

General Information on New York State Tax Credits for Article 9-A Businesses

For tax year 2009



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Introduction

New York State offers a number of significant tax incentives designed to promote economic development, create jobs, stimulate capital investment, and encourage revitalization of distressed areas. The broad range of these tax credits underscores the state's commitment to attract and foster growth in the business community. These credits provide significant tax relief to businesses to enhance New York State's economic climate and ensure competitiveness in a global marketplace.

This publication provides information about the New York State tax credits available to businesses that are taxable under Article 9-A of the Tax Law (general business corporations). This publication describes the credit qualifications, their tax limitations, whether or not they are refundable, the respective tax credit forms, and where to find additional information. Other rules for these credits may apply to businesses taxable under other Articles of the New York State Tax Law (Articles 9, 22, 32, or 33).

For information about the New York State business related tax credits available to shareholders of New York S corporations, see Publication 99-B, *General Information on New York State and New York City Income Tax Credits for Businesses*.

Article 9-A requires taxpayers claiming multiple credits to apply them in a particular order. The Tax Department created Form CT-600, *Ordering of Corporation Tax Credits*, to assist taxpayers in determining the proper order. This publication presents the credits in alphabetical order, not in the order they should be applied.

The forms and instructions for the credits described in this publication may be obtained by visiting our Web site at www.nystax.gov.

Alternative fuels credit

Tax Law section 210.24

Businesses purchasing alternative fuel vehicle refueling property that is placed in service in New York State during the tax year may be entitled to claim the alternative fuels credit.

Alternative fuel vehicle refueling property, defined by Internal Revenue Code (IRC) section 30C, includes property (other than buildings and structural components of buildings) used to store and dispense clean-burning fuel into the tank of a motor vehicle propelled by the fuel or used to recharge electric vehicles. The storage or dispensing of the fuel must be located at the point where the fuel is delivered into the fuel tank of a motor vehicle. For the recharging of motor vehicles propelled by electricity, the property must be located at the point where the motor vehicles are recharged. The property must be eligible for the depreciation deduction, and the original use must commence with the business. Alternative fuel vehicle refueling property does **not** include qualified hybrid vehicle refueling property.

Leased property – Businesses acquiring property for use in a leasing business and not for resale may qualify for the New York credit if the property qualifies for a federal credit. However, leases to public (governmental) or tax-exempt (charitable) organizations generally do not qualify for a federal credit, and therefore would not qualify for the New York credit.

The credit for alternative fuel vehicle refueling property is equal to 50% of the cost of property that:

- is located in New York State;
- is used more than 50% in a trade or business carried on in New York State during the tax year; **and**
- qualifies for a credit under IRC section 30C, but does not include alternative fuel vehicle refueling property related to a qualified hybrid vehicle.

The credit and carryover of the credit may not reduce the tax to below the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. The alternative fuels credit is not refundable. If the amount of credit exceeds the tax for the year, the excess credit may be carried over to the following year or years.

If you claim the alternative fuels credit and the property is disposed of, modified, or removed from qualified use, you may have to recapture all or part of the credit you claimed.

Taxpayers may elect to transfer their unused alternative fuels credit to an affiliate. For purposes of this credit, an affiliate means:

- a parent corporation, where the parent owns or controls, directly or indirectly, 80% or more of the taxpayer's capital stock;
- a subsidiary corporation, where the taxpayer owns or controls, directly or indirectly, 80% or more of the subsidiary's capital stock; **or**
- a brother-sister corporation, where the same interests own or control, directly or indirectly, 80% or more of both the corporation's and the taxpayer's capital stock.

Both the transferor (affiliate transferring the credit) and the transferee (affiliate receiving the credit) must consent to the election. Once the election is made, the credit becomes a credit of the transferee. The transferee is responsible for any credit recapture if the transferor disposes

of the property, or if the transferor's property on which the credit was allowed ceases to qualify.

To claim this credit, you must complete Form CT-40, *Claim for Alternative Fuels Credit*, and file it with your franchise tax return. Form CT-40 may also be used to claim any unused credit from a prior year that was allowed for electric vehicles, clean-fuel vehicle property, clean-fuel vehicle refueling property, and qualified hybrid vehicles.

Automated external defibrillator credit

Tax Law section 210.25

Businesses purchasing an automated external defibrillator may be entitled to the automated external defibrillator credit. However, the credit is not allowed for an automated defibrillator purchased for resale.

An *automated external defibrillator*, as defined under Public Health Law section 3000-b, is a medical device approved by the United States Food and Drug Administration, that:

- is capable of recognizing the presence or absence, in a patient, of ventricular fibrillation and rapid ventricular tachycardia;
- is capable of determining, without intervention by an operator, whether defibrillation should be performed on the patient;
- upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to the patient's heart; and
- upon action by an operator, delivers an appropriate electrical impulse to the patient's heart to perform defibrillation.

The credit is equal to the lesser of the cost of the unit, or \$500. There is no limit to the number of units purchased during the tax year for which the credit may be taken. However, the credit cannot exceed \$500 for **each** unit purchased.

The credit cannot reduce the tax to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. The credit is not refundable and any unused credit cannot be carried forward to a future year.

To claim this credit, you must complete Form CT-250, *Credit for Purchase of an Automated External Defibrillator*, and file it with your franchise tax return.

Biofuel production credit

Tax Law sections 28 and 210.38

The biofuel production credit is available for biofuel produced at a biofuel plant located in New York State. The credit is available for tax years beginning on or after January 1, 2006, and before January 1, 2013.

Biofuel means a fuel which includes biodiesel or ethanol. Biofuel may also include any other standard approved by the New York State Energy and Research Development Authority.

Biodiesel means a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, which meets the specifications of the American Society of Testing and Materials designation D 6751-02.

Ethanol means ethyl alcohol manufactured in the United States and its territories and sold:

- for fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives for the production of ethanol for fuel, **or**
- as denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use.

Biofuel plant means a commercial facility located in New York State at which one or more biofuels are produced.

The credit allowed is fifteen cents per gallon of biofuel produced at a biofuel plant located in New York State, after the production of the first 40,000 gallons per year presented to market. The credit is claimed in the same tax year that the biofuel is produced and is limited to \$2.5 million per taxpayer per year. The credit can be claimed for four consecutive years per biofuel plant.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current tax year will be treated as an overpayment of tax that will be refunded or credited to next year's tax. Interest will not be paid on the refund or overpayment.

To claim this credit, you must complete Form CT-243, *Claim for Biofuel Production Credit*, and file it with your franchise tax return.

Brownfield credits

The Brownfield Cleanup Program was created to encourage cleanup and redevelopment of brownfield sites in New York State (see Title 14 of Article 27 of the Environmental Conservation Law).

The brownfield tax credits are based on costs paid or incurred for site preparation and property improvements, on-site groundwater cleanup costs, real property taxes, and environmental insurance premiums.

To qualify for the credits, your business must execute a brownfield site cleanup agreement (BCA) under the Environmental Conservation Law and have a Certificate of Completion (COC) issued by the Commissioner of Environmental Conservation. Your business may also qualify for the credits if your business received the COC pursuant to the transfer or sale of a qualified site.

A *qualified site* means a site for which the taxpayer has been issued a COC. None of the brownfield tax credits are allowed with respect to a qualified site for which a COC is issued after March 31, 2015.

For more information about the Brownfield Cleanup Program, visit the Department of Environmental Conservation Web site at www.dec.ny.gov.

**Brownfield
redevelopment tax
credit**

Tax Law sections 21 and
210.33

Your business may be eligible for the brownfield redevelopment tax credit if your business executes a BCA under the Environmental Conservation Law and receives a COC issued by the Commissioner of Environmental Conservation. You may also be entitled to the credit if the COC was transferred to you from the person or business originally issued the COC, upon the sale or transfer of the brownfield site to you.

The brownfield redevelopment tax credit consists of the sum of the following three credit components, computed for each tax year, for costs incurred in the remediation or redevelopment of a qualified site:

- the site preparation credit component;
- the tangible property credit component; and
- the on-site groundwater remediation credit component.

The brownfield redevelopment tax credit is calculated by applying a percentage of the costs that qualify with respect to each credit component. The amount of the credit increases if at least 50% of the qualified site is located in an environmental zone (EN-Zone), as designated by the Commissioner of Economic Development, or if the site is remediated to the highest environmental standard track (designated as Track 1 under Environmental Conservation Law section 27-1415). The amount of the credit also increases for qualified sites accepted into the Brownfield Cleanup Program on or after June 23, 2008, if the site is located in a Brownfield Opportunity Area.

The qualified costs used to calculate the amount of the credit components must be reduced by any grants received from a federal, state, or local government, or an instrumentality of a public benefit corporation and used to pay for any of the qualified costs incurred, provided the amount of the grant was not included in the taxpayer's federal adjusted gross income.

The site preparation costs and on-site groundwater remediation costs paid or incurred with respect to a qualified site and the cost of tangible property used to compute the credit components only includes those costs paid or incurred by your business on or after the effective date of the BCA executed by your business and the Department of Environmental Conservation (under Environmental Conservation Law section 27-1409) or on or after the date the COC was transferred to your business (under Environmental Conservation Law section 27-1419). However, if a COC is transferred to your business, you cannot include the cost of acquiring an interest in the site or any amounts included in the cost (or other basis for federal income tax purposes) of qualified tangible property already claimed by the previous taxpayer.

Generally the credit is claimed in the tax year in which the COC is issued. However, the site preparation and groundwater remediation components are available for five years after the issuance of the COC, and the tangible property component is available for ten years after the issuance of the COC.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

If the COC is revoked, or if qualified tangible property that is used in the basis for this credit ceases to be in qualified use prior to the end of its useful life, all or a portion of the credit must be recaptured.

Note: Property used to qualify for this credit may **not** be used as qualifying property for the investment tax credit or the empire zone investment tax credit.

To claim this credit for qualified sites accepted into the Brownfield Cleanup Program prior to June 23, 2008, you must complete Form CT-611, *Claim for Brownfield Redevelopment Tax Credit For Qualified Sites Accepted into the Brownfield Cleanup Program Prior to June 23, 2008*, and attach it to your franchise tax return. To claim this credit for qualified sites accepted into the Brownfield Cleanup Program on or after June 23, 2008, you must complete Form CT-611.1, *Claim for Brownfield Redevelopment Tax Credit For Qualified Sites Accepted into the Brownfield Cleanup Program on or after June 23, 2008*, and attach it to your franchise tax return.

