New York State Department of Taxation and Finance

Instructions for Form IT-246

Claim for Empire State Commercial Production Credit

Tax Law — Section 28, Section 606(jj)

IT-246-I

2010

Temporary deferral of certain tax credits

For tax years beginning on or after January 1, 2010, and before January 1, 2013, if the total amount of certain credits that you may use to reduce your tax or have refunded to you is greater than $2 million, the excess over $2 million must be deferred to, and used or refunded in, tax years beginning on or after January 1, 2013. For more information about the credit deferral, see Form IT-500, *Income Tax Credit Deferral*.

If you are subject to the credit deferral, you must complete all credit forms without regard to the deferral. However, the credit amount that is transferred to your tax return to be applied against your tax due or to be refunded to you may be reduced. Follow the instructions for Form IT-500 to determine the amounts to enter on your tax return.

General information

For tax years beginning on or after January 1, 2007, Tax Law sections 28 and 606(jj) provide for tax credits for the commercial production industry. The Empire State commercial production credit is available to taxpayers subject to tax under Article 22 (personal income tax) or Article 9-A (general business corporations). Form IT-246 is for taxpayers subject to tax under Article 22. Those subject to tax under Article 9-A (including New York S corporations), should complete Form CT-246, *Claim for Empire State Commercial Production Credit*.

The credit is based on 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. If the amount of the credit allowable for any tax year exceeds the tax for that year, 50% of the excess is treated as an overpayment to be credited or refunded. No interest will be paid on the refund. The remaining excess may be carried over to the following tax year and may be deducted from the tax in that year. Any excess after application in the succeeding year is treated as an overpayment to be credited or refunded. No interest will be paid on the refund.

If the commercial production credit is claimed for *qualified production costs,* no other income tax credit may be claimed for those costs.

The amount of credit allowed for the current tax year is allocated by the New York State Governor's Office for Motion Picture and Television Development. **Attach a copy of your certificate of tax credit from this office for the credit allowed.** For rules and regulations regarding the credit, contact the New York State Governor's Office for Motion Picture and Television Development at *nyfilm@empire.state.ny.us* or call (212) 803-2330.

Eligibility

After receiving a certificate of tax credit from the New York State Governor's Office for Motion Picture and Television Development, the following taxpayers, subject to tax under Article 22, are eligible to claim the commercial production credit by filing Form IT-246:

- individuals (including sole proprietors);
- fiduciaries of estates and trusts;
- partners in a partnership (including members of an LLC if the LLC is treated as a partnership for federal tax purposes);
- shareholders of a New York S corporation; **and**
- beneficiaries of an estate or trust.

Taxpayers subject to tax under Article 9-A must complete Form CT-246, *Claim for Empire State Commercial Production credit*.

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): Complete Part 1, lines 1 through 16.

Partnerships: Complete Part 1, lines 1 through 5.

Husband and wife business that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business. Complete Part 1, lines 1 through 16.

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust: Complete Part 1, lines 2 through 16, and Part 2.

Fiduciaries: Complete Part 1, lines 1 through 16, and Part 3. An estate or trust that divides the credit among itself and its beneficiaries must attach Form IT-246 to Form IT-205 showing each beneficiary's share of credit.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-246.

Part 1 – Computation of credit

Line 1 – Obtain this amount from the certificate of tax credit issued by the Governor's Office for Motion Picture and Television Development. Attach a copy of the certificate to Form IT-246. If you have more than one certificate, include the total from all certificates on line 1 and attach copies of all certificates.

Line 2 – Partners, shareholders, and beneficiaries: Enter the amount from Part 2, line 17.

Line 4 – Fiduciary: Enter the amount of credit that was allocated to beneficiaries in Part 3, column C.

(continued)

Line 9 – If you are applying any credits against the tax before this credit, enter those amounts here.

When applying credits, follow the order of credits under Tax Law section 606(yy):

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

Line 11 – Enter the amount from line 5 or line 10, whichever is less. This is your **nonrefundable** portion of the Empire State commercial production credit.

If your total credits from all sources are **$2 million or less**, enter the amount from line 11 and code ***355*** on Form IT-201-ATT, line 6, or Form IT-203-ATT, line 7, or include it on Form IT-205, line 10.

If your total credits from all sources are **more than $2 million**, you may be subject to a credit deferral. Complete line 11, but do not enter the amount from line 11 on your tax return. See Form IT-500, *Income Tax Credit Deferral*, to determine the proper amount to enter on your 2010 tax return.

Line 12 – If zero, and you have no prior-year carryover, stop; you do not have any refundable credit or credit to be carried forward to next year.

Line 15 – Add lines 13 and 14. If your total credits from all sources are **$2 million or less**, enter the amount from line 15 and code ***355*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

If your total credits from all sources are **more than $2 million**, you may be subject to a credit deferral. Complete line 15, but do not enter the amount from line 15 on your tax return. See Form IT-500, *Income Tax Credit Deferral*, to determine the proper amount to enter on your 2010 tax return.

Line 16 – Subtract line 13 from line 12. This is the amount of credit to be carried forward to next year. You will need this figure to complete your 2011 Form IT-246.

Part 2 – Partnership, New York S corporation, and estate and trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust from which you received a share of the Empire State commercial production credit. If you need more space, attach a separate sheet following the same format. Include your name and taxpayer identification number on the attached sheet.

Part 3 – Beneficiary's and fiduciary's share of Empire State commercial production credit

If an estate or trust allocates or assigns the credit to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust.