy the employment test individually, or the test may be satisfied by the aggregation of the taxpayer and its affiliates.

Employees performing administrative and support functions include all employees other than brokers, dealers, or investment advisors to regulated investment companies. Generally, any employee whose compensation for the tax year is based more than 50% on commissions is presumed to be a broker, dealer, or investment advisor. However, if you do not compensate those employees who are employed as brokers, dealers, or investment advisors on a commission basis, you must specifically identify the employees performing those functions and must exclude those employees from the employment percentage calculation.

If you do not meet any of the eligibility requirements as stated above, do not complete Schedule A, Part 4. **You are not eligible for the EZ-ITC.** However, you may need to complete Schedule B if you are eligible for the EZ-EIC, and Schedule F if you need to recapture a credit previously taken. Complete Schedule G to claim the available EZ-EIC and any available carry over of credit, and complete Schedule H to claim the refund for a new business.

Schedule A — Part 1 — 80% current-year test

Use Schedule A, Part 1, if you wish to claim the credit using the 80% current-year test eligibility method.

Line 1a — Enter the number of employees who perform administrative and support functions in New York State for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) occurring during the current tax year to obtain the total number of employees in New York State for the current tax year. Divide the total by four to obtain the average number of employees in New York State for the current tax year.

Line 1b — Enter the number of employees who perform administrative and support functions everywhere for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) occurring during the current tax year to obtain the total number of employees everywhere for the current tax year. Divide the total by four to obtain the average number of employees everywhere for the current tax year.

Line 2 — Divide line 1a by line 1b to obtain the percentage of employees who perform administrative and support functions in New York State for the current tax year. If your result equals or exceeds 80%, continue with Schedule A, Part 4. You qualify for the EZ-ITC.

Schedule A — Part 2 — 95% three-year back-office test

Use Schedule A, Part 2, if you wish to claim the credit using the 95% three-year back-office test eligibility method.

Line 3a — Enter the number of employees who perform administrative and support functions in New York State for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) occurring during the current tax year to obtain the average number of employees for the current tax year.

Example 1:

Current tax year	March 31	June 30	Sept 30	Dec 31	Total
Number of administrative and support employees in New York State	*100*	*100*	*125*	*175*	*500*
3a Average number of employees in New York State for current tax year *(divide* Total *column above by four)*				4.	*125*

Line 3b — Enter the number of employees who perform administrative and support functions in New York State on each of the dates listed for the 36 months immediately preceding the year in which the EZ-ITC is claimed. Add the number of employees for the 36-month period, and divide by the number of such dates (include 0 dates) occurring during the 36-month period, to obtain the average number of employees for the 36-month test period.

Example 2:

Number of administrative and support employees in New York State during the 36-month test period	March 31	June 30	Sept 30	Dec 31	Total
A. First year	*100*	*100*	*100*	*100*	*400*
B. Second year	*50*	*75*	*75*	*100*	*300*
C. Third year	*0*	*0*	*40*	*50*	*90*
D. Total number of administrative and support employees in New York State for 36-month test period					*790*
3b *Average number of administrative and support employees in New York State for 36-month test period (divide line D above by twelve)*				*5.*	*66*

Line 4 — Divide line 3a by line 3b. If the result equals or exceeds 95%, continue with Schedule A, Part 4. You qualify for the EZ-ITC.

Schedule A — Part 3 — 90% end-of-year test

Use Schedule A, Part 3, if you wish to claim the credit using the 90% end-of-year test eligibility method.

Line 5a — Enter the number of employees in New York State for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) then divide by four to obtain the average number of employees in New York State for the current tax year.

Line 5b — If you were subject to tax in New York State for tax year 1998, enter one of the following two numbers:

a) **Calendar year filer —** enter the number of employees in New York State on December 31, 1998.

b) **Fiscal year filer —** enter the number of employees in New York State on the last day of your first fiscal year ending after December 31, 1998.

Line 6 — Divide line 5a by line 5b. If the result equals or exceeds 90%, continue with Part 4; you qualify for the credit.

