New York State Department of Taxation and Finance

Instructions for Form IT-602

Claim for EZ Capital Tax Credit

IT-602-I

Changes for 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.

Empire Zone capital tax credit changes

If you made a contribution to an approved community development project before the expiration of the Empire Zones Program on June 30, 2010, you may continue to claim the Empire Zone capital tax credit for any additional contributions you make to that approved project before April 1, 2014. The project and all contributions must be approved by the Commissioner of Economic Development prior to June 30, 2010.

Direct equity investments made to certified Empire Zone businesses after June 30, 2010, will no longer qualify for the EZ capital tax credit.

You may continue to use any credit carryovers from previous years against your tax liability. However, any business that was required to obtain an EZ retention certificate but was denied one will not be eligible to claim the EZ capital tax credit for investments in certified EZ businesses or carryovers of the credit. No EZ retention certificate is needed to claim the EZ capital tax credit for contributions to community development projects, or carryovers of the credit from such contributions.

General information

Tax Law section 606(l) allows an empire zone (EZ) capital tax credit to be applied against the taxes imposed by Article 22.

The EZ capital tax credit is equal to 25% of the sum of the following investments and contributions made during the tax year that are certified by the Commissioner of Economic Development:

a) qualified investments in certain certified EZ businesses; and
b) contributions of money to community development projects as defined in regulations issued by the Commissioner of Economic Development.

The term *qualified investment* means (1) the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, (2) the contribution of property to a partnership in exchange for an interest in the partnership, and (3) similar contributions to a business entity not in a corporate or partnership form in exchange for an ownership interest in that entity.

Section 606(l) imposes **three limitations** on the capital tax credit, as follows:

1) The credit may not exceed the tax due under Article 22.
2) The total amount of credit allowable to a taxpayer for all years may not exceed $300,000, and the total credit allowed for each of the two categories of qualified investments and contributions may not exceed $100,000 (for additional limitations under section 606(l), see the instructions for line 14).
3) The credit and carryover of the credit may not exceed 50% of the tax imposed by Article 22, section 601, 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 to be deducted from the tax for succeeding tax years.

Attachments required — Empire State Development Corporation issues Form Z10, *Eligibility to Apply for a Zone Capital Tax Credit*, to taxpayers. Form Z10 authorizes the taxpayer to receive an EZ capital tax credit against the taxpayer's New York State personal income or franchise tax. Therefore, attach a copy of Form Z10 to Form IT-602, when applying for the EZ capital tax credit.

No EZ retention certificates need to be attached to this form. However, for investments in certified EZ businesses, an EZ retention certificate must be obtained and retained in your records.

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 Schedule A, Schedule B, Schedule E, and Schedule G. If applicable, also complete Schedule F.

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

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 (enter the total of all applicable amounts from both federal Schedule C forms). Complete Schedule A, Schedule B, Schedule E, and Schedule G. If applicable, also complete Schedule F.

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

Fiduciaries: Complete Schedule A, Schedule B, Schedule E, Schedule G, and Schedule H. If applicable, also complete Schedule F.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-602.

Schedule A — Investments in certified EZ businesses

Line 1 — Enter the amount of qualified investments made in certified EZ businesses during the tax year. A *certified EZ business* is one certified pursuant to General Municipal Law Article 18-B that, during the 12-month period immediately preceding the month of the investment, employed full time within the state an average of 250 or fewer individuals. The average number of individuals is computed pursuant to Tax Law section 606(k)(2)(C).

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

Line 3 — Partnerships: If you are not completing Schedule D, enter the line 3 amount on Form IT-204, line 130, and enter the applicable information below line 3. **Fiduciaries:** Enter the line 3 amount on the *Totals* line of Schedule H, column C, and enter the applicable information below line 3.

Line 4 — Enter the total amount of qualified investments made in certified EZ businesses that are itemized in Schedule A. Submit supporting documentation from the certified EZ business indicating the name of the business and the dollar amount of the qualified investment.