For more information on the changes to the brownfield redevelopment tax credit for sites accepted into the Brownfield Cleanup Program on or after June 23, 2008, see TSB-M-08(13)C, (8)I, *Revisions to Brownfield Cleanup and Remediation Program*.

**Remediated
brownfield credit for
real property taxes**

Tax Law sections 22 and
210.34

A developer of a qualified brownfield site may be entitled to the remediated brownfield credit for real property taxes. The credit is available for up to 10 consecutive tax years, beginning with the later of the tax year the COC is issued or the first tax year beginning on or after April 1, 2005.

A *developer* is a taxpayer:

- who has executed a BCA under the Environmental Conservation Law and has a COC issued by the Commissioner of Environmental Conservation; **or**
- who has obtained by purchase or conveyance all or a portion of a qualified site for which a COC has been issued. The purchase or conveyance must occur within seven years of the effective date of the COC. The business that is purchasing all or any portion of the qualified site and the taxpayer and any other party who has been issued the COC may not be related persons (as defined in IRC section 465(b)(3)(C)).

A developer may also be a partner in a partnership (including a member of a limited liability company (LLC) treated as a partnership) or a shareholder in a New York S corporation if the partnership or New York S corporation has been issued a COC, or the partnership or New York S corporation has purchased or otherwise been conveyed all or any portion of a qualified site for which a COC was issued.

The amount of the credit is 25% of the product of the following three factors:

- the benefit period factor;
- the employment number factor; and
- the eligible real property taxes paid or incurred by the developer of the qualified site during the tax year.

The *benefit period factor* for each year of the benefit period is 1.0. The benefit period is 10 consecutive taxable years beginning with the tax year in which the COC is issued for the qualified site or the first tax year beginning on or after April 1, 2005, whichever is later.

The *employment number factor* is a numerical value assigned to the developer based on the average number of full-time employees (excluding general executive officers) employed by the developer and any lessees at the qualified site during the tax year.

Eligible real property taxes are taxes imposed on real property that is a qualified site owned by the developer. To qualify for the credit, the taxes

must become a lien on the real property in a period during which the real property is a qualified site.

Eligible real property taxes also include payments in lieu of taxes (PILOT) made to the state, a municipal corporation, or a public benefit corporation for a qualified site owned by the developer provided the payments are made pursuant to a written agreement. However, the amount of PILOT payments that constitute eligible real property taxes is limited.

For a qualified site that is located entirely in an environmental zone (EN-Zone), the amount of the credit is also equal to the product of the above three factors. However, for purposes of calculating the credit for a qualified site in an EN-Zone, only taxes imposed on real property attributable to the qualified site located in an EN-Zone and owned by the developer qualify as eligible real property taxes.

The credit for each tax year is limited to the product of \$10,000 and the average number of full-time employees employed by the developer of a qualified site and a lessee during the tax year.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

If the eligible real property taxes, which were the basis for the brownfield real property tax credit, are subsequently reduced as a result of a final order in any proceeding under Real Property Tax Law Article 7, or other provision of law, you must recapture a portion of the credit allowed in the tax year the final order is issued. The recapture amount is equal to the amount of credit originally taken, less the amount of credit recalculated using the reduced eligible real property taxes. If the taxes are reduced for more than one year, you must determine how much of the reduction is attributable to each year covered by the final order and calculate the amount of credit that is required to be recaptured for each year based on the reduction. In addition, if the COC is revoked, a recapture of the credit must be computed.

If the qualified site is located in whole or in part in an empire zone and your business meets the eligibility requirements (with respect to all or a portion of the qualified site) for both the brownfield real property tax credit and the qualified empire zone enterprise (QEZE) credit for real property tax credit, your business **may not** claim both credits. (For more information on the QEZE credit for real property taxes, see *QEZE credit for real property taxes* on page 31 of this publication.)

You must make an irrevocable election to claim either the brownfield real property tax credit or the QEZE real property tax credit. The election is made by filing a tax return in the first tax year the site is eligible for the brownfield real property tax credit and claiming either of the credits.

To claim this credit, you must complete Form CT-612, *Claim for Brownfield Credit for Real Property Taxes*, and attach it to your franchise tax return.

**Environmental
remediation
insurance credit**

Tax Law sections 23 and
210.35

Businesses that paid premiums for environmental remediation insurance with respect to a qualified brownfield site may be entitled to the environmental remediation insurance credit.

To qualify for this credit, your business must execute a BCA under the Environmental Conservation Law and have a COC issued by the Commissioner of Environmental Conservation for the qualified site for which eligible premiums are paid. Your business must also have a certification form issued by your insurer certifying that the insurance coverages qualify for the credit.

Environmental remediation insurance, as described in the Insurance Law section 3447, must be written under Insurance Law sections 1113(a)(13) (personal injury liability insurance) or 1113(a)(14) (property damage liability insurance). It must also contain any of the following (or substantially similar or combined) coverages:

- coverage for the costs of on-site cleanup of pre-existing pollution conditions from the insured property that are outside the scope of the remedial work plan pursuant to Environmental Conservation Law section 27-1411 for the insured property;
- coverage for third-party claims for on-site bodily injury and property damage resulting from pre-existing pollution conditions outside the scope of the remedial work plan for the insured property;
- coverage that caps cleanup costs relating to the remedial work plan;
- coverage for the costs of state re-openers under Environmental Conservation Law section 27-1421 or modifications to the remedial work plan to fill any gap in any liability limitation provided under Environmental Conservation Law section 27-1421 for environmental conditions.

The amount of the credit is the lesser of:

- \$30,000; or

- fifty percent of the eligible premiums paid by the taxpayer on or after the effective date of the BCA executed by the taxpayer and the Department of Environmental Conservation.

The credit is allowed for the tax year in which the COC is issued and may be taken only once with respect to each COC issued. However, if the date the COC was issued occurred in a tax year that began prior to April 1, 2005, the date of issuance of the COC is treated as if that date occurred in the business' first tax year beginning on or after April 1, 2005.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current tax year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

If the COC is revoked, the credit must be added back in the tax year in which the determination is final and no longer subject to judicial review.

If the premiums paid for environmental remediation insurance were deducted in computing federal taxable income, to the extent a credit is taken relating to these premiums, the amount of the credit taken is required to be added back to entire net income on your franchise tax return.

To claim this credit, you must complete Form CT-613, *Claim for Environmental Remediation Insurance Credit*, and attach it to your franchise tax return.

Clean heating fuel credit

Tax Law section 210.39

A business that purchases bioheat for space heating or hot water production for residential purposes within New York State may be entitled to the clean heating fuel credit. The credit is available for tax years beginning after December 31, 2005, and before January 1, 2012, and applies to bioheat purchased on or after July 1, 2006, and before July 1, 2007; and on or after January 1, 2008, and before January 1, 2012.

Bioheat means a fuel comprised of biodiesel blended with conventional home heating oil, which meets specifications of the American Society of Testing and Materials (ASTM) designation D 396 or D 975.

Biodiesel means a fuel comprised exclusively of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B 100 (pure biodiesel), which meets the specifications of ASTM designation D 6751.

Residential purposes means any use of a structure, or part of a structure, as a place of abode maintained by or for a person, whether or not owned by such person, on other than a temporary or transient basis. This includes

multi-family dwelling units such as multi-family homes, apartment buildings, condominiums, and cooperative apartments. The structure must be located in New York State.

Residential purposes do not include the use of part of a structure used as a hotel, motel, or similar space, except for those units used by the same occupant for at least 90 consecutive days.

The credit amount equals \$0.01 per gallon for each percent of biodiesel included in the bioheat, not to exceed \$0.20 per gallon. If you make more than one purchase of bioheat that qualifies for this credit and the percentage of biodiesel included in the bioheat varies, a separate calculation must be made for each purchase of bioheat.

Note: The percentage of biodiesel included in the bioheat is the number or numbers preceded by the letter *B* in the bioheat designation. For example, bioheat designated **B5** contains 5% biodiesel.

If you purchase bioheat for a location that has both residential and nonresidential space but has only one tank for the storage of the bioheat fuel, you will need to determine the percentage of space used for residential purposes in order to properly compute the credit.

The credit is claimed for the tax year in which the bioheat is purchased. In general, bioheat is deemed purchased on the date of delivery regardless of when the payment is made. For example, bioheat that is paid for through a budget payment plan whereby you make monthly payments to the supplier and the supplier charges your account for the cost of the bioheat delivered, will be deemed purchased on the date the delivery was made, even if your budget account does not contain sufficient funds to cover the cost of the delivery. However, bioheat that is purchased under a plan that requires you to prepay the supplier for a certain number of gallons of bioheat at a fixed price will be treated as purchased on the date the prepayment was made, not the date of delivery.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current tax year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

To claim this credit you must complete Form CT-241, *Claim for Clean Heating Fuel Credit*, and attach it to your franchise tax return.

Conservation easement tax credit

Tax Law section 210.38

Businesses owning land in New York State that is subject to a conservation easement held by a public or private conservation agency may be entitled to a credit of 25% of the allowable school district, county, and town real property taxes paid on the land subject to the conservation easement. This credit is not available to a New York S corporation or its shareholders.

Conservation easement means a perpetual and permanent conservation easement as defined in Article 49 of the Environmental Conservation Law on land located in New York State that:

- is held by a public or private conservation agency;
- serves to protect open space, biodiversity, or scenic, natural, agricultural, watershed, or historic preservation resources;
- is filed with the Department of Environmental Conservation by the person causing the document to be so recorded, as provided for in Environmental Conservation Law Article 49;
- complies with the provisions of Environmental Conservation Law, Article 49, Title 3; and
- complies with the provisions of IRC section 170(h).

Dedications of land for open space through the execution of conservation easements for the purpose of fulfilling density requirements to obtain subdivision or building permits are **not** considered a conservation easement for purposes of this credit.

Note: You should maintain adequate records to substantiate the conservation easement's compliance with the provisions of IRC 170(h), including but not limited to a copy of federal Form 8283, *Noncash Charitable Contributions*, for the year of the donation. Under certain circumstances, a letter from the public or private conservation agency may also be adequate.

Land means a fee simple title to real property located in New York State, with or without improvements thereon; rights of way; water and riparian rights; easements; privileges and all other rights or interests of any land or description in, relating to, or connected with real property, excluding buildings, structures, or improvements.

Public or private conservation agency means:

- any state, local, or federal government body; or

- any private not-for-profit charitable corporation or trust that is authorized to do business in New York State; organized and operated to protect land for natural resources, conservation or historic preservation purposes; is exempt from federal tax under IRC section 501(c)(3); and has the power to acquire, hold, and maintain land and/or interests in land for such purpose.

The conservation easement credit cannot exceed \$5,000 in any given year. Additionally, when this credit is combined with any other tax credit claim that is based on school district, county, and town real property taxes, the amount of credit(s) cannot exceed the total amount of these taxes.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current tax year will be treated as an overpayment of tax that will be refunded or credited to next year's tax. Interest will not be paid on the refund or overpayment.

To claim this credit, you must complete Form CT-242, *Claim for Conservation Easement Tax Credit*, and attach it to your franchise tax return.

Credit for servicing certain mortgages

Tax Law section 210.21-a

Mortgage bankers registered under Article 12-D of the Banking Law meeting the requirements of the State of New York Mortgage Agency (SONYMA) and entering into a contract with SONYMA to service mortgages may be entitled to claim the credit for servicing certain mortgages.

The credit is equal to:

- 2.93% of the total interest and principal collected during the taxable year on mortgages secured by liens on real estate improved by one-family to four-family residential structures; and
- a fraction of the interest collected on the mortgages secured by liens on real property improved by a structure occupied as the residence of five or more families living independently of each other, the denominator of which is the interest rate payable on the mortgage and the numerator of which is .00125 for mortgages acquired by SONYMA for less than \$1 million and .00100 for mortgages acquired by SONYMA for \$1 million or more.

The credit for servicing certain mortgages is available only to mortgage brokers who have a letter from SONYMA approving the credit. The credit for servicing certain mortgages may reduce the tax to zero. Any unused portion of the credit for servicing certain mortgages is not refundable and may not be carried forward to future taxable years.

Credit for taxicabs and livery services vehicles accessible to persons with disabilities

Tax law section 210.40

To claim this credit, you must enter the amount of the credit from the SONYMA letter approving the credit in the credit section of your franchise tax return.

Businesses providing taxicab or livery services may be entitled to the credit for taxicabs and livery services vehicles accessible to persons with disabilities. The credit is allowed for the incremental cost associated with the purchase of a vehicle accessible to persons with disabilities or the conversion of a motor vehicle to a vehicle accessible to persons with disabilities that is used in providing the taxicab or livery service. The incremental costs must be incurred on or after January 1, 2006, and before January 1, 2011, and must be claimed in the year in which the incremental costs are incurred.

Taxicab means every motor vehicle, other than a bus, used in the business of transporting passengers for compensation and operated in that business under a license or permit issued by a local authority. However, it does not mean vehicles that are rented or leased without a driver.

Livery means every motor vehicle, other than a taxicab or bus, used in the business of transporting passengers for compensation. However, it does not mean vehicles that are rented or leased without a driver.

Bus means every motor vehicle having a seating capacity of 15 or more passengers in addition to the driver and used for the transportation of persons.

Motor vehicle means every vehicle that is operated or driven on a public highway and is propelled by any power other than muscular power, **except** for an electrically driven mobility assistance device operated or driven by a person with a disability, a vehicle that runs only on rails or tracks, a snowmobile, and an all-terrain vehicle (ATV).

Providing a taxicab or livery service means the operation of a taxicab or livery in New York State in accordance with required licenses, permits, or registrations issued by a local authority and the New York State Department of Motor Vehicles.

Local authority means every county, municipal or other local board, body or officer, county park commission, parkway authority, bridge authority, bridge and tunnel authority, the Office of Parks and Recreation, the New York State Thruway Authority, or similar body or person having authority to enact laws or regulations relating to traffic under the constitution and laws of this state.

Incremental cost means the expenses specifically associated with:

- the excess purchase price of a vehicle accessible to persons with disabilities over the purchase price of a motor vehicle that is the same make and model, except for the equipment necessary to convert it to a vehicle accessible to persons with disabilities; or
- in the case of a conversion of an existing motor vehicle, the equipment and installation costs necessary to convert it to a vehicle accessible to persons with disabilities.

Vehicle accessible to persons with disabilities means a motor vehicle, less than 22 feet in length, that complies with federal regulations promulgated pursuant to the Americans with Disabilities Act applicable to vans under 22 feet in length by the federal Department of Transportation (49 CFR Parts 37 and 38) and the federal Architecture and Transportation Barriers Compliance Board (CFR title 36, section 1192.23); **and** with the Federal Motor Vehicle Safety Standards (CFR title 49, Part 571).

The amount of credit equals the incremental costs described above. The credit may only be claimed once per vehicle and may not exceed \$10,000 per vehicle.

The credit may reduce the franchise tax due to zero. If the amount of credit exceeds the tax for the year the excess is **not** refundable. However, the excess credit may be carried over to the following year or years.

To claim this credit, you must complete Form CT-239, *Claim for Credit for Taxicabs and Livery Services Vehicles Accessible to Persons with Disabilities*, and attach it to your franchise tax return.

Empire State commercial production credit

Tax Law sections 28 and 210.38

Qualified commercial production companies may be entitled to the Empire State commercial production credit. This credit is available for tax years beginning on or after January 1, 2007, and expires December 31, 2011.

The credit is administered by the New York State Governor's Office for Motion Picture and Television Development which is responsible for determining both eligibility for the credit and the amount of credit. To qualify for this credit, you must file an application with the New York State Governor's Office for Motion Picture and Television Development and receive an allocation of the credit.

The credit is allowed for qualified production costs paid or incurred in the production of a qualified commercial in New York State. The credit is allowed for the tax year in which the production of the qualified commercial is completed.

Qualified commercial production company means a corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the production of a qualified commercial and controls the production of the qualified commercial and is not the distributor or contracting entity for production of the commercial.

Qualified commercial means an advertisement that is recorded on film, audiotape, videotape, or digital medium in New York for multi-market distribution by way of radio, television networks, cable, satellite, or motion picture theaters.

Qualified commercial does not include: news or current affairs programs; interview or talk programs; network promos (for example, commercials promoting television series or movies); how-to or instructional commercials or programs; commercials or programs consisting entirely of stock footage; trailers promoting theatrical films, sporting events or sporting programs, game shows, award ceremonies, daytime dramas (soap operas), or reality programs; or a production for which records are required under section 2257 of Title 18 of the United States Code, to be maintained with respect to any performer in the production (reporting of books, films, etc., with respect to sexually explicit conduct).

The credit may not reduce the tax due below the fixed dollar minimum tax. If the amount of the credit exceeds your tax for the year, 50% of the excess will be treated as a refund or an overpayment of tax to be credited to next year's tax. The balance not refunded or credited will be carried over to the next succeeding tax year. Any amount of the credit carried over in the succeeding tax year that exceeds your tax for that year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

Production costs used as the basis for allowance of this credit or used in the calculation of this credit cannot be used to claim any other tax credit.

To claim this credit, you must complete Form CT-246, *Claim for Empire State Commercial Production Credit*, and attach it to your franchise tax return.

For definitions, rules, and regulations regarding the credit, visit the New York State Governor's Office for Motion Picture and Television Development's Web site at www.nylovesfilm.com or call (212) 803-2330.

Qualified film and television production companies may be entitled to the Empire State film production credit. This credit is available for tax years beginning on or after January 1, 2004, and expires December 31, 2013.

The credit is administered by the Governor's Office for Motion Picture and Television Development which is responsible for determining both

Empire State film production credit

Tax Law sections 24 and 210.36

eligibility for the credit and the amount of the credit. To qualify for this credit, you must file an application with the New York State Governor's Office for Motion Picture and Television Development and receive an allocation of the credit.

Qualified film production company means a corporation, partnership, limited partnership, or other entity or individual that is principally engaged in the production of a qualified film and controls the qualified film during production.

Qualified film means a feature-length film, television film, television pilot and/or each episode of a television series, regardless of the medium by means of which the film, pilot, or episode is created or conveyed.

Qualified film does not include: a documentary film; a news or current affairs program; an interview or talk program; a how-to or instructional film or program; a film or program consisting primarily of stock footage, a sporting event or sporting program; a game show; an award ceremony; a film or program intended primarily for industrial, corporate, or institutional end-users; a fund-raising film or program; a daytime drama (soap opera); a commercial; a music video or reality program; or a production for which records are required under section 2257 of Title 18 of the United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc., with respect to sexually explicit conduct).

The credit is equal to 30% of the qualified production costs paid or incurred in the production of certain qualified films and television shows.

For tax years beginning on or after January 1, 2009, the credit may be claimed as follows:

- Credits of less than one million dollars are claimed in the tax year in which the production of the qualified film is completed.
- Credits of at least one million dollars but less than five million dollars are claimed over a two-year period beginning with the tax year in which the production of the qualified film is completed and the next succeeding tax year. One-half of the amount of the credit allowed is claimed in each year.
- Credits of at least five million dollars are claimed over a three-year period beginning with the taxable year in which production of the qualified film is completed and the next two succeeding tax years. One-third of the amount of the credit allowed is claimed in each year.

The credit may not reduce the tax due below the fixed dollar minimum tax. If the amount of the credit exceeds your tax for the year, the excess will be

treated as a refund or an overpayment to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

Production costs used as the basis for allowance of this credit or used in the calculation of this credit cannot be used to claim any other credit.

To claim this credit, you must complete Form CT-248, *Claim for Empire State Film Production Credit*, and file it with your franchise tax return.

For definitions, rules, and regulations regarding the credit, visit the New York State Governor's Office for Motion Picture and Television Development Web site at www.nylovesfilm.com or call (212) 803-2330.

Empire zone and qualified empire zone enterprise credits

New York State's Empire Zone Program was created to stimulate economic growth through a variety of state tax incentives designed to attract new businesses to New York State and to encourage existing businesses to expand and create more jobs. As part of the program, certain tax credits are available for businesses that are certified under Article 18-B of the General Municipal Law, a process administered by Empire State Development. Additional credits are available to qualified empire zone enterprises.