Schedule A — Part 4 — EZ investment tax credit (EZ-ITC)

Note: If you are claiming an EZ-ITC for more than four properties located in the EZ, complete as many Form(s) IT-605 (name, identification number, and Schedule A, Part 4 only) as necessary. On the first Form IT-605, complete Schedules A through H, as applicable. Include in the total column E line of the first Form IT-605 the total of column E from all additional Form(s) IT-605. Attach the additional Form(s) IT-605 to the back of the first Form IT-605 that has an entry in column E.

Columns A and B: List in these columns a clear description of qualified property placed in service during this tax period and the principal use of each item of property. Describe the property in terms that a layperson could understand.

Add column E to obtain the total cost or other basis of all property claimed in this schedule, including any attached pages.

Line 7 — Multiply the total of column E by the rate of 8% (0.08) to arrive at the EZ-ITC.

Schedule B — EZ-employment incentive credit (EZ-EIC)

If you acquire, construct, reconstruct, or erect property for which an EZ-ITC is allowed, an EZ-EIC may be allowed in the following three years.

The amount of the EZ-EIC allowed is 30% of the original EZ-ITC for each of the three years following the year for which the EZ-ITC was originally allowed. However, the credit is allowed only for those years during which your average number of employees in the EZ-ITC 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 was allowed.

A taxpayer that has claimed an EZ-ITC for property purchased that is principally used by an affiliate of the taxpayer, may also be eligible for an EZ-EIC. In this case, the credit is allowed based on the taxpayer's average number of employees. The number of the affiliate's employees are not taken into consideration.

If a taxpayer did not have a tax year for New York State immediately preceding the year in which the EZ-ITC is originally allowed, the average number of employees in the EZ in the tax year in which the EZ-EIC is claimed must be at least 101% of its average number of employees in the EZ in the tax year in which the EZ-ITC was originally allowed.

A taxpayer (including partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust) may claim an EZ-EIC, applicable to any EZ-ITC computed on property placed in service on or after October 1, 1998, whether or not deductible in such tax year.

Any excess EZ-EIC that cannot be used to reduce a taxpayer's current year tax liability may be carried forward.

A taxpayer that qualifies as an owner of a new business may elect to have 50% of the excess EZ-EIC refunded. A shareholder of an S corporation will be considered the owner of a new business if the S corporation itself qualifies as a new business under section 210.12(j) of the Tax Law.

Schedule B — Part 1 — Employment information required to determine eligibility for EZ-EIC

Complete Part 1 to determine if you are eligible for the credit. If you are eligible, complete Part 2.

Column A — Enter in column A the year covered by this claim and the base year. The *base year* is the year before the year you claimed the original EZ-ITC. However, if your business was not in operation in New York State during that year, the *base year* is the year in which you claimed the EZ-ITC.

Columns B, C, D, and E — Enter the total number of employees employed within New York State on each of the dates listed that occur during your tax year.

> **Example:** *A taxpayer filing for a fiscal year beginning September 1, 2008, and ending August 31, 2009, would enter the number of employees employed in New York State on the following dates: September 30, 2008, December 31, 2008, March 31, 2009, and June 30, 2009.*

Column G — Unless you have a short tax year, divide the amount in column F by four. If you have a short tax year (a tax year of less than 12 months), divide the amount in column F by the number of dates shown in columns B through E that occur during the short tax year.

Column H — Divide the average number of employees covered by this claim by the average number of employees in the base year (column G), and round the result to the second decimal place. If the percentage in column H is at least 101% (1.01), complete Part 2 below. **If the percentage** in column H **is less than 101%, stop. You do not qualify** for the employment incentive tax credit for this year.

Schedule B — Part 2 — Computation of EZ-EIC

Use Schedule B, Part 2, to determine the amount of the EZ-EIC allowed for each year of eligibility listed in Schedule B, Part 1.

Example: *Taxpayer A acquired qualified property in 2007 at a cost of $100,000. The EZ-ITC allowed was $8,000.*

Year	*Average number of EZ employees*	*EZ-EIC available for use*
2006	*200*	*—*
2007	*not required*	*—*
2008	*202*	*$ 2,400 (30% of $8,000)*
2009	*199*	*0**
2010	*205*	*$ 2,400 (30% of $8,000)*

** In 2009, the average number of EZ employees was less than 101% of the number employed in 2006.*

Schedule C — Partnership, S corporation, and estate and trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust for which you receive a share of the EZ-ITC and EZ-EIC. If you need more space, attach a separate schedule.

