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NEW YORK STATE 2021

Department of Taxation and Finance

Instructions for Form IT-212

Investment Credit

IT-212-I

General information

Form IT-212 is used to claim an investment credit (including the employment incentive credit (EIC) computed on Form IT-212-ATT, *Claim for Historic Barn Rehabilitation Credit and 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 (submit Form IT-212-ATT with 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 rehabilitation or the EIC); **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 submit Form IT-212 with Form IT-205, *Fiduciary Income Tax Return*, 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, *Partnership Return*, 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, *Claim for Investment Tax Credit*. If you are a shareholder in an S corporation that has made the election under Tax Law section 660, 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 (Exception: Property principally used as a qualified film production facility must be placed in service on or after January 1, 2005. A building principally used as a qualified film production facility must have received a final certificate of occupancy after January 1, 2005.);

– is depreciable under Internal Revenue Code (IRC) sections 167 or 168;

– has a useful life of four years or more;

– is acquired by purchase as defined in IRC section 179(d);

– is located in New York State; **and**

– is one of the following types of property (see *Definitions*):
  - manufacturing and production property,
  - retail enterprise property,
  - waste treatment property,
  - pollution control property,
  - research and development property, or
  - qualified film production property.

Definitions

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.

Property principally used in the production or distribution of electricity, natural gas after extraction from wells, steam, or water delivered through pipes and mains does **not** qualify as property used in the production of goods.

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 Tax Law section 606(a)(11).

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 (ECL)) 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 ECL) 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 (R & D) 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.

Qualified film production property is property principally used as a qualified film production facility, including qualified film production facilities having a situs in an empire zone (EZ) designated as such pursuant to Article 18-B of the General Municipal Law, where the taxpayer is providing three or more services to any qualified film production company using the facility. These include services such as a studio lighting grid, lighting and grip equipment, multiline phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation, and air conditioning.

Qualified film production facility means a film production facility in the state which contains at least one sound stage having a minimum of seven thousand square feet of contiguous production space.

Qualified film production company is a corporation, partnership, limited partnership, or other entity or individual principally engaged in the production of a qualified film (as defined in Tax Law section 24(b)(3)) and controlling the qualified film during production.

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 IRC section 168(f)(8) 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 (Tax Law section 606(a)(4)). The use of a qualified film production facility by a qualified film production company shall not be considered a lease of such a facility to such a company.

– 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.

When the credit is 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 computed 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 IRC section 179(a). 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 compute an addback of credit on early dispositions (see Part 4 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, *Investment Tax Credit (ITC) Relief for Property Destroyed as a Direct Result of the Terrorist Attacks of September 11, 2001 (Articles 9-A, 22, 32, and 33)* .

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 IRC section 49(a)(1). 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 this year's 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 2011 may not be claimed on your 2021 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 tax years, excluding short tax years, that you operate your new business.

You **cannot** claim a refund of unused credit if any of the following apply:

– 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 (including former Article 32 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);
3. had income or losses that are (or were) included in computing your New York State personal income tax; **or**
4. would have been subject to the franchise tax on banking corporations under Article 32 (as such article was in effect on December 31, 2014).

If you are a shareholder of an S corporation that has an election in effect under Tax Law section 660, and the S corporation qualifies as a new business as defined in Tax Law section 210-B.1(f), you may qualify to have the excess credit that relates to your pro rata share of the S 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 4), 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.

Line instructions

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

NAICS code – To be completed by federal Schedule C and federal Schedule F filers only.

Federal Schedule C filers: Enter the six-digit NAICS business code number from your federal Schedule C, line B.

Federal Schedule F filers: Enter the six-digit NAICS business code number from your federal Schedule F, line B.

Individuals: Complete Parts 1, 2, 3, 4, and 6.
Fiduciaries: Complete Parts 1 through 6.
Partnerships: Complete Parts 2, 3, and 4.
Beneficiaries of estates and trusts, partners, and shareholders of S corporations: Complete Parts 1, 2, and 6.

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 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 Parts 1, 2, 3, 4, and 6.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-212.