If you need to fill in additional Form(s) IT-602 to report in Schedule A qualified investments made in certified EZ businesses, include on line 4 of the first Form IT-602 the total of all qualified investments from all additional Forms IT-602. Attach the additional Form(s) IT-602 to the back of the first Form IT-602 that has the entry on line 4.

Schedule B — Contributions of money to EZ community development projects

Line 5 — Enter the amount of contributions of money made to EZ community development projects. *Community development projects* are defined in regulations issued by the Commissioner of Economic Development.

Line 7 — Partnerships: If you are not completing Schedule D, enter the line 7 amount on Form IT-204, line 131, and enter the applicable information below line 7. **Fiduciaries:** Enter the line 7 amount on the *Totals* line of Schedule H, column D, and enter the applicable information below line 7.

Line 8 — Enter the total amount of contributions of money made to EZ community development projects. Submit supporting documentation indicating the name(s) of the community development project(s) and the amount of the money contributed.

If you need to fill in additional Form(s) IT-602 to report in Schedule B contributions of money to EZ community development projects, include on line 8 of the first Form IT-602 the total of all contributions from all additional Forms IT-602. Attach the additional Form(s) IT-602 to the back of the first Form IT-602 that has the entry on line 8.

Schedule C — Partnership, S corporation, and estate and trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust from which you receive a share of the EZ capital tax credit. If you need more space, attach a separate schedule.

Schedule D — Partner's, shareholder's, or beneficiary's share of credit

Enter your share of the EZ capital tax credit received from a partnership, New York S corporation, or an estate or trust. If you belong to more than one partnership, New York S corporation, or estate or trust, enter the total of all your shares of credit on the appropriate line.

Line 9 — Partner: Enter your share of the EZ capital tax credit from your partnership. This information should be provided to you by the partnership. If you are claiming a credit from more than one partnership, combine all amounts on line 9. (Tiered partnerships see below.)

Tiered partnerships: If you are **not** claiming a credit on line 3, enter the total of Schedule D, column A (lines 9 and 11), on Form IT-204, line 130. If you are claiming a credit on line 3, enter the total of line 3 **and** Schedule D, column A (lines 9 and 11), on Form IT-204, line 130. If you are **not** claiming a credit on line 7, enter the total of Schedule D, column B (lines 9 and 11), on Form IT-204, line 131. If you are claiming a credit on line 7, enter the total of line 7 **and** Schedule D, column B (lines 9 and 11), on Form IT-204, line 131.

Line 10 — S corporation shareholder: Enter your share of the EZ capital tax credit from your S corporation. This information should be provided to you by the S corporation. If you are claiming a credit from more than one S corporation, combine all amounts on line 10.

Line 11 — Beneficiary: Enter your share of the EZ capital tax credit from the estate or trust. This information should be provided to you by your fiduciary. If you are claiming a credit from more than one estate or trust, combine all amounts on line 11. (Tiered partnerships see above.)

Fiduciaries: Enter the total of Schedule D, column A (lines 9, 10, and 11), on the *Totals* line of Schedule H, column C. Enter the total of Schedule D, column B (lines 9, 10, and 11), on the *Totals* line of Schedule H, column D.

Schedule E — Limitations of EZ capital tax credit

Line 12 — Calculate the amount to enter on this line as follows:

- **Form IT-201 filers:** 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.
- **Form IT-203 filers:** 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.
- **Form IT-205 filers:**

  Resident — Enter the tax from line 8, reduced by any resident credit and accumulation distribution credit.
  Nonresident and part-year resident — Enter the tax from line 9, reduced by any resident credit and accumulation distribution credit.

Line 13 — Enter 50% of the amount on line 12.

If the credit and carryovers of the credit allowable for any tax year exceed the taxpayer's tax for the tax year, the excess and the amount disallowed because of the 50% limitation may be carried over to the following year(s) and may be deducted from the taxpayer's tax for that year(s).

