



Instructions for Form IT-633 Economic Transformation and Facility Redevelopment Program Tax Credit

IT-633-I

General information

The Tax Law provides a credit to taxpayers who are participants in the Economic Transformation and Facility Redevelopment Program. Individuals (including sole proprietors), estates and trusts, shareholders of an S corporation, partners in a partnership (including a member of a limited liability company (LLC) that is treated as a partnership for federal tax purposes), and beneficiaries of an estate or trust may claim the credit on Form IT-633.

Eligibility

To be eligible for this credit, **all** of the following requirements must be met:

- The taxpayer is a participant (see *Definitions*) or the owner of a participant in the Economic Transformation and Facility Redevelopment Program.
- The taxpayer or the entity in which the taxpayer is an owner (see *Definitions*) has received a certificate of eligibility (see *Definitions*) from Empire State Development (ESD). Submit a copy of the certificate of eligibility with Form IT-633.
- The taxpayer or the entity in which the taxpayer is an owner is a qualified new business (see *Definitions*). However, this requirement does **not** apply to a participant at a closed facility that was previously owned by New York State, operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the Metropolitan Commuter Transportation District (MCTD), but outside New York City.
- The taxpayer or the entity in which the taxpayer is an owner has created and maintained at least five net new jobs (see *Definitions*) in the economic transformation area.

For more information on becoming a participant in the program see ESD's website (at www.esd.ny.gov).

Credit information

The economic transformation and facility redevelopment program tax credit is equal to the sum of the following credit components:

- the jobs tax credit component,
- the investment tax credit component,
- the training tax credit component, and
- the real property tax credit component.

The credit may be claimed for five consecutive tax years (the benefit period), beginning with the first tax year in which five net new jobs are created. However, in no event may the benefit period start later than two years after the certificate of eligibility is issued. If a participant does not start construction, or acquire a qualified investment (see *Definitions*) or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the tax credits. If, in any year of the benefit period, the business fails to maintain the required level of five net new jobs (measured quarterly), the business will not be allowed a credit for that year. Such failure to be allowed a credit will not extend the taxpayer's benefit period.

No cost or expense paid or incurred that is the basis for any of the components of this credit can be the basis for any other credit. If a business elects to claim an economic transformation and facility redevelopment program tax credit, the election is irrevocable.

Any unused amount of credit for the current tax year will be treated as a refund or overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

Who must file

File Form IT-633 if you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in a partnership, or a shareholder of an S corporation, **and**:

- you are claiming the economic transformation and facility redevelopment program tax credit; **or**
- you are required to recapture any previous economic transformation and facility redevelopment program tax credit.

An estate or trust that divides the credit or add back of credit among itself and its beneficiaries must submit Form IT-633 with Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit or recapture of the credit.

A partnership must file Form IT-633 with Form IT-204, *Partnership Return*, showing the total of each credit component of the partnership and any recapture of credit.

An S corporation does not file Form IT-633. It must file Form CT-633. If you are a shareholder in an S corporation that has made the election under Tax Law section 660, obtain your share of the S corporation's credit or recapture of credit from the S corporation.

Definitions

Certificate of eligibility means the document issued by ESD to an applicant that demonstrates that the applicant has been admitted as a participant into the Economic Transformation and Facility Redevelopment Program. Possession of a certificate of eligibility does not guarantee the eligibility of the participant to claim the economic transformation and facility redevelopment program tax credit.

Closed facility means:

- a correctional facility, as defined in paragraph (a) of subdivision four of section two of the Correction Law, that has been selected by the governor of the state of New York for closure after April 1, 2011, but no later than March 31, 2012; **or**
- a facility operated by the Office of Children and Family Services under Article 19-G of the Executive Law that is closed pursuant to authority granted to such office in a chapter of the laws of 2011; **or**
- which has been closed provided that the Commissioner of Correctional Services or the Commissioner of the Office of Children and Family Services has notified the Commissioner of ESD of such closure; **or**
- a facility that was previously owned by New York State, and when operated, was operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the MCTD, but outside New York City.

Entity in which the taxpayer is an owner means an LLC in which the taxpayer is a member, a partnership in which the taxpayer is a partner, and a New York S corporation in which the taxpayer is a shareholder.