Part 1 – Computation of credit

If the investment tax credit (ITC) is being claimed as a flow-through credit from more than one entity, submit additional sheets listing each entity's employer identification number and business name.

Individual or fiduciary

Line 1 – Enter your credit for investment in manufacturing and production, retail enterprise, waste treatment, and pollution control property from Part 3, line 25, column F. See Part 3 instructions.

Line 2 – Enter your credit for investment in research and development property from Part 3, line 25, column G. See Part 3 instructions.

Beneficiary

Line 3 – Enter your share of the credit for investments in manufacturing and production, retail enterprise, waste treatment, pollution control property, and EIC and historic barn rehabilitation credits from the estate or trust. This information should be provided to you by the estate or trust.

Fiduciaries who are receiving a flow-through credit from another estate or trust, include the line 3 amount on the *Total* line of Part 5, column C.

Line 4 – Enter your share of the credit for investments in research and development property from the estate or trust. This information should be provided to you by the estate or trust.

Fiduciaries who are receiving a flow-through credit from another estate or trust, include the line 4 amount on the *Total* line of Part 5, column D.

Partner

Line 5 – Enter your share of the total credit for investments in manufacturing and production, retail enterprise, waste treatment, pollution control property, and EIC and historic barn rehabilitation credits from partnerships. This information should be provided to you by your partnership(s).

Fiduciaries who are receiving a flow-through credit from a partnership, include the line 5 amount on the *Total* line of Part 5, column C.

Line 6 – Enter your share of the total credit for investments in research and development property from partnerships. This information should be provided to you by your partnership(s).

Fiduciaries who are receiving a flow-through credit from a partnership, include the line 6 amount on the *Total* line of Part 5, column D.

S corporation shareholder

Line 7 – Enter your share of the total credit for investments in manufacturing and production, waste treatment, pollution control property, and EIC credits from S corporations. This information should be provided to you by your S corporation(s).

Fiduciaries who are receiving a flow-through credit from an S corporation, include the line 7 amount on the *Total* line of Part 5, column C.

Line 8 – Enter your share of the credit for investment in research and development property from S corporations. This information should be provided to you by your S corporation(s).

Fiduciaries who are receiving a flow-through credit from an S corporation, include the line 8 amount on the *Total* line of Part 5, column D.

Line 10 – Enter the amount of credit that was allocated to beneficiaries in Part 5, columns C and D.

Line 14 – Fiduciaries: Enter the fiduciary portion of the addback from Part 5, column E.

Line 15a – If line 13 is greater than line 14, subtract line 14 from line 13 and enter the result here and on line 32a. Do not complete line 15b. If line 14 is greater than line 13, do not make an entry on this line; go to line 15b to calculate your net recaptured investment tax credit.

Line 15b – If line 14 is greater than line 13, subtract line 13 from line 14 and enter here.

Individuals: Enter the line 15b amount and code ***212*** on Form IT-201-ATT, line 20, or Form IT-203-ATT, line 19.

Fiduciaries: Include the line 15b amount on Form IT-205, line 12.

Part 2 – Summary of addback of credit on early dispositions

Individual and partnership

Line 16 – Enter your addback of credit on early dispositions from Part 4, line 31 column H. See Part 4 instructions.

Beneficiary

Line 17 – Enter on line 17 your share of addback of credit on early dispositions from the estate or trust. This information should be provided to you by the estate or trust.

Partner

Line 18 – Enter your share of the total addback of credit on early dispositions from partnerships. 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 from S corporations. This information should be provided to you by your S corporation.

Fiduciary

Line 20 – Enter addback of credit on early dispositions from line 31.

Line 21

Partnerships: Enter the amount from line 21 and code ***212*** on Form IT-204, line 148.

Fiduciaries: Enter the line 21 amount on the *Total* line of Part 5, column E.

All others: Enter the amount from line 21 on line 14.

Part 3 – Investments in qualified property

Fill in columns A through G for qualified property that was placed in service during this tax year. List individual items of machinery and equipment separately; do not list them as one general category such as machinery. Describe the property in terms that a layman would understand. Submit additional sheet(s) as necessary. Enter in column D the property's useful life under IRC section 167 even if the property is subject to the provisions of IRC section 168.

