New York State Department of Taxation and Finance

Instructions for Form DTF-622

Claim for QETC Capital Tax Credit

Tax Law – Articles 9-A and 22

DTF-622-I
(Revised 9/12)

General information

The qualified emerging technology company (QETC) capital tax credit under section 210.12-F of Article 9-A and section 606(r) of Article 22 of the Tax Law was created to stimulate investment in a QETC. The credit is available to Article 9-A taxpayers or Article 22 taxpayers (individuals, including sole proprietors, partners in partnerships, shareholders of New York S corporations, estates and trusts, and beneficiaries of estates and trusts). For additional information about the credit see TSB-M-99(2.1)C, *Qualified Emerging Technology Company Tax Credits (Article 9-A taxpayers only)*, or TSB-M-00(2)I, *Qualified Emerging Technology Company Tax Credits (personal income tax)*. Also see TSB-M-12(9)C, (8)I, *Clarification of Qualifications for Qualified Emerging Technology Company Tax Credits*.

Eligibility

You may claim this credit if you are:

- a corporation that is subject to tax under Article 9-A;
- an individual that is subject to tax under Article 22 including:
  - a sole proprietor (including estates and trusts that are sole proprietors);
  - a partner in a partnership (including a member of a limited liability company (LLC) that is treated as a partnership for federal income tax purposes);
  - a shareholder of a New York S corporation; **or**
  - a beneficiary of an estate or trust where the estate or trust is a sole proprietor, partner in a partnership, or a shareholder of a New York S corporation;

and the corporation, sole proprietorship, partnership, or S corporation made a qualified investment in a certified QETC.

Credit amount

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 the taxpayer certifies 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 the taxpayer certifies 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.

Definitions

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 Internal Revenue Code (IRC)).

An *owner of the qualified emerging technology company* means an entity that owns more than a 10% interest in a QETC. The percentage of ownership in a certified QETC is determined based upon the amount of the following:

- the number of shares of stock issued and outstanding; or
- the contribution of property to a partnership; **or**
- similar contributions in the case of a business entity not in corporate or partnership form.

A *qualified emerging technology company* is, pursuant to 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; **or**
- 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 (NSF) in the most recently published results from its survey *Research and Development in Industry: 2006*, or a comparable successor survey as determined by the Tax Department).

For more information see TSB-M-99(2.1)C or TSB-M-00(2)-I, and TSB-M-12(9)C, (8)I.

A *certified QETC* means a qualified emerging technology company which has 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.

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Credit limitations

Sections 210.12-F and 606(r) impose the following three limitations on the QETC capital tax credit:

— The credit and any carryover of the credit may not reduce the tax imposed by Article 9-A to less than the higher of the tax on minimum taxable income base or the fixed dollar minimum (computed before the addition of the MTA surcharge and without regard to any credits); and the credit may not exceed the tax due under Article 22.

— The total amount of credit allowable to a taxpayer for all years may not exceed $150,000 for a credit computed at the rate of 10% of qualified investments, and $300,000 for a credit computed at the rate of 20% of qualified investments.

— The credit and any carryover of the credit may not exceed 50% of the tax imposed by section 209 of Article 9-A and section 601 of Article 22 without regard to any credit.

This credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over and deducted from the tax in succeeding tax years.

Recapture of credit

If a taxpayer sells, transfers, or otherwise disposes of corporate stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if an investment is recovered by the taxpayer that was the basis for the allowance of the QETC capital tax credit, and 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, the taxpayer must add back to the tax in the tax year of the disposition or recovery, the required portion of the credit originally allowed. For more information, see Schedule C instructions.

Combined filers — A taxpayer filing as a member of a combined group is allowed to claim the credit. The credit is computed on a separate basis in Schedule A, Part 1 and Part 2**,** and applied against the combined tax.

Line instructions

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

Individuals (including sole proprietors) and fiduciaries: Complete Schedule A, Schedule B, Parts 1 and 2, and Schedule D. If applicable, also complete Schedule C.

New York S corporations and partnerships: Complete Schedule A. Transfer the total of lines 3 and 6 (and, if applicable, line A) as follows:

- **New York S corporations:** Enter the total on Form CT-34-SH and provide your shareholders with their pro rata share of this amount.
- **Partnerships:** Enter the total and code ***622*** on Form IT-204, line 147, and provide the partners with their pro rata share of this amount.