Note: Effective for tax years beginning on or after January 1, 2008, certain provisions of the Tax Law and the General Municipal Law affecting the Empire Zones Program have been amended. As part of these changes, Empire State Development is required to review all certified EZ business enterprises and apply new criteria for continued certification of businesses wishing to retain EZ benefits, including the claim for new credits and the carryover of credits from prior tax years. For more information, see TSB-M-09(5)C, (4)I, *Legislative Changes to the Empire Zones Program*.

An *empire zone (EZ)* is an area within New York State that has been designated by Empire State Development as an EZ according to Article 18-B of the General Municipal Law. The area must be characterized by pervasive poverty, high unemployment, and general economic distress.

A *qualified empire zone enterprise (QEZE)* is a business certified as eligible to receive benefits under Article 18-B of the General Municipal Law prior to July 1, 2010, that annually meets an employment test during its business tax benefit period. A QEZE also includes a clean energy enterprise certified under Article 18-B of the General Municipal Law that annually meets an employment test.

The following is a general description of the credits available under the Empire Zone Program. For more information on these credits see:

- Publication 26, *A Guide to Business Tax and Personal Income Tax Credits Within Empire Zones*;

- TSB-M-06(1)C, *Qualified Empire Zone Enterprise (QEZE) Tax Credits*;
- the instructions of the applicable EZ or QEZE tax credit form(s); and
- TSB-M-09(5)C, (4)I, *Legislative Changes to the Empire Zones Program*.

EZ capital tax credit

Tax Law section 210.20

Businesses making certain qualified investments and contributions during the tax year that are certified by the Commissioner of Economic Development may be entitled to the EZ capital tax credit. The credit is equal to 25% of the sum of the following:

- Qualified investments in certain certified EZ businesses; and
- Contributions of money to community development projects, as defined in regulations issued by the Commissioner of Economic Development.

Qualified investment means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions to a business entity not in a corporate or partnership form in exchange for an ownership interest in that entity.

The total amount of credit allowable to a taxpayer for all years may not exceed \$300,000 and the total amount allowed for each category of qualified investments and contributions may not exceed \$100,000.

This credit is not refundable, but any amount of credit or carryover of credit not deductible in the current tax year may be carried over to be deducted from the tax for the following year or years. However, the amount of credit or carryover of the credit, deducted from the tax otherwise due, may not in the aggregate exceed 50% of the franchise tax imposed without regard to any credit. In addition, the credit and carryover of the credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater.

If you sell, transfer, or otherwise dispose of stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if you recover a contribution or investment that was the basis for the allowance of the credit, and the disposal or the recovery occurs during the tax year or within 36 months from the close of the tax year for which the credit was allowed, the difference between the credit taken and the credit allowed must be added back.

To claim this credit, you must complete Form CT-602, *Claim for EZ Capital Tax Credit*, and attach it to your franchise tax return.

EZ wage tax credit
Tax Law section 210.19

Certified zone businesses meeting certain increased employment levels in New York State and in an EZ during the tax year may be entitled to the EZ wage tax credit.

The wage tax credit is based on your number of full-time employees who receive empire zone wages (for more than one-half the tax year) for employment in a job created in an area designated or previously designated as an EZ.

However, the requirement that an employee must receive EZ wages for more than half of the current tax year does not apply in the first tax year of a business that:

- has acquired real or tangible personal property during its first year from an entity which is not a related person as defined in IRC section 465(b)(3)(C);
- has a first tax year that is a short year of not more than seven months in duration; and
- has at least 190 full-time employees on the last day of the tax year, substantially all of them previously employed by the entity from which the business purchased its assets.

EZ wages are wages paid by a certified taxpayer for full-time employment (excluding general executive officers) during the tax year in an area designated or previously designated as an EZ, if such employment is in a job created in the EZ during the period of its designation as an EZ or within four years of the expiration of such EZ designation.

EZ wages for purposes of clean energy enterprises (CEEs) are wages paid by a certified business for full-time employment in New York State during the tax year, if the employment is in a job created in New York State during the period of designation for CEEs, which is on or after June 23, 2006.

If certification under Article 18-B of the General Municipal Law is revoked, any wages paid by the taxpayer on or after the effective date of the revocation do not constitute EZ wages.

Wages paid to individuals employed before an EZ is designated do not qualify as EZ wages.

Full-time employment means a job consisting of at least 35 hours per week. You may also combine two or more part-time jobs that together equal at least 35 hours per week.

The *date of designation* of the EZ is the date the zone was created. In the case of a business that was included as a result of a boundary amendment,

the date of designation is the date the boundary was amended to include the business in the EZ.

A qualified targeted employee is an employee who:

- is employed full-time;
- is working in a job created in the EZ during its period of designation;
- received EZ wages for more than half of the current tax year;
- received an hourly wage, that is at least 135% of the minimum wage specified in section 652 of the Labor Law, for more than half of the employee's period of employment during the current tax year; and
- meets the definition of a targeted employee.

A targeted employee is a New York State resident who received EZ wages during the current tax year and who is **one or more** of the following:

- an eligible individual under the provisions of the Work Opportunity Credit (IRC section 51);
- an individual eligible for benefits under the provisions of the Workforce Investment Act as a dislocated worker or low-income individual (Public Law 105-220, as amended);
- a recipient of public assistance benefits at any time during the previous two years;
- an individual whose income is below the most recently established poverty rate promulgated by the U.S. Department of Commerce, Bureau of Census;
- a member of a family whose family income is below the most recently established poverty rate promulgated by the U.S. Department of Commerce, Bureau of Census; **or**
- an honorably discharged member of any branch of the armed forces of the United States.

Any employee who qualified as a targeted employee at the time of initial employment will qualify as a targeted employee for subsequent years as long as he or she continues to receive EZ wages and remains a resident of New York State.

The Department of Labor (DOL) is required to provide a certificate verifying the targeted status of an individual for use by an employer seeking wage tax credits under the EZ program. The Tax Department will only recognize Form ES-450B, *Empire Zones Targeted Status Certification*, issued by the DOL and signed by a DOL representative as proof of targeted status under the wage tax credit program. For more information, please contact the DOL by accessing their Web site at www.labor.state.ny.us or calling 1 800 HIRE-992.

The EZ wage tax credit is allowed for up to five consecutive tax years beginning in the first tax year in which **all three** of the following eligibility requirements are met:

- EZ wages are paid;
- the average number of full-time employees (including full-time equivalents) in New York State for the current tax year exceeds the average number of full-time employees (including full-time equivalents) in New York State during the four years immediately preceding the first tax year in which the EZ wage tax credit is claimed; **and**
- the average number of full-time employees (including full-time equivalents) in the EZ for the current year exceeds the average number of full-time employees (including full-time equivalents) in the EZ, or area comprising the EZ, during the four years immediately preceding the first tax year in which the EZ wage tax credit is claimed.

The amount of the credit is the sum of the following:

- the average number of qualified targeted employees multiplied by \$3,000; and
- the average number of qualified employees multiplied by \$1,500.

For businesses certified in an *investment zone*, the amount of the credit is increased by \$500 for both targeted and qualified employees who earn wages in excess of \$40,000 for the tax year.

An *investment zone (IZ)* is an empire zone designated as an investment zone by Empire State Development based on census tract statistics or location in a municipality. Clean energy enterprises are considered to be located in an IZ.

The total credit used in the current tax year may not exceed 50% of the tax due for the current tax year. The credit or carryover of the credit may not reduce the tax liability to less than either the minimum taxable income base

or the fixed dollar minimum tax, whichever is greater. Any amount of EZ wage tax credit or carryover of credit not deductible in the current tax year may be carried over to the following year or years.

A new business may elect to treat 50% of the unused EZ wage tax credit earned in the current tax year as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

To claim this credit, you must complete Form CT- 601, *Claim for EZ Wage Tax Credit*, and file it with your franchise tax return.

EZ investment tax credit

Tax Law section 210.12-B

Certified zone businesses placing qualified property in service in an EZ may be entitled to the EZ investment tax credit (EZ-ITC).

The amount of the credit for general business corporations is 10% of the cost (or other federal basis) of qualified property when placed in service. New York S corporations compute the credit by multiplying the cost (or other federal basis) of qualified property by 8%.

Qualified property means tangible personal property and other tangible property, including buildings and structural components of buildings, that:

- was acquired, constructed, reconstructed, or erected by the taxpayer on or after the date of designation of the EZ and before the expiration of such designation;
- is depreciable under IRC section 167;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase under IRC section 179(d);
- is located in an EZ; and
 - is 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; or
 - is an industrial waste treatment facility or air pollution control facility, used in the taxpayer's trade or business; or
 - is research and development property.

The EZ-ITC may not reduce the tax liability to less than either the tax on minimum taxable income base or the fixed dollar minimum tax, whichever

is greater. Any amount of the EZ-ITC that cannot be used to reduce the current year tax liability may be carried over to the following tax year or years. However, a business that has been decertified may carry forward the EZ-ITC for only seven years.

A corporation that qualifies as a new business may treat 50% of the unused EZ-ITC as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

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 is a disposal or cessation of qualified use on the effective date of the decertification.

To claim this credit, you must complete Form CT-603, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit*, and file it with your franchise tax return.

**EZ employment
incentive credit**

Tax Law section 210.12-C

A business that acquires, constructs, reconstructs, or erects property for which an EZ investment tax credit (EZ-ITC) is allowed may be entitled to the EZ employment incentive credit (EZ-EIC) for each of the three years following the year the business qualified for the EZ-ITC.

The amount of the EZ-EIC allowed is 30% of the original tax credit for each of the three years following the year for which the original EZ-ITC was allowed. However, the credit is allowed only for those years during which your average number of employees (except general executive officers) in the EZ is at least 101% of the average number of employees (except general executive officers) in the EZ, during the tax year immediately preceding the tax year for which the original EZ-ITC was allowed.

The EZ-EIC used may reduce your franchise tax liability to the fixed dollar minimum. Any amount of credit that cannot be used to reduce the current year liability may be carried over to the following year or years.

A recapture of the 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.

To claim this credit, you must complete Form CT-603, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit*, and file it with your franchise tax return.

EZ investment tax credit for the financial services industry

Tax Law section 210.12-B

The EZ investment tax credit (EZ-ITC) for the financial services industry is allowed for qualified property placed in service in an EZ by the certified business on or after October 1, 1998, and before October 1, 2011.

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.