– **Column F:** You may claim an investment credit of 4% of the investment credit base for all qualifying property listed in column A, except property for which you are claiming the research and development credit in column G. Multiply the column E amount by 4% (.04).
– **Column G:** You may claim an investment credit of 7% of the investment credit base for all qualifying research and development property. Multiply column E amount by 7% (.07).

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

– For depreciable property under IRC section 167, 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 IRC section 168, 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.

Line 25 – When adding the amounts in columns F and G, include amounts from additional schedules, if any.

Partnerships: If you are **not** claiming a credit on line 5, enter the line 25, column F amount on Form IT-204, line 146a. If you **are** claiming a credit on line 5, enter the total of line 5 and line 25, column F, on Form IT-204, line 146a. If the partnership has Article 9-A corporate partners, in addition to entering the amount of credit on Form IT-204, line 146a, enter code ***212*** and the amount of investment credit **base** (cost or other basis of qualified property purchased, **excluding** R&D property) on Form IT-204, lines 144a through 144f.

If you are **not** claiming a credit on line 6, enter the line 25, column G amount on Form IT-204, line 146b. If you **are** claiming a credit on line 6, enter the total of line 6 and line 25, column G, on Form IT-204, line 146b.

If the partnership has Article 9-A corporate partners, in addition to entering the amount of credit on line 146b, enter code ***218*** and the amount of R&D investment credit **base** (cost or other basis of qualified property purchased) on lines 144a through 144f.

Also see the instructions for Form IT-204-CP.

Part 4 – 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 this tax year, 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 IRC section 167, the number of months of useful life of property.
– For recovery property under IRC section 168;
  - 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 28 – When totaling the amounts in column H, include amounts from additional schedules, if any.

Line 29 – Enter on line 29 the applicable underpayment interest rate in effect on the last day of your tax year. Visit our website at *www.tax.ny.gov* to find the rate.

Part 5 – Beneficiary's and fiduciary's share of investment credit and addback of credit on early dispositions

Enter the total of the amounts from lines 1, 3, 5, and 7 on the *Total* line, column C.

Enter the total of the amounts from lines 2, 4, 6, and 8 on the *Total* line, column D.

Enter the amount from line 21 on the *Total* line, column E.

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 from the estate or trust. Provide the beneficiaries with their share of the credit and addback.

Part 6 – Application of credit and computation of refund and carryover

Line 32b – Enter the tax due before credits.

Form IT-201 filers: Enter the tax from Form IT-201, line 39, plus any amount from Form IT-201-ATT, line 21.

Form IT-203 filers: Enter the tax from Form IT-203, line 46, plus any amount from Form IT-203-ATT, line 20.

Form IT-205 filers: Enter the tax from Form IT-205, line 8 (for residents), or line 9 (for nonresidents), **plus** any credits shown on line 1 of the *Addbacks worksheet*, in the instructions for Form IT-205, line 12.

Line 33 – If you are applying any credits against the tax before this credit, enter those amounts here.

When applying credits, use the following rules:

- First apply any household credit.
- Next apply any credits that cannot be carried over or refunded.
- Then apply any credits that can be carried over for a limited duration.
- Then apply any credits that can be carried over for an unlimited duration.
- Apply refundable credits last.

Line 35 – Enter the amount from line 32a or line 34, whichever is less.

Enter the amount from line 35 on Form IT-201-ATT, line 4, or Form IT-203-ATT, line 5, or include it on Form IT-205, line 10.

Line 37 – If you qualify as an owner of a new business, you may claim a refund of your credit instead of carrying it over to the next year. See page 2 for information about refundable investment tax credits under *Refundable unused investment credit*.

If you qualify as an owner of a new business, enter the amount from line 36 or line 11, whichever is less. All others, enter ***0***.

Enter the amount from line 37 and code ***212*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

Line 39 – Any unused portion of the ITC and EIC that you earned in prior periods can be carried forward for up to 10 years. Enter on this line any unused tax credit included on line 38 that expired during this tax year and is no longer available.