Net new jobs means jobs created in the economic transformation area that:

- are new to the area;
- have not been transferred from employment in this state with the participant or with a related person in this state, and are not replacing jobs with similar titles or job responsibilities;
- are either full time wage paying jobs or equivalent to a full time wage paying job requiring at least 35 hours per week;
- are filled for more than six months in a tax year;
- are not general executive officers of the participant; **and**
- may not be filled with individuals having the familial relationship defined in Internal Revenue Code (IRC) section 267(c)(4) with any owner of the participant. Section 267(c)(4) states, *The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.*

Participant means a business entity that:

- is a new business *(see definition of *Qualified new business*);
- has completed an application to be admitted into the Economic Transformation and Facility Redevelopment Program;
- has demonstrated to ESD how it plans to meet the eligibility criteria in the program; **and**
- has been issued a certificate of eligibility by ESD.

*The requirement that a participant be a new business does **not** apply to a closed facility that was previously owned by New York State, operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the MCTD, but outside New York City.

Qualified investment means an investment in tangible property (including a building or a structural component of a building) that is owned by a business entity and:

- is depreciable under IRC section 167;
- has a useful life of four years or more;
- is acquired by purchase as defined in IRC section 179(d);
- has a situs in an economic transformation area in New York State in which the business is certified; **and**
- is placed in service in an economic transformation area in New York State on or after the date the certificate of eligibility is issued to the business entity.

Qualified new business means a business entity that satisfies all of the following tests:

- it must not be currently operating or located within the economic transformation area in which it is applying for certification;
- it must not be moving existing jobs into the economic transformation area in which it is applying for certification from another area of the state;
- it must not be substantially similar in ownership and operation to another taxpayer taxable or previously taxable under Article 9 section 183, 184, former section 185, or former section 186; former Article 32; or Article 9-A, 22, or 33, or the income or losses of which is or was includable under Article 22;
- it must not have caused individuals to transfer from existing employment in New York State with another business entity with similar ownership to similar employment with the business entity;
- it must not have acquired, purchased, leased, or had transferred to it real property located in the economic transformation area in which it is applying for certification if

that real property was previously owned by an entity with similar ownership (regardless of form of incorporation or organization); **and**

- it must not be substantially similar in operation to a business entity from which it has acquired real or tangible personal property that is located in the economic transformation area in which it is applying for certification.

Qualified training includes a course or courses taken and satisfactorily completed by an employee of the taxpayer at an accredited degree-granting, post-secondary college or university in New York State. The course must:

- directly relate to the duties that the employee performs for the taxpayer within the economic transformation area; **and**
- be intended to upgrade, retrain, or improve the productivity or theoretical awareness of the employee.

Classes in the disciplines of management, accounting, or the law, or any class designed to fulfill the discipline-specific requirements of a degree program at the associate, baccalaureate, graduate, or professional level of these disciplines do not qualify. Satisfactory completion of a course or courses means the earning and granting of credit or an equivalent unit, with the attainment of a grade of *B* or higher in a graduate level course or courses, a grade of *C* or higher in an undergraduate level course or courses, or a similar measure of competency for a course that is not measured according to a standard grade formula.

Qualified training expenditures include expenses for tuition and mandatory fees, software required by the institution, fees for textbooks or other literature required by the institution offering the course or courses, minus applicable scholarships and tuition or fee waivers not granted by the taxpayer or any related person (see *Definitions*), that are paid or reimbursed by the taxpayer. Qualified training expenditures do not include room and board, computer hardware or software not specifically assigned for the qualifying course or courses, late charges, fines or membership dues and similar expenses. Qualified training expenditures are not eligible for the credit unless the employee for whom the expenditures are disbursed is continuously employed by the taxpayer in a full-time, full-year position primarily located at a site in an economic transformation area during the period of the coursework and lasting through at least 180 days after the satisfactory completion of the qualified course work. Qualified training expenditures do not include expenses for in house or shared training outside of a New York State higher education institution or the use of consultants outside of credit granting courses, whether the consultants function inside the higher education institution or not.

Real property taxes are charges imposed upon real property by or on behalf of a county, city, town, village, or school district for municipal or school district purposes, provided that the charge is levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction, and provided that where taxes are levied pursuant to Article 18 or Article 19 of the Real Property Tax Law, the property must have been taxed at the rate determined for the class in which it is contained, as provided by Article 18 or 19, whichever applies.

The term real property taxes does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when:

- the property subject to the charge is limited to the property that benefits from the charge, **or**
- the amount of the charge is determined by the benefit to the property assessed, **or**

- the improvement for which the charge is assessed tends to increase the property value.

The term real property taxes includes payments in lieu of taxes (PILOT) made by the participant that is the beneficial owner of the real property to the state, a municipal corporation or a public benefit corporation pursuant to a written agreement entered into between the participant and the state, municipal corporation, or public benefit corporation. A PILOT made by the participant pursuant to a written agreement does not constitute real property taxes in any tax year to the extent that the payment exceeds:

- the basis for federal income tax purposes of the real property located in the economic transformation area and subject to that agreement, calculated without regard to depreciation, on the last day of the tax year;
- multiplied by the county's full value tax rate (For these rates, see the Tax Department's website (at www.tax.ny.gov). Use the full-value tax rates by county for the local fiscal year ending in the tax year immediately preceding this tax year.);
- divided by 1,000.