If you have a recapture of the QETC capital tax credit, complete Schedule C and transfer the amount on line 22 as follows:

- **New York S corporations:** Enter the line 22 amount on Form CT-34-SH and provide your shareholders with their pro rata share of the recapture.
- **Partnerships:** Enter the line 22 amount and code ***622*** on Form IT-204, line 148, and provide the partners with their pro rata share of the recapture.

A married couple in a business enterprise that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Complete Schedule A, Schedule B, Parts 1 and 2, and Schedule D. If applicable, also complete Schedule C.

Partners (including corporate partners), shareholders of New York S corporations, and beneficiaries of estates and trusts: Except as provided in the *Note* below, complete line A, Schedule B, Parts 1 and 2, and Schedule D. Corporate partners must also complete Schedule B, Part 3.

Note: Tiered partnerships complete line A only. If you are claiming a credit on line 3 or line 6, see the *New York S corporations and partnerships* instructions above. If you are **not** claiming a credit on line 3 or line 6, enter the line A amount and code ***622*** on Form IT-204, line 147.

Corporations: Complete Schedule A, Schedule B, and Schedule D. If applicable, also complete Schedule C.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form DTF-622.

Line A

If you are claiming a credit from more than one partnership, New York S corporation, or trust, combine all amounts on Line A and attach a list showing a breakdown of the amounts and the name and identification number of each entity.

Schedule B — Limitations of QETC capital tax credit

Part 1 — Fifty percent limitation

Line 7 — Article 9-A taxpayers: enter the tax due before credits from Form CT-3 or Form CT-3-A.

Article 22 taxpayers: if you file Form IT-201, enter the total of your tax from line 39 **and** Form IT-230-I, Worksheet A, line 1, reduced by any resident credit and accumulation distribution credit. If you file Form IT-203, enter the total of your tax from line 46 **and** Form IT-203-ATT, line 18, reduced by any resident credit and accumulation distribution credit. Resident filers of Form IT-205, enter the tax from line 8, reduced by any resident credit or accumulation distribution credit. Nonresident or part-year resident filers of Form IT-205, enter the tax from line 9, reduced by any resident credit or accumulation distribution credit.

Part 2 — $150,000/$300,000 limitation

Line 10 — Article 22 taxpayers: the total amount of credit allowable to a taxpayer for all years may not exceed $150,000 for a credit computed at the rate of 10% of qualified investments, and $300,000 for a credit computed

at the rate of 20% of qualified investments. However, if a husband or wife is required to file a separate return, the $150,000 limitation is reduced to $75,000 and the $300,000 limitation is reduced to $150,000, unless the taxpayer's spouse has no credit allowable for the tax year which ends with or within the taxpayer's tax year.

In the case of an estate or trust, the $150,000 limitation and $300,000 limitation of the credit is reduced to an amount which bears the same ratio to $150,000 and an amount which bears the same ratio to $300,000 as the portion of the income of the estate or trust that is not allocated to beneficiaries bears to the total income of the estate or trust.

Line 12 — Subtract line 11 from line 9, or, if it applies, from line 10. The result represents the amount of credit that may still be claimed in each category.

Line 13

Column A — Add the amount on line A attributable to qualified investments to be held 4 years, if any, to the amount on line 3. Enter the smaller of this total or the line 12, column A amount on line 13, column A.

Column B — Add the amount on line A attributable to qualified investments to be held 9 years, if any, to the amount on line 6. Enter the smaller of this total or the line 12, column B amount on line 13, column B.

Part 3 — Tax on minimum taxable income base and fixed dollar minimum limitation (Article 9-A only)

Line 16 — Enter the total amount of any other credits used against the current year's tax. Certain credits must be applied before the QETC capital tax credit. Refer to your franchise tax return or Form CT-600, *Ordering of Corporation Tax Credits*, to determine the order of credits that apply.

If you are included in a combined return, include any amount of tax credits being claimed by other members of the combined group, including the QETC Capital Tax Credit, that you wish to apply before your QETC Capital Tax Credit.

Schedule C — Recapture of credit

Part 1 — Recapture of credit for qualified investments to be held four years

If a taxpayer sells, transfers, or otherwise disposes of corporate stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if an investment is recovered by the taxpayer that was the basis for the allowance of the QETC capital tax credit, and the disposal or recovery occurs during the tax year or within 48 months from the close of the tax year when the credit was allowed, the taxpayer must add back to the tax in the tax year of the disposition or recovery, the required portion of the credit originally allowed.