There are three eligibility tests that can be used to determine if your business meets the requirement to maintain the requisite number of employees performing administrative and support functions in New York State: the 80% current-year test, the 95% three-year back-office test, and the 90% end-of-year test. (For more information, see *Schedule A* in Form CT-605-I, *Instructions for Form CT-605, EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*.)

The amount of the credit for a corporation that is not a New York S corporation is 10% of the cost (or other federal basis) of qualified property when placed in service. The amount of the credit for New York S corporations is 8% of the cost (or other federal basis) of qualified property when placed in service.

Qualified property means tangible property, including buildings and structural components of buildings, that:

- 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 before October 1, 2011;
- is depreciable according to IRC section 167;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase under IRC section 179(d);
- is located in an EZ; and
- 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); or
- as an exchange registered as a national securities exchange (sections 3(a)(1) and 6(a) of the Securities Exchange Act of 1934); or
- as a board of trade (section 1410(a) of the Not-for-Profit Corporation Law); or
- as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides automation or technical services thereto.

Property leased to a broker, dealer, registered investment advisor, national securities exchange, or board of trade that is an affiliate of the taxpayer, that principally uses the property in the qualifying activities listed above, qualifies for the credit provided it 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, registered investment advisor, national securities exchange, or board of trade that 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.

The EZ-ITC for the financial services industry used may not reduce the corporation franchise tax liability for the current tax year to an amount less than the greater of the tax on the minimum taxable income base or the fixed dollar minimum. Any portion of the tax credit that cannot be used to reduce the current year tax liability may be carried over to the following year or years. However, a taxpayer who has been decertified may carry forward the EZ-ITC for only seven years.

A corporation that qualifies as a new business may treat 50% of the unused EZ-ITC as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

A recapture of an EZ-ITC 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.

To claim this credit, you must complete Form CT-605, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*, and file it with your franchise tax return.

EZ employment incentive credit for the financial services industry

Tax Law section 210.12-C

The rules for the EZ-EIC for the financial services industry are generally the same as those for the EZ-EIC. However, if you claim an EZ-ITC for property purchased that is principally used by your affiliate, you may also be eligible for an EZ-EIC. In this case, the credit is allowed based on your average number of employees in the EZ. The number of the affiliate's employees is not taken into consideration.

To claim this credit, you must complete Form CT-605, *Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry*, and file it with your franchise tax return.

Qualified empire zone enterprise credit for real property taxes

Tax Law sections 15 and 210.27

Qualified empire zone enterprises with real property located in an EZ in which it is certified may be entitled to the qualified empire zone enterprise (QEZE) credit for real property.

Note: The information in this section applies to a QEZE certified on or after April 1, 2005. For information on a QEZE first certified prior to April 1, 2005, see the instructions for Form CT-606, *Claim for QEZE Credit for Real Property Taxes*.

A *development zone (DZ)* is an EZ designated by Empire State Development, usually located within a county.

An *investment zone (IZ)* is an EZ designated by Empire State Department based on census tract statistics or location in a municipality. Clean energy enterprises are considered to be located in an IZ.

Manufacturer means a business that during the tax year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, or a business engaged in emerging technologies under Public Authorities Law section 3102(e).

Net new employees is equal to the QEZE's current year employment number in the EZ(s) in which it is certified for the tax year less the QEZE's employment number in the EZ(s) for the base period.

Development zone employment increase factor is an amount which cannot exceed one, based on the QEZE's net new employees (see the table below):

Net new employees	Development zone employment increase factor
1 to 10	.25
11 to 49	.50
50 to 75	.75
76+	Net new employees divided by 100, up to 1.0

Eligible real property taxes refers to taxes for the current tax year imposed on real property located in an EZ in which the QEZE is certified, provided that:

- the property is owned by the QEZE,
- the taxes are imposed in a tax year in which the owner is certified and qualifies as a QEZE, and
- the owner paid the real property taxes, or a tenant paid the real property taxes. If a tenant paid the real property taxes, the owner may take the credit for those taxes paid by the tenant if the tenant does not qualify as a QEZE or if the taxes do not constitute eligible real property taxes for the tenant (see *Lessees* below).

Lessees – Eligible real property taxes include taxes paid by a QEZE that is a lessee if:

- the taxes are paid under a written lease agreement executed or amended on or after June 1, 2005;
- the taxes become a lien on the property during a tax year in which the lessee is both certified and a QEZE; and
- the lessee made direct payment to the taxing authority and has received a receipt for the payment from the authority.

Payments in lieu of taxes (PILOT) – Eligible real property taxes include PILOT payments made by the QEZE to the state, a municipal corporation, or a public benefit corporation. PILOT payments made by the QEZE under a written agreement executed or amended on or after January 1, 2001, but prior to January 1, 2005, are not eligible real property taxes unless both the Department of Economic Development and the Office of Real Property Services approve the written agreement. For tax years beginning on or after January 1, 2005, PILOT payments are not eligible real property taxes in any tax year to the extent that the payment exceeds:

- the greater of the basis for federal income tax purposes on the certification date of real property (including buildings and structural components of buildings) owned by the QEZE and located in EZs for which it is certified or the basis on the last day of the tax year, multiplied by
- the county's full-value tax rate (see, *Full-value tax rates by county* in Form CT-606-I, *Instructions for Form CT-606, Claim for QEZE Credit for Real Property Taxes*),

- divided by 1,000.

Note: The basis is calculated without regard to depreciation. If the basis is adjusted pursuant to any Internal Revenue Code provisions, the QEZE may petition the Tax Department, the Department of Economic Development, and the Office of Real Property Services to disregard the adjustment for purposes of this calculation.

The amount of the credit is limited to the greater of the following two amounts:

- the credit amount, or
- the capital investment amount.

However the credit shall not exceed the amount of the business' eligible real property taxes for the tax year (see page 32 for the definition of eligible real property taxes).

The *credit amount* for a QEZE certified only in an investment zone, or which is a manufacturer, is the product of the following factors:

- twenty-five percent; and
- the total wages, health benefits, and retirement benefits of net new employees for the taxable year, not to exceed \$40,000 for each net new employee.

In the case of a QEZE certified only in an investment zone or which is a manufacturer, the capital investment amount shall be the product of:

1. ten percent of the greater of:
 - a. the cost or other basis of real property for federal income tax purposes (determined on the later of January 1, 2001, or on the effective date of the certification); **or**
 - b. the cost or other basis for federal income tax purposes of the real property referred to above on the last day of the taxable year,

and
2. The greater of:
 - a. the percentage of the real property referenced in (1a) above, physically occupied and used by the QEZE or by a *related person* to the QEZE; **or**

- b. the percentage of the cost or other basis attributable to the construction, expansion or rehabilitation of the real property referenced in (1a) above (not including the acquisition cost) by the QEZE. If such percentage is 50% or greater, then the percentage shall be deemed to be 100%.

The credit amount for a QEZE certified in an area designated as a development zone, with the exception of manufacturers, or a QEZE which is certified in both a development zone and an investment zone with the exception of manufacturers, is the product of the following factors:

- twenty-five percent;
- the total wages and health and retirement benefits of net new employees for the taxable year, not to exceed \$40,000 for each net new employee; **and**
- the corresponding development zone employment increase factor based upon net new employees.

In the case of a QEZE which is certified in an area designated as a development zone with the exception of manufacturers, or a QEZE which is certified in both a development zone and an investment zone with the exception of manufacturers, the capital investment amount is the product of the following factors:

- ten percent;
- the amount of such cost or other basis which is attributable to the construction, expansion or rehabilitation (not including the acquisition cost) of real property, including buildings and structural components of buildings, owned by the QEZE and located in EZs in which the QEZE is certified; and
- the percentage of the real property physically occupied and used by the QEZE or by a *related person* to the QEZE. (If 50% or more of the cost or other basis is attributable to the construction, expansion or rehabilitation of the real property (not including the acquisition cost), then this percentage shall be deemed to be 100%.)

Note: Effective for taxpayers who are certified under Article 18-B of the General Municipal Law on or after April 1, 2009, the QEZE real property tax credit calculation is changed. These QEZEs will compute the QEZE real property tax credit in the same manner as an entity first certified on or after April 1, 2005. However, only 75% of the amount of credit so computed will be allowed.

The QEZE credit for real property taxes may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of the QEZE credit in the current tax year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

A business enterprise **certified on or after April 1, 2005**, may be a QEZE for up to 10 years provided the employment test is met. However, a business enterprise that subsequently has its certification revoked under Article 18-B of the General Municipal Law will cease to be a QEZE on the first day of the taxable year in which the certification is revoked.

If the eligible real property taxes which were the basis for a QEZE credit for real property taxes are subsequently reduced as a result of a final order in any proceeding under the Real Property Tax Law Article 7 or other provision of law, the QEZE must recapture a portion of the credit allowed in the year the final order is issued. Recapture is required only if the credit claimed in a tax year exceeds the amount of real property taxes paid after taking into account the reduction.

To claim this credit, complete Form CT-606, *Claim for QEZE Credit for Real Property Taxes*, or if you are a corporate partner, Form CT-604-CP, *Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit for Corporate Partners*, and file it with your franchise tax return.

For more information on the QEZE Credits, please see TSB-M-06(1)C, *Qualified Empire Zone Enterprise (QEZE) Tax Credits*.

Qualified empire zone enterprise tax reduction credit

Tax Law sections 16 and
210.28

Qualified empire zone enterprises may be entitled to a tax reduction credit for a percentage of the taxes attributable to the QEZE.

Note: The information in this section applies to a QEZE certified on or after April 1, 2005. For information on a QEZE first certified prior to April 1, 2005, see instructions for Form CT-604.

The QEZE tax reduction credit is the product of:

- the *benefit period factor* (for a QEZE first certified on or after April 1, 2005, the benefit period factor is always 1.0);
- the *employment increase factor*;
- the *zone allocation factor*; and
- the *tax factor*.

The *employment increase factor* is an amount which cannot exceed 1, but that is the greater of the following:

- The excess of the QEZE's employment number in the Empire Zones in which the QEZE is certified under Article 18-B of the General Municipal Law for the taxable year, over the QEZE's test year employment number in such empire zones, divided by the QEZE's test year employment number in the zones in which the QEZE is certified; **or**
- The excess of the QEZE's employment number in zones in which the QEZE is certified under Article 18-B of the General Municipal Law for the taxable year, over the QEZE's test year employment number in such zones, divided by 100.