Related person means a related person as defined under IRC section 465(b)(3)(C).

The information below represents the Internal Revenue Service (IRS) interpretation of the definition of *related persons* in IRC section 465(b)(3)(C) as contained in IRS Publication 925, *Passive Activity and At-Risk Rules*. When preparing your tax return, you should refer to section 465(b)(3)(C) to see if the definition of *related persons* has been amended.

Related persons include the following:

- Members of a family, but only an individual's brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).
- Two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test.
- The fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts.
- A tax-exempt educational or charitable organization and a person who directly or indirectly controls it (or a member of whose family controls it).
- A corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation.
- A trust fiduciary and a corporation of which more than 10% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust.
- The grantor and fiduciary, or the fiduciary and beneficiary, of any trust.
- A corporation and a partnership if the same persons own over 10% in value of the outstanding stock of the corporation and more than 10% of the capital interest or the profits interest in the partnership.
- Two S corporations if the same persons own more than 10% in value of the outstanding stock of each corporation.
- An S corporation and a regular corporation if the same persons own more than 10% in value of the outstanding stock of each corporation.
- A partnership and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership.

- Two partnerships if the same persons directly or indirectly own more than 10% of the capital or profits of each.
- Two persons who are engaged in business under common control.
- An executor of an estate and a beneficiary of that estate.

To determine the direct or indirect ownership of the outstanding stock of a corporation, apply the following rules:

1. Stock owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries.
2. Stock owned directly or indirectly by or for an individual's family is considered owned by the individual. The family of an individual includes only brothers and sisters, half-brothers and half-sisters, a spouse, ancestors, and lineal descendants.
3. Any stock in a corporation owned by an individual (other than by applying rule 2) is considered owned directly or indirectly by the individual's partner.

When applying rule 1, 2, or 3, stock considered owned by a person under rule 1 is treated as actually owned by that person. However, if a person constructively owns stock because of rule 2 or 3, he or she does not own the stock for purposes of applying either rule 2 or 3 to make another person the constructive owner of the same stock.

Specific instructions

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

Individuals: Complete Schedules A, B, and E. If applicable, also complete Schedule F.

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

A married couple in a business enterprise 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 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 Schedules A, B, and E. If applicable, also complete Schedule F.

Fiduciaries: Complete Schedules A, B, C, and E. If applicable, also complete Schedule F.

Partners in a partnership, shareholders of an S corporation, and beneficiaries of an estate or trust: Complete Schedules B, D, and E. If applicable, also complete Schedule F.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-633.

Schedule A – Eligibility

Line 1b – If you are a participant at a closed facility that was previously owned by New York State, operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the MCTD, but outside New York City, mark an **X** in the Yes box and continue with Part 2.

Part 2 – Computation of average number of net new jobs

For each date specified of the current tax year, enter the number of net new jobs.

Line 2 – Divide the total number of net new jobs for the current tax year by the number of the dates occurring during the current tax year (even if you had no net new jobs on those dates) to

obtain the average number of net new jobs for the current tax year. Do not make entries for any dates that did not occur during your tax year. Do not include those dates in the calculation.

Schedule B – Computation of credit component amounts

Partners: Obtain the amount to enter on lines 5, 15, 20, and 27 from the partnership. If you are a partner in more than one partnership, enter on the appropriate line the total of all your shares of each credit component received from the partnerships. Submit a copy of the partnership(s) certificate of eligibility with Form IT-633.

Shareholders: Obtain the amounts to enter on lines 6, 16, 21, and 28 from the S corporation. If you are a shareholder in more than one S corporation, enter on the appropriate line the total of all your shares of each credit component received from the S corporations. Submit a copy of the S corporation(s) certificate of eligibility with Form IT-633.

Beneficiaries: Obtain the amounts to enter on lines 7, 17, 22, and 29 from the estate or trust. If you are a beneficiary of more than one estate or trust, enter on the appropriate line the total of all your shares of each credit component received from the estates or trusts. Submit a copy of the estate(s) or trust(s) certificate of eligibility with Form IT-633.

Part 1 – Jobs tax credit component

Complete columns A through F for each net new job created and maintained in the economic transformation area.

Column D – To meet the definition of net new job, the job must have been filled for more than six months of the tax year. For each person still employed at the end of the year, enter the last day of your tax year.