Schedule D — Partner's, shareholder's, or beneficiary's share of credit

Enter your share of the total credit received from a partnership, New York S corporation, or an estate or trust. If you belong to more than one partnership, New York S corporation, or estate or trust, enter the total of all your shares on the appropriate line.

Partner Line 9 — Enter your share of the EZ-ITC and EZ-EIC from your partnership. This information should be provided to you by the partnership. If you are claiming a credit from more than one partnership, combine all amounts on line 9.

S corporation shareholder Line 10 — Enter your share of the total EZ-ITC and EZ-EIC made by the S corporation. This information should be provided to you by your S corporation. If you are claiming a credit from more than one S corporation, combine all amounts on line 10.

Beneficiary Line 11 — Enter your share of the total EZ-ITC and EZ-EIC made by estates and trusts. This information should be provided to you by your fiduciary. If you are claiming a credit from more than one estate or trust, combine all amounts on line 11.

Schedule E — Beneficiary's and fiduciary's share of credit and recapture of credit

An estate or trust must complete Schedule E. If an estate or trust allocates or assigns the credit to its beneficiaries, base the allocation on each beneficiary's proportionate share of the income of the estate or trust.

Schedule F — Computation of recapture of EZ-ITC and EZ-EIC

Note: If you are claiming a recapture of credit for more than two properties on which you previously claimed a credit, complete as many Form(s) IT-605 (name, identification number, and Schedule F only) as necessary. On the first Form IT-605, complete Schedules A through H, as applicable. Include on line 13, column H and on line 14, column I of the first Form IT-605, the total of line 13, column H and line 14, column I from all additional Form(s) IT-605. Attach the additional Form(s) IT-605 to the back of the first Form IT-605 that has an entry on line 13, column H and line 14, column I.

When property on which an EZ-ITC 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 added back to the tax otherwise due 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.

For purposes of the recapture, the termination or expiration of an EZ's designation as an EZ will not be considered a disposal or cessation of qualified use.

Section 606(j)(6) provides different formulas to compute the amount of EZ-ITC required to be recaptured.

1. For property depreciated under IRC section 167, the formula is:

$$\frac{\text{months of unused life}}{\text{months of useful life}} \times \text{original EZ-ITC allowed}$$

2. For three-year property depreciated under IRC section 168, the formula is:

$$\frac{\text{36 minus the number of months of qualified use}}{36} \times \text{original EZ-ITC allowed}$$

Recapture is only required if the property is disposed of or ceases to be in qualified use prior to the end of 36 months.

3. For property depreciated under IRC section 168, other than three-year property or buildings or structural components of buildings, the formula is:

$$\frac{\text{60 minus the number of months of qualified use}}{60} \times \text{original EZ-ITC allowed}$$

Recapture is only required if the property is disposed of or ceases to be in qualified use prior to the end of 60 months.

4. For buildings or structural components of buildings depreciated under IRC section 168, the formula is:

$$\frac{\text{months of unused life}}{\text{number of months allowed by IRC and used by taxpayer}} \times \text{original EZ-ITC allowed}$$

If qualified property has a useful life of more than 12 years, no credit need be added back if it has been in use more than 12 consecutive years.

Column G — Enter the total amount of EZ-ITC credit allowed. Include the original EZ-ITC but not any EZ-EIC allowed.

Column I — Multiply 30% of amount in column H by the number of years the EZ-EIC was allowed. If the recapture of the EZ-ITC occurred in a prior year, enter 30% of the recaptured EZ-ITC.

Line 15 — In certain instances when an EZ business has been decertified, the amount of credit to be recaptured must be augmented by an interest charge. For information on how to compute the augmented recapture amount, see TSB-M-86(13.3)C, (5.3)I, *Decertification of Economic Development Zone Business.*

Line 16 — This information should be provided to you by your partnership, S corporation, estate, or trust.

Schedule G — Computation of available EZ-ITC and EZ-EIC allowed for the current tax year or recapture amount

Line 18 — Individuals and partnerships: enter the EZ-ITC computed for the current year as shown on line 7.

Line 19 — Individuals and partnerships: enter the EZ-EIC computed for the current year as shown on line 8.

Line 20 — Partner in a partnership, New York S corporation shareholder, or a beneficiary of an estate or trust: enter your EZ-ITC and EZ-EIC as shown on line 12.

Line 21 — Fiduciaries: enter the amount from Schedule E, *Fiduciary* line, column C.

Line 23 — Enter the amount of the EZ-ITC and EZ-EIC carryover(s) from the tax year immediately preceding the current tax year.

Line 26 — If line 24 is more than line 25, subtract line 25 from line 24. This is the amount of your credit. If you are not completing Schedule H:

- **Individuals:** Enter the line 26 amount and code ***165*** on Form IT-201-ATT, line 6, or Form IT-203-ATT, line 7.
- **Partnerships:** Enter the line 26 amount and code ***165*** on Form IT-204, line 147.
- **Fiduciaries:** Include the line 26 amount on Form IT-205, line 10.

If you are completing Schedule H, continue with line 28.

Line 27 — If line 25 is more than line 24, subtract line 24 from line 25. This is your addback of EZ-ITC and EZ-EIC.

- **Individuals:** Enter the line 27 amount and code ***165*** on Form IT-201-ATT, line 20, or Form IT-203-ATT, line 19.
- **Partnerships:** Enter the line 27 amount and code ***165*** on Form IT-204, line 148.
- **Fiduciaries:** Include the line 27 amount on Form IT-205, line 12.

Do not complete Schedule H.

Schedule H — Computation of refundable portion of EZ-ITC and EZ-EIC or carryover

Line 28 — Enter the amount of EZ-ITC and EZ-EIC computed for the current year from line 22.

Line 30 — Enter the total amount of all credits that you choose to apply against your tax except for the EZ-ITC and EZ-EIC. For more information, see the instructions for Form IT-201-ATT, Part 1 or Form IT-203-ATT, Part 1.

Line 32 — Subtract line 31 from line 28 to arrive at EZ-ITC and EZ-EIC available to be carried forward to future years.

Line 33 — A new business may elect to treat 50% of the current year EZ-ITC available to be carried forward as an overpayment of tax to be refunded. In addition, an Article 22 taxpayer that qualifies as a new business may elect to have 50% of any excess EZ-EIC refunded.

The election may be made by a taxpayer qualifying as the owner of a new business under section 606(a)(10).

Owner of a new business under Article 22, section 606(a)(10), means an individual who is either a sole proprietor or a member of a partnership unless:

- The business entity of which the individual is an owner is substantially similar in operation and in ownership to a business entity:
  - — taxable or previously taxable under Tax Law Article 9-A; Article 9, section 183, 184, 185, or 186; Article 32; or Article 33.
  - — that would have been subject to tax under Article 23 (as it was in effect on January 1, 1980).
  - — with income or losses that are or were includable under Article 22 if the intent and purpose of section 606(j)(5) or section 606(k)(5) with respect to refunding of credit to new business would be evaded.
- The individual operated the new business entity in New York for more than five tax years (excluding short tax years of the business).

An *owner of a new business* under Article 22 also includes a shareholder of a New York S corporation, unless:

- The S corporation is a corporation:
  - — in which over 50% of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned or controlled either directly or indirectly by a taxpayer subject to tax under Tax Law Article 9-A; Article 9, section 183, 184, or 185; Article 32; or Article 33.
  - — that is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under Tax Law Article 9-A, Article 9, section 183, 184, 185, or 186; Article 32; Article 33; or Article 23 (the New York State unincorporated business tax as it was in effect on January 1, 1980), or that has income or losses that are or were includable under Article 22, whereby the intent and purposes of section 210.19(e) with respect to refunding of credit to new businesses would be evaded.
- The S corporation has been in operation in New York for more than five tax years (excluding short tax years of the business).

If you qualify as the owner of a new business, you must enter the lesser of 50% of line 22 or 50% of line 32.

Transfer the line 33 amount as follows:

Fiduciaries: Include the line 33 amount on Form IT-205, line 33.

All others: Enter the line 33 amount and code ***165*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12.

Line 34 — Subtract the amount on line 33 from the amount on line 26. This is the amount of your EZ-ITC and EZ-EIC that is not refundable.

- **Individuals:** Enter the line 34 amount and code ***165*** on Form IT-201-ATT, line 6, or Form IT-203-ATT, line 7.
- **Fiduciaries:** Include the line 34 amount on Form IT-205, line 10.