Column C — For recapture purposes, the amount of the credit to be added back must be the portion of the credit attributable to the qualified investment disposed of, or the investment recovered, multiplied by the following percentage:

— 100%, if the disposition or recovery occurs within the tax year in which the credit is allowed, or within 12 months of the end of that tax year;

— 75%, if the disposition or recovery occurs more than 12 months, but not more than 24 months, after the end of the tax year in which the credit was allowed;

— 50%, if the disposition or recovery occurs more than 24 months, but not more than 36 months, after the end of the tax year in which the credit was allowed; or

— 25%, if the disposition or recovery occurs more than 36 months, but not more than 48 months, after the end of the tax year in which the credit was allowed.

Part 2 — Recapture of credit for qualified investments to be held nine years

If a taxpayer sells, transfers, or otherwise disposes of corporate stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if an investment is recovered by the taxpayer that was the basis for the allowance of the QETC capital tax credit, and the disposal or recovery occurs during the tax year or within 108 months from the close of the tax year when the credit was allowed, the taxpayer must add back to the tax in the tax year of the disposition or recovery, the required portion of the credit originally allowed.

Column C — For recapture purposes, the amount of the credit to be added back must be the portion of the credit attributable to the qualified investment disposed of, or the investment recovered, multiplied by the following percentage:

— 100%, if the disposition or recovery occurs within the tax year in which the credit is allowed, or within 12 months of the end of that tax year;

— 80%, if the disposition or recovery occurs more than 12 months, but not more than 48 months, after the end of the tax year in which the credit was allowed;

— 60%, if the disposition or recovery occurs more than 48 months, but not more than 72 months, after the end of the tax year in which the credit was allowed;

— 40%, if the disposition or recovery occurs more than 72 months, but not more than 96 months, after the end of the tax year in which the credit was allowed; or

— 20%, if the disposition or recovery occurs more than 96 months, but not more than 108 months, after the end of the tax year in which the credit was allowed.

Line 22 — Add line 20, column D and line 21, column D and enter the amount on line 22. This is your total recaptured credit. Corporations and individuals: enter the line 22 amount on line 26. New York S corporations, partnerships and fiduciaries: provide shareholders, partners or beneficiaries with their share of the recaptured credit amount.

- **New York S corporations:** Enter the line 22 amount on Form CT-34-SH.
- **Partnerships:** Enter the line 22 amount and code ***622*** on Form IT-204, line 148.
- **Fiduciaries:** Enter the amount from line 22 not allocated to beneficiaries on line 26.

Schedule D — Computation of QETC capital tax credit and carryover

Line 26 — New York C corporations enter the amount from line 22. Corporate partners also include your share of any recapture from the partnership.

New York S corporation shareholders, partners in a partnership, and beneficiaries of an estate or trust, enter your share of the New York S corporation's, partnership's, or estate's or trust's recaptured credit. This information should be provided to you by the New York S corporation, the partnership, or the estate or trust. Provide the name and identification number of the entity.

Fiduciaries, enter your share of the estate's or trust's recaptured credit on line 26 (if any) that was not distributed to the beneficiaries. Self-employed individuals, enter your share of the recaptured credit on line 26.

Line 27 — If line 25 is more than line 26, subtract line 26 from line 25. This is the amount of your tentative credit. Skip line 28 and continue with line 29. If line 26 is more than line 25, do not enter an amount on line 27; go to line 28.

Line 28 — If line 26 is more than line 25, subtract line 25 from line 26. This is your QETC capital tax credit recapture.

- **Corporations** (except New York S corporations)**:** Show the net recapture amount on line 28 as a loss by placing a minus (-) sign in the box immediately to the left of the amount. Enter the line 28 amount as a negative number with a minus (-) sign in the appropriate box of the tax credits section of your franchise tax return.
- **New York S corporations:** Show the net recapture amount as a positive amount on line 28. Enter the line 28 amount on Form CT-34-SH.
- **Fiduciaries:** Show the net recapture amount as a positive amount on line 28. Include the line 28 amount on Form IT-205, line 12.
- **Individuals:** Show the net recapture amount as a positive amount on line 28. Enter the line 28 amount and code ***622*** on Form IT-201-ATT, line 20, or Form IT-203-ATT line 19.

Do not continue with lines 29 and 30.

Line 30 — Subtract line 29 from line 27 to arrive at your QETC capital tax credit to be carried forward to future years. You will need to refer to this amount when calculating your 2010 credit.