The *zone allocation factor* is the percentage that represents the economic presence in the EZs in which your business is certified. For a clean energy enterprise (CEE) the zone allocation factor equals 100%.

The *tax factor* is the tax calculated under Article 9-A of the Tax Law that is based on income (i.e., the entire net income or alternative minimum taxable income bases).

Business enterprises certified on or after April 1, 2005, may be QEZEs for up to 10 years provided the employment test is met each year. (Owners of qualified investment projects and/or significant capital investment projects may qualify for an extended business tax benefit period.)

The QEZE tax reduction credit may not reduce the tax to less than the fixed dollar minimum tax. However, a QEZE that has a zone allocation factor of 100% is not subject to this limitation and may reduce the tax to zero.

The QEZE tax reduction credit is not refundable. Any amount not deductible in the current tax year may not be refunded, carried forward, or applied as an overpayment of tax to be credited to next year's tax.

To claim this credit, you must complete Form CT-604, *Claim for QEZE Tax Reduction Credit*, or if you are a corporate partner, Form CT-604-CP, *Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit for Corporate Partners*, and file it with your franchise tax return.

For more information on the QEZE credits, please see TSB-M-06(1)C, *Qualified Empire Zone Enterprise (QEZE) Tax Credits*.

Employment of persons with disabilities credit

Tax Law section 210.23

Businesses employing qualified persons with disabilities may be entitled to a tax credit. The qualified employee must be certified by the New York State Department of Labor's Economic Development Services Unit.

If the federal work opportunity credit for vocational rehabilitation referrals under IRC section 51 (see federal Form 5884) is **not** in effect for an employee, the New York credit is based on 35% of the first \$6,000 of the employee's qualified **first-year** wages.

If the federal work opportunity credit for vocational rehabilitation referrals under IRC section 51 (see federal Form 5884) is in effect for an employee, the New York credit is 35% of the first \$6,000 of the employee's qualified **second-year** wages.

The maximum credit is \$2,100 per employee. The credit cannot reduce the tax to less than the fixed dollar minimum tax. The employment of persons with disabilities credit is not refundable. However, any amount of the credit not used in the current tax year may be carried forward for an unlimited number of years.

To claim this credit, you must complete Form CT-41, *Claim for Credit for Employment of Persons with Disabilities*, and file it with your franchise tax return.

For additional information on this credit, see TSB-M-98(3)C, *Credit for Employment of Persons with Disabilities*.

Farmers' school tax credit

Tax Law section 210.22

A corporation engaged in the business of farming may be entitled to a tax credit for the school district property taxes paid on qualified agricultural property. In addition, corporations that are partners in a partnership (including a limited liability company treated as a partnership) engaged in the business of farming or owning qualified agricultural property may be entitled to the credit.

You are *engaged in the business of farming* if you cultivate, operate, or manage a farm for gain or profit, even though the operation may not produce a profit every year.

You are also *engaged in the business of farming* if you rent your farm property to another person who uses the property in agricultural production and the rental arrangement meets certain conditions (see the instructions for Form CT-47, *Claim for Farmers' School Tax Credit*).

Qualified agricultural property includes land and land improvements located in New York State that are used in agricultural production. It also includes structures and buildings that are located on the qualifying property that are used or occupied to carry out agricultural production. Structures or buildings used as residential property by any of the executive officers of the

corporation are not considered qualifying agricultural property for the purposes of the credit. Qualified agricultural property also includes land set aside or retired under a federal supply management or soil conservation program or land that at the time it becomes subject to a conservation easement, as defined under Tax Law section 210.38, met the other requirements for qualified agricultural property.

Qualified agricultural property you purchased under a land sales contract is considered owned by you if you are obligated under the land sales contract to pay the school district property taxes on the purchased property and you are entitled to deduct those taxes as a tax expense for federal income tax purposes.

Land used in agricultural production includes land under structures or buildings which are qualified agricultural property, and land in support of a farm operation, such as farm ponds, drainage swamps, wetlands, and access roads.

If all or a portion of your qualified agricultural property is converted to nonqualified use before the end of the second tax year following the year in which you first claimed a credit, you may be required to recapture all or part of the credit you claimed.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current year may be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment. The corporation may also elect to carry the excess credit forward to the following year or years.

To claim this credit, you must complete Form CT-47, *Claim for Farmers' School Tax Credit*, and file it with your franchise tax return.

A corporation is not eligible to claim the credit for any tax year in which the shareholders have in place a valid election to deem the income of the corporation to the shareholders. For information concerning the election, see Form CT-47.1, *Election or Termination of Election to Deem Income for Purposes of the Farmers' School Tax Credit*.

For more information on the Farmers' School Tax Credit, see Publication 51, *Questions and Answers on New York State's Farmers' School Tax Credit*, Publication 51.1, *Update to Publication 51*, and TSB-M-03(8)I, *Farmers' School Tax Credit Eligibility Enhanced*.

Fuel cell electric generating equipment credit

Tax Law section 210.37

The fuel cell electric generating equipment credit was allowed for the purchase and installation of fuel cell electric generating equipment used in New York State. Effective for tax years beginning on or after January 1, 2009, no new claims for this tax credit will be allowed. However, if you have a carryover of the credit from a prior year, you may continue to carry that credit forward for an unlimited number of tax years. To claim a carryover credit, you must complete Form CT-259, *Claim for Fuel Cell Electric Generating Equipment Credit*, and attach it to your franchise tax return.

Green building credit

Tax Law sections 19 and 210.31

The green building credit is available to businesses that construct, rehabilitate, and maintain buildings with specified environmental standards and energy efficiency. The credit is administered by the New York State Department of Environmental Conservation (DEC) which is responsible for determining both eligibility for the credit and the amount of credit. The credit is allowed for tax years beginning in 2001 through 2014.

To qualify for this credit, you must obtain an initial credit component certificate from DEC. Initial credit component certificates may be issued through 2009. The initial credit component certificate will state the first tax year for which the credit may be claimed, an expiration date, and the maximum amount of credit component allowable for each year. Additionally, for each year the credit is claimed, your business must obtain an eligibility certificate, issued by a licensed architect or engineer, certifying that the project meets the standards for green buildings.

The credit is the sum of the following credit components specified in the component certificate:

- green whole building credit component;
- green base building credit component;
- green tenant space credit component;
- fuel cell credit component;
- photovoltaic module credit component; **and**
- green refrigerant credit component.

The credit may be claimed for five years starting with the first tax year allowed according to the initial credit component certificate, and including the four succeeding tax years. If a credit is allowed to an owner who sells the building, or to a tenant who terminates his or her lease within the five-year period of allowance of such credit, the successor owner or successor tenant would be allowed the credit for the remainder of the five-year

period, provided that the property continues to meet the applicable environmental and energy efficient standards.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. The credit is not refundable. If the amount of credit exceeds the tax for the year, the excess credit may be carried over to the following year or years.

To claim this credit, you must complete Form DTF-630, *Claim for Green Building Credit*, and attach it to your franchise tax return. More information on the green building credit can be found on the Department of Environmental Conservation Web site at www.dec.state.ny.us.

Investment tax credit

Tax Law section 210.12

Businesses purchasing qualified property may be entitled to the investment tax credit (ITC).

Qualified property is tangible property, including buildings and structural components of buildings, that:

- was 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. Buildings principally used as a qualified film production facility must have received a final certificate of occupancy after January 1, 2005.);
- is depreciable under IRC section 167 or 168;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase under IRC section 179(d);
- is located in New York State; **and**
- is one of the following types of property:
 - property that is principally used by the taxpayer in producing goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing;
 - an industrial waste treatment facility or air pollution control facility, used in the taxpayer's trade or business;
 - research and development (R&D) property; or

- property that is principally used as a qualified film production facility.

The investment tax credit is 5% of the first \$350 million of the investment credit base, and 4% of the excess amount. The *investment credit base* is the cost, or other basis when placed in service in New York State for federal income tax purposes, of qualified tangible property, including buildings and the structural components of buildings, less the amount of nonqualified nonrecourse financing with respect to such property, to the extent such financing would be excludible from the credit base under section 46(c)(8) of the IRC.

A corporation that is not a New York S corporation may compute the investment tax credit on research and development (R&D) property at either the standard rate or the optional rate of 9%. However, only R&D property on which the investment tax credit was computed at the standard rate may be included in the investment credit base for purposes of computing the employment incentive credit (see section titled, *Employment Incentive Credit*).

The investment tax credit is allowed for the tax year in which the qualifying property is placed in service. The credit may not reduce the tax liability to less than either the tax on minimum taxable income or the fixed dollar minimum tax, whichever is greater. Any amount of the ITC that cannot be used to reduce the current year tax liability may be carried forward for 15 years. However, a taxpayer that qualifies as a new business may elect to have the unused amount of credit treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

A recapture of an ITC previously allowed may be required if the property was stolen, destroyed, or disposed of prior to the end of its useful life, or if there is an increase in nonqualified nonrecourse financing.

To claim this credit, you must complete Form CT-46, *Claim for Investment Tax Credit (includes Employment Incentive Credit)*, and file it with your franchise tax return.

Employment incentive credit

Tax Law section 210.12-D

Businesses claiming an ITC and increasing employment may be entitled to the employment incentive credit (EIC). If you qualify, the credit is allowed for each of the two years immediately following the tax year in which the investment tax credit was allowed.

The amount of the EIC is a percentage of the original investment credit base on which the ITC was allowed. The percentage for computing the EIC will vary depending on the level of employment. Research and development property on which the ITC was computed at the optional 9%

rate is not eligible to be included in the investment credit base for purposes of computing the EIC.

The credit is not allowed for years in which the average number of employees in New York State is not at least 101% of the average number of employees in New York State during the employment base year.

The *employment base year* means the calendar year or fiscal year immediately preceding the tax year in which the original ITC was claimed.

If you were not taxable in New York State in the preceding year, the base year is the tax year the ITC was allowed.

The credit may not reduce the tax liability to an amount less than either the tax on minimum taxable income or the fixed dollar minimum tax, whichever is greater. The EIC is not refundable but may be carried forward for up to 15 years.

To claim this credit, you must complete Form CT-46, *Claim for Investment Tax Credit (includes Employment Incentive Credit)*, and file it with your franchise tax return.