Part 2 – Investment tax credit component

Costs incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the investment tax credit component. A participant in the Economic Transformation and Facility Redevelopment Program or an owner of an entity that is a participant is not eligible for any other investment tax credits.

Qualified investment at a closed facility – An investment tax credit of 10% of the cost or other basis for federal income tax purposes is allowed for a qualified investment at a closed facility (see *Definitions*).

A taxpayer who is the owner of a closed facility that was previously owned by New York State, operated as a psychiatric facility pursuant to Mental Hygiene Law section 7.17, and located within the MCTD, but outside New York City, is allowed to include in its costs, or other basis of the qualified investment at the closed facility, any demolition costs incurred at that closed facility.

Demolition costs include:

- asbestos removal;
- rental of demolition equipment;
- personnel costs to operate demolition equipment;
- removal and disposal of demolition debris; and
- permits, licenses, and insurance necessary for demolition.

Line 10 – The total amount of investment tax credits allowed for all eligible participants located at each closed facility cannot exceed \$8 million. The maximum credit amount allowed to you at the closed facility will be provided to you by ESD. Enter the lesser of that amount or line 9 on line 10.

All other qualified investments – The economic transformation and facility redevelopment program investment tax credit allows a taxpayer that meets the requirements of the statute to claim a credit in the amount of 6% of the federal basis for qualified investments at all locations other than at the closed facility within the economic transformation area.

Line 12 – The amount of tax credit for all other qualified investments may not exceed \$4 million. This limit is imposed at the entity level so that the aggregate credit allowed to all partners, members, or shareholders of each entity does not exceed the \$4 million limitation.

Part 3 – Training tax credit component

A credit is allowed for qualified training expenditures (see *Definitions*) paid with respect to the project for which the certificate of eligibility is issued. The amount of the credit is the lesser of 50% of the qualified training expenses paid during the tax year or \$4,000 per employee. This credit applies only to qualified training (see *Definitions*) provided to employees who were hired after they lost their jobs at a closed facility as a result of the closure of that facility.

Part 4 – Real property tax credit component

A credit is allowed for the real property taxes (see *Definitions*) on the real property located in the economic transformation area with respect to the project for which the certificate of eligibility is issued. Submit copies of your real property tax bills or your PILOT agreement.

Property located entirely within a closed facility

For property that is located entirely within the grounds of a closed facility, the credit for the first year of the benefit period is 50% of the real property taxes assessed and paid by the participant during that year on that property. For the following years of the benefit period, the percentage decreases by 10% each year.

Property located outside a closed facility

For property that is located outside of the closed facility, the credit for the first year of the benefit period is 25% of the real property taxes assessed and paid by the participant during that year on that property. For the following years of the benefit period, the percentage decreases by 5% each year.

Schedule C – Beneficiary's and fiduciary's share of credit components and recapture of credit

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

Schedule D – Partnership, S corporation, estate, and trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust from which you received a share of the credit or a share of the recapture of credit. If you need more space, submit a separate schedule (be sure to include your name and taxpayer identification number).

Schedule E – Computation of credit

Fiduciaries: Do not enter any amount on line 32. Enter the amounts from the appropriate columns of Schedule C, *Fiduciary* line, on lines 33 through 36.

Line 37

Fiduciaries: Add lines 33 through 36.

All others: Enter the amount from line 32 on line 37.

Enter the amount from line 37 and code **633** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

Schedule F – Summary of recapture of credit (final year of benefit period)

Fiduciaries: Do not enter any amounts on lines 38 through 41. Include any flow-through of credit recapture from partnerships, S corporations, estates, or trusts on the *Total* line of Schedule C, column G.

If at the end of the benefit period the participant has not created sufficient net new jobs and made sufficient qualified investments to achieve a benefit to cost ratio of at least ten to one, the taxpayer is required to add back as tax for the last year of its benefit period the portion of the economic transformation and facility redevelopment program tax credits claimed for the years of its benefit period necessary to achieve a cost benefit ratio of ten to one.

Line 39 – Beneficiaries: Enter on line 39 your share of recapture of credit from the estate or trust from the fiduciary's Form IT-633, Schedule C, column G.

Line 40 – Partners: Enter on line 40 your share of the total recapture of credit made by the partnerships (the total is shown on Form IT-204). This information should be provided to you by the partnership.

Line 41 – S corporation shareholders: Enter on line 41 your share of the recapture of credit made by S corporations. This information should be provided to you by your S corporations.

Line 43

Fiduciaries: Enter the amount from line 42 on line 43.

All others: Add lines 38 through 41.