Line 14 — The total amount of credit allowable to a taxpayer for all years may not exceed $300,000, and the total credit allowed in each of the two categories may not exceed $100,000. However, if a husband or wife is required to file a separate return, the $100,000 limitation is reduced to $50,000, and the $300,000 limitation is reduced to $150,000, unless the taxpayer's spouse has no credit allowable for the tax year that ends with or within the taxpayer's tax year.

For an estate or trust, the $100,000 limitation and the $300,000 limitation of the credit are reduced to an amount that bears the same ratio to $100,000 and an amount that 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 17 column A — Enter the lesser of line 3 or line 16, column A. However, if you are claiming a credit from both line 3 and Schedule D, column A, add the line 3 and Schedule D, column A (lines 9, 10, and 11) amounts. Enter the **lesser** of that total or line 16, column A.

If you are **only** claiming a credit from Schedule D, enter the **lesser** of the total of Schedule D, column A (lines 9, 10, and 11), or line 16, column A.

Fiduciary: Enter the lesser of Schedule H, column C, *Fiduciary* line, or line 16, column A.

Line 17 column B — Enter the lesser of line 7 or line 16, column B. However, if you are claiming a credit from both line 7 and Schedule D, column B, add the line 7 and Schedule D, column B (lines 9, 10, and 11) amounts. Enter the lesser of that total or line 16, column B.

If you are **only** claiming a credit from Schedule D, enter the **lesser** of the total of Schedule D, column B (lines 9, 10, and 11), or line 16, column B.

Fiduciary: Enter the lesser of Schedule H, column D, *Fiduciary* line, or line 16, column B.

Schedule F — Recapture of EZ capital tax credit

If a taxpayer sells, transfers, or otherwise disposes of stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if a contribution or investment is recovered by the taxpayer that was the basis for the allowance of the credit, and the disposal or recovery occurs during the tax year or within 36 months from the close of the tax year when the credit was allowed, the difference between the credit taken and the credit allowed must be added back.

Column C — For recapture purposes, the amount of the credit to be added back must be the portion of the credit attributable to the stock, or other ownership interest disposed of, or the payment or contribution recovered, multiplied by one of the following percentages:

- 100%, if the disposition or recovery occurs within the tax year or within 12 months of the close of the tax year in which the credit was allowed
- 67%, 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
- 33%, 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

Line 19 — This information should be provided to you by your partnership, New York S corporation, or estate or trust.

Line 20 — Partnerships: Transfer the portion of line 20 that represents the recapture of credit for investment in a certified EZ business to Form IT-204, line 132; the portion of line 20 that represents the recapture of credit for contributions of money to EZ community development projects to Form IT-204, line 133.

Schedule G — Computation of EZ capital tax credit and carryover

Line 24

- **Fiduciaries:** Enter the amount from the *Fiduciary* line of Schedule H, column E.
- **All others:** Enter the amount from line 20.

Line 25 — If line 23 is greater than line 24, subtract line 24 from line 23. Enter this amount on line 25, skip line 26, and continue with lines 27 through 32.

Line 26 — If line 24 is greater than line 23, subtract line 23 from line 24. This is your net EZ capital tax credit recapture. Do not complete lines 27 through 32.

- **Individuals:** Enter the line 26 amount and code ***162*** on Form IT-201-ATT, line 20 or Form IT-203-ATT, line 19;
- **Fiduciaries:** Include the line 26 amount on Form IT-205, line 12.

Line 28

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

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

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

Line 29 — 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 31 — If your total credits from all sources are **$2 million or less**, enter the amount from line 31 and code ***162*** 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 lines 27 through 32, but do not enter the amount from line 31 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 32 — Subtract line 31 from line 25 to arrive at your EZ capital tax credit to be carried forward to future year(s). You will need to refer to this figure when completing next year's Form IT-602.

Schedule H — Beneficiary's and fiduciary's share of credit and recapture of credit

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