**Investment tax credit
for the financial
services industry**

Tax Law section 210.12

The investment tax credit (ITC) for the financial services industry is allowed for qualified property placed in service by a business on or after October 1, 1998, and before October 1, 2011. Generally, the rates and rules for the credit are the same as the ITC.

However, the definition of qualified property for the ITC for the financial services industry has two key distinctions:

- the property must be acquired, constructed, reconstructed, or erected by the taxpayer on or after October 1, 1998, and before October 1, 2011; and
- the property must be 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));
 - providing investment advisory services for a regulated investment company (IRC section 851);

- as an exchange registered as a national securities exchange (sections 3(A)(1) and 6(A) of the Securities Exchange Act of 1934);
- as a board of trade (Not-for-Profit Corporation Law section 1410(a)); or
- as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides them with automation or technical services.

Property used by an affiliate may also qualify for the credit. For more information, see Form CT-44-I, *Instructions for Form CT-44, Claim for Investment Tax Credit for the Financial Services Industry*.

A recapture of an ITC previously allowed may be required if the property was stolen, destroyed, or disposed of, or ceases to be in qualified use prior to the end of its useful life, or if there is an increase in nonqualified nonrecourse financing.

Businesses seeking to claim the ITC for the financial services industry are subject to an employment test. To claim the credit, all or a substantive portion 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.

There are three eligibility tests that can be used to determine if your business meets this requirement: the 80% current-year test, the 95% three-year back-office test, and the 90% end-of-year test. (For more information, see *Schedule A* in Form CT-44-I, *Instructions for Form CT-44, Claim for Investment Tax Credit for the Financial Services Industry*.)

To claim this credit, you must complete Form CT-44, *Claim for Investment Tax Credit for the Financial Services Industry*, and file it with your franchise tax return.

**Employment
incentive credit for
the financial services
industry**

Tax Law section 210.12-D

Businesses claiming the ITC for the financial services industry may also be eligible for the EIC. The rules for the EIC for the financial services industry are generally the same as the EIC.

If you claim an ITC for property purchased that is principally used by your affiliate, you may also be eligible for an EIC. In this case, the credit allowed is based on your average number of employees in New York State. The number of the affiliate's employees is not taken into consideration.

To claim this credit, you must complete Form CT-44, *Claim for Investment Tax Credit for the Financial Services Industry*, and file it with your franchise tax return.

Credit for rehabilitation expenditures for historic barns

Tax Law section 210.12(1)

Businesses making qualified rehabilitation expenditures, as defined in section 47(c)(2) of the IRC, may be entitled to the credit for rehabilitation expenditures for historic barns. The expenditures must be paid or incurred for a barn located in New York State that is a qualified rehabilitated building, as defined in section 47(c)(1) of the IRC.

The barn must be a building originally designed and used for storing farm equipment or agricultural products, or for housing livestock. No credit is allowed for a barn converted to a residence or for a barn whose historic appearance has been altered.

A *qualifying rehabilitated building* is a barn (and its structural components), as defined in section 47(c)(1) of the IRC, which is located in New York State, and satisfies the following criteria:

- The barn is a certified historic structure or was first placed in service before 1936 (for exceptions, see below).
- The barn has been substantially rehabilitated. A barn will be considered *substantially rehabilitated* only if the expenditures incurred during the 24-month period you selected, and ending with or within the tax year, exceed the greater of the adjusted basis of the barn or \$5,000. Under certain circumstances, the rehabilitation work may extend over a number of tax years.
- The barn was placed in service before the beginning of the rehabilitation. A barn qualifies for the credit if it had been placed in service as a barn by any person prior to the rehabilitation, even if it is not in service at the time the rehabilitation is done.
- Depreciation (or amortization in lieu of depreciation) is allowable for the barn.

For barns that are not certified historic structures and which were placed in service before 1936, the rehabilitation must meet the following additional criteria:

- fifty percent or more of the existing external walls of the barn are retained in place as external walls;
- seventy-five percent or more of the existing external walls of the barn are retained in place as internal or external walls; and
- seventy-five percent or more of the existing internal structural framework of the barn is retained in place.

Qualified rehabilitation expenditures are defined in section 47(c)(2) of the IRC. A *qualified rehabilitation expenditure* must, among other things, be

properly chargeable to a capital account for property which qualifies for depreciation under section 168 of the IRC.

The amount of the credit is 25% of the taxpayer's qualifying rehabilitation expenditures paid or incurred.

The credit may not reduce the tax liability to less than the tax on minimum taxable income or the fixed dollar minimum tax, whichever is greater. Any unused credit may be carried forward to the next fifteen taxable years. However, a taxpayer that qualifies as a new business may elect to have the unused amount of credit treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

If a rehabilitated historic barn for which this credit has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life (that is the number of months your business has chosen to depreciate the property for purposes of the IRC), 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 the qualified use ceased or the year of disposition.

To claim this credit, you must complete Form CT-46-ATT, *Credit for Rehabilitation Expenses for Retail Enterprises and Historic Barns*, attach it to Form CT-46, *Claim for Investment Tax Credit*, and file it with your franchise tax return.

For more information on the historic barn rehabilitation credit, see TSB-M-97(5)C, *A Credit for Rehabilitation of Historic Barns*.

**Credit for
rehabilitation
expenditures for
retail enterprises**

Tax Law section 210.12(k)

Businesses making qualified rehabilitation expenditures, as defined in section 47(c)(2) of the IRC, may be entitled to the credit for rehabilitation expenditures for retail enterprises. To qualify for the credit, you must be a retail enterprise and qualify for the federal credit. The rehabilitated property must be located in New York State. The credit is limited to the portion of the expenditures attributable to the property employed in retail sales.

A retail enterprise is a taxpayer who is registered as a vendor under Article 28 of the New York State Tax Law and is at least 50% engaged in retail sales as defined in section 1101(b)(4)(i) of the Tax Law.

The credit for rehabilitation expenditures for retail enterprises is 5% of the first \$350 million of qualified rehabilitation expenditures, and 4% of the excess amount. The credit is allowed for the taxable year in which the rehabilitated property is placed in service.

The credit may not reduce the tax liability to less than the tax on minimum taxable income or the fixed dollar minimum tax, whichever is greater. Any unused credit may be carried forward to the next fifteen taxable years.

However, a taxpayer that qualifies as a new business may elect to have the unused amount of credit treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

If property on which a retail enterprise credit has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life, you must add the difference between the original credit allowed and the credit allowed for actual use back to the tax otherwise due in the year of disposition or disqualification.

To claim this credit, you must complete Form CT-46-ATT, *Credit for Rehabilitation Expenses for Retail Enterprises and Historic Barns*, attach it to Form CT-46, *Claim for Investment Tax Credit (including Employment Incentive Credit)*, and file it with your franchise tax return.

Long-term care insurance credit

Tax Law section 210.25-a

Businesses paying premiums for qualified long-term care insurance on behalf of their employees may be entitled to the long-term care insurance credit.

A qualified long-term care insurance policy is one that is:

- approved by the New York State Superintendent of Insurance under section 1117(g) of the Insurance Law and is a qualified long-term care insurance contract under section 7702B of the IRC. (**Note:** Section 7702B relates to policies for which a federal itemized deduction is allowed); **or**
- a group contract delivered or issued for delivery outside of New York State, but which is a qualified long-term care insurance contract under section 7702B of the IRC. The premiums paid for this insurance qualify for the credit even if the policy is not approved by the New York State Superintendent of Insurance.

A qualified long-term care insurance contract under section 7702B of the IRC is an insurance contract that provides only coverage of qualified long-term care services. The contract must:

- be guaranteed renewable;
- not provide for cash surrender value or other money that can be paid, assigned, pledged, or borrowed;
- provide that refunds, other than refunds on the death of the insured or complete surrender or cancellation of the contract, and dividends under the contract must be used only to reduce future premiums or increase future benefits; **and**

- generally not pay or reimburse expenses incurred for services or items that would be reimbursed under Medicare, except where Medicare is a secondary payer, or the contract makes per diem or other periodic payments without regard to expenses.

The insurance company that issued your policy should be able to tell you if the policy qualifies under section 7702B of the IRC.

The credit is equal to 20% of the premiums paid during the tax year for the purchase of or for continuing coverage under a qualifying long-term care insurance policy.

The credit may not reduce the tax liability to less than either the tax on minimum taxable income or the fixed dollar minimum tax, whichever is greater. The long-term care insurance credit is not refundable. If the amount of credit exceeds the tax for the year, the excess credit may be carried over to the following year or years.

To claim this credit, you must complete Form CT-249, *Claim for Long-Term Care Insurance Credit*, and file it with your franchise tax return.

Low-income housing credit

Tax Law sections 18 and 210.30

A New York State low-income housing tax credit program has been established to promote the construction and rehabilitation of low-income housing in New York State. The credit program coordinates with and builds upon the federal low-income housing credit, which is provided for in section 42 of the IRC.

The low-income housing credit is available for eligible low-income buildings for which an eligibility statement has been issued by the Commissioner of the New York State Division of Housing and Community Renewal. The amount of the credit for each building is determined by the Commissioner of the DHCR under Article 2-A of the Public Housing Law. The credit amount allocated to a project by the commissioner is allowed each year for 10 years. However, the project must continue to qualify as low-income housing for a 15-year compliance period to avoid a partial recapture of the credit.

The credit may not reduce the tax liability to less than either the tax on minimum taxable income or the fixed dollar minimum tax, whichever is greater. The credit is not refundable. If the amount of credit exceeds the tax for the year, the excess credit may be carried over to the following year or years.

If, as of the close of any tax year in the compliance period, there is a reduction in the qualified basis of the building from the previous year, you may have to recapture a part of the credit you have taken. Similarly, you may have to recapture part of the credits taken in previous years upon

certain dispositions of the building or interests therein (See Form DTF-626, *Recapture of Low-Income Housing Credit*).

To qualify for this credit, the building owner must obtain a New York State low-income housing credit allocation from DHCR on Form DTF-625, *Low-Income Housing Credit Allocation and Certification*. The building owner also completes Form DTF-625-ATT, *Low-Income Housing Credit Annual Statement*. To claim the credit you must file Form DTF-624, *Claim for Low-Income Housing Credit*, and attach it to your franchise tax return.

For more information, see the instructions for Forms DTF-625, DTF-625-ATT, DTF-624, and DTF-626. Additional information on this credit is also available from the Division of Housing and Community Renewal, call 1 866-275-3427 or access the DHCR Web site at www.dhcr.state.ny.us.

Qualified emerging technology company tax credits

The qualified emerging technology company (QETC) tax credits have been created to enhance emerging technology industries in New York State. Three tax credits are available to Article 9-A taxpayers: the QETC employment credit, the QETC capital tax credit, and the QETC facilities, operations, and training credit.

A *qualified emerging technology company* is, as defined in section 3102-e of the Public Authorities Law (PAL), a company located in New York State that has total annual product sales of \$10 million or less, and meets **either** of the following criteria:

- its primary products or services are classified as emerging technologies under section 3102-e(1)(b) of the PAL.
- it has research and development activities in New York State, and its ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified (as determined by the National Science Foundation in the most recently published results from its survey, *Research and Development in Industry*, or a comparable successor survey as determined by the Tax Department).

For the definition of *emerging technologies*, see the instructions for Form DTF-621, *Claim for QETC Employment Credit*, Form DTF-622, *Claim for QETC Capital Tax Credit*, or Form DTF-619, *Claim for QETC Facilities, Operations, and Training Credit*.

QETC employment credit

Tax Law section 210.12-E

Businesses creating jobs in emerging technology companies in New York State may be entitled to the QETC employment credit.

To qualify for the credit the average number of individuals employed full-time by the QETC in New York State during the tax year must be at least 101% of the QETC's base year employment.

Base year employment means the average number of individuals employed full-time by the QETC in New York State during the three tax years immediately preceding the first tax year in which the credit is claimed.

The amount of the credit is equal to the average number of full-time employees in New York State for the current tax year, minus the taxpayer's base year employment, multiplied by \$1,000. The credit is available for three consecutive tax years selected by your business, and may be claimed for each of the three years that the eligibility requirements are met.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current tax year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

To claim this credit, you must complete Form DTF-621, *Claim for QETC Employment Credit*, and file it with your franchise tax return.

For more information, see TSB-M-99(2.1)C, *Qualified Emerging Technology Company Tax Credits*, and the instructions for Form DTF-621.

QETC capital tax credit

Tax Law section 210.12-F

Businesses investing in emerging technology companies in New York State may be entitled to the QETC capital tax credit.

The credit is computed on each qualified investment made during the tax year in a certified QETC.

A qualified investment means:

- the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest; **and**
- the contribution of property to a partnership in exchange for an interest in the partnership; **and**
- similar contributions to a business entity not in corporate or partnership form in exchange for an ownership interest in the entity.

Qualified investments **do not include** investments made by or on behalf of an owner of the QETC, including, but not limited to, a stockholder, partner, sole proprietor, or any related person (as defined in section 465(b)(3)(C) of the IRC).

A certified qualified emerging technology company means a QETC that filed Form DTF-620, *Application for Certification of a Qualified Emerging Technology Company*, and has been certified as a QETC by the Commissioner of Taxation and Finance.

The QETC capital tax credit is computed on each qualified investment made during the tax year in a certified QETC and is equal to the sum of:

- ten percent of qualified investments in certified QETCs, if you certify to the Commissioner of Taxation and Finance at the time the credit is claimed that the qualified investment will not be sold, transferred, traded, or disposed of within four years from the close of the tax year in which the QETC capital tax credit is first claimed; **and**
- twenty percent of qualified investments in certified QETCs, if you certify to the Commissioner of Taxation and Finance at the time the credit is claimed that the qualified investment will not be sold, transferred, traded, or disposed of within nine years from the close of the tax year in which the QETC capital tax credit is first claimed.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. The credit is not refundable. If the amount of credit exceeds the tax for the year, the excess credit may be carried over to the following year or years.

You may have to recapture a portion of the credit originally allowed if:

- you sell, transfer, or otherwise dispose of an ownership interest arising from the making of a qualified investment, **or**
- you recover an investment that was the basis for the allowance of the QETC capital tax credit.

Recapture is required if the disposal or recovery occurs during the tax year or within 48 months (for a credit at the rate of 10% of qualified investments) or 108 months (for a credit at the rate of 20% of qualified investments) from the close of the tax year when the credit was allowed.

To claim this credit, you must complete Form DTF-622, *Claim for QETC Capital Tax Credit*, and attach it to your franchise tax return.

For more information, see TSB-M-99(2.1)C, *Qualified Emerging Technology Company Tax Credits*, and the instructions for Form DTF-622.

**QETC facilities,
operations, and
training credit**

Tax Law section 210.12-G

Businesses incurring costs for certain facilities, operations, and employee training may be entitled to a tax credit for tax years beginning on or after January 1, 2005, and before January 1, 2012.

To qualify for the credit the QETC must have:

- 100 full-time employees or less, with at least 75% of those employees employed in New York State;

- a ratio of research and development funds to net sales which equals or exceeds 6% during its tax year; **and**
- gross revenues, along with the gross revenues of its affiliates and related members, that did not exceed \$20 million for the tax year immediately preceding the year the credit is claimed.

The amount of the credit is the sum of the following amounts:

- eighteen percent of the research and development property, costs and fees incurred in connection with emerging technology activities;
- nine percent of qualified research expenses paid or incurred by the taxpayer during the tax year; **and**
- one hundred percent of qualified high-technology training expenditures paid or incurred by the taxpayer, limited to \$4,000 per employee, per year.

The total amount of the credit allowable to a taxpayer cannot be more than \$250,000 per year.

The credit may be claimed for four consecutive tax years. However, a business that relocates from an academic incubator facility may claim the credit for five consecutive tax years and may elect to defer the credit to the first tax year after the taxpayer relocates from the incubator facility.

See Form DTF-619-I, *Instructions for Form DTF-619*, for more information on qualifying property and expenses for this credit.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current tax year will be treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

To claim this credit, you must complete Form DTF- 619, *Claim for QETC Facilities, Operations, and Training Credit*, and file it with your franchise tax return.

Rehabilitation of historic properties credit

Tax Law section 210.40

Businesses incurring expenses related to the rehabilitation of depreciable, certified historic structures located in New York State may be entitled to the rehabilitation of historic properties credit. The credit is available for tax years beginning on or after January 1, 2007.

A *certified historic structure* is a building (and its structural components) that is listed in the National Register of Historic Places or is located in a

registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district.

The credit for tax year 2009 is equal to 30% of the federal credit amount allowed under IRC section 47(c)(3) on a certified historic structure located in New York State, with the New York State credit amount not to exceed \$100,000 per certified historic structure. There is no limit on the number of certified historic structures for which the credit may be taken.

If the credit exceeds the taxpayer's tax for the year, the excess may be carried over to the following years indefinitely. The credit is not refundable.

Any credit taken must be recaptured if the federal credit upon which the New York credit is based is recaptured. The recapture amount will be the lesser of 30% of the federal amount recaptured on property located in New York State, or the amount of credit for the rehabilitation of historic properties previously claimed for that property.

To claim this credit, you must complete Form CT-238, *Claim for Rehabilitation of Historic Properties Credit*, and file it with your franchise tax return.

Note: Chapter 239 of the Laws of 2009 made amendments to the rehabilitation of historic properties credit for tax years beginning on or after January 1, 2010. For information on the provisions of the credit for tax years beginning on or after January 1, 2010 see TSB-M-10(2)C, (3)I, *The Rehabilitation of Historic Properties Credit and the Historic Homeownership Rehabilitation Credit*.

Security officer training tax credit

Tax Law sections 26 and 210.37

Qualified building owners employing qualified security officers may be entitled to the security officer training tax credit. The credit is administered by the New York State Office of Homeland Security (NYSOHS) which is responsible for determining the eligibility for the credit and the amount of the credit.

To qualify for this credit, the building owner must file an application with NYSOHS and receive a certificate of tax credit. The certificate will state the amount of the security officer training tax credit that the building owner has qualified for. The credit amount equals \$3,000 multiplied by the sum of the number of qualified security officers providing protection for a building or buildings owned by a qualified building owner. In the case of a qualified security officer not employed for a full year, the amount of the credit is prorated to reflect the length of employment.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. Any unused amount of credit in the current tax year will be

treated as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

To claim this credit, you must complete Form CT-631, *Claim for Security Officer Training Tax Credit*, and file it with your franchise tax return.

For more information regarding this credit, visit the New York State Office of Homeland Security Web site at www.security.state.ny.us.

Special additional mortgage recording tax credit

Tax Law sections 210.17 and 210.21

Businesses paying the special additional mortgage recording tax to record a mortgage on real property located in New York State may be entitled to a tax credit for the amount of the tax paid.

A tax credit is not allowed for the special additional mortgage recording tax paid on residential mortgages recorded on or after May 1, 1987 if the real property is located in Erie County or any of the counties within the Metropolitan Commuter Transportation District (MCTD). The MCTD includes the counties of New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester.

A *residential mortgage* is defined as a mortgage of real property that has been or will be principally improved by one or more structures containing a total of not more than six residential dwelling units, each with its own separate cooking facilities.

The credit may not reduce the tax liability to less than either the tax on the minimum taxable income base or the fixed dollar minimum tax, whichever is greater. If the amount of the special additional mortgage recording tax credit exceeds your tax for the tax year, any amount of credit exceeding the tax may be carried over to the following year or years. You can also elect to treat any unused amount of credit in the current tax year as a refund or an overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

For tax periods beginning in and after 1994, New York S corporations taxable under Article 9-A may apply this credit against the franchise tax or carry it forward. Credits earned from residential mortgages may be treated as an overpayment of tax to be credited or refunded. Credits earned by the S corporation do not flow through to the shareholders and may not be claimed against their personal income tax liability.

When claiming this credit, you must add back, to your entire net income, the amount of the special additional mortgage recording tax allowed as a deduction in the computation of the corporation's federal taxable income.

To claim this credit, you must complete Form CT-43, *Claim for Special Additional Mortgage Recording Tax Credit*, and file it with your franchise tax return.

For more information on the special additional mortgage recording tax credit, see TSB-M-94(4)C, *Refundable Special Additional Mortgage Recording Tax*, TSB-M- 87(7)C, *Special Additional Mortgage Recording Tax Credit Disallowed on Certain Real Property*, and TSB-M-87(10)C, *Special Additional Mortgage Recording Tax Credit Disallowed on Certain Real Property Located in Erie County*.

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