2011

Instructions for Form IT-252

Investment Tax Credit for the Financial Services Industry

IT-252-I

Changes for 2011

Chapter 61 of the Laws of 2011 amends the investment tax credit (ITC) for the financial services industry. The ITC has been extended to include property placed in service before October 1, 2015.

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

Individuals and estates and trusts may claim the investment tax credit (ITC) for the financial services industry against the tax imposed under Article 22 for the tax year during which qualified property is placed in service. The property must be placed in service on or after October 1, 1998, and before October 1, 2015.

To claim the 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. See Parts 1, 2, and 3 for more information.

Who must file

File Form IT-252 if you are an individual, a beneficiary or fiduciary of an estate or trust, a partner of a partnership, or a shareholder of an S corporation, and:

— You are claiming the investment tax credit (including the employment incentive credit); or

— You had an early disposition of property for which the investment tax credit was allowed in a prior year.

An estate or trust that divides among itself and its beneficiaries the credit or addback of credit on early dispositions must attach Form IT-252 to Form IT-205, showing each beneficiary's share of the credit or addback of credit on early dispositions.

A partnership must file Form IT-252 with Form IT-204 showing the partnership's total investment in qualified property or total early dispositions of qualified property.

An S corporation does not file Form IT-252. It must file Form CT-44. If you are a shareholder in an S corporation that has made the election under Tax Law section 660, obtain your share of the corporation's credit or addback of credit on early dispositions of qualified property from the corporation.

Qualified property

Qualified property for the investment tax credit is tangible property, including buildings and structural components of buildings, that:

- was acquired, constructed, reconstructed, or erected by the taxpayer on or after October 1,1998, and before October 1, 2015;
- is depreciable pursuant to IRC section 167;
- has a useful life of four years or more;
- was acquired by the taxpayer by purchase according to IRC section 179(d);
- is located in New York State; and
- is principally used in the ordinary course of the taxpayer's business in one of the following capacities:
  — 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)(2)), 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).

Though the property must be located in New York State, it is not necessary for the users of the property to be located in New York State. For example, a computer system that is placed in service in New York State would qualify for the credit, even if the brokers accessing the system are located outside the state.

Generally, property that a taxpayer purchases and leases to others does not qualify for the investment tax credit. However, if such property is leased to an affiliated broker, dealer, or registered investment advisor that is an affiliate of the taxpayer that principally uses the property in the qualifying activities listed above, the property 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, or registered investment advisor 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.

Definitions

Affiliate means:

- A partnership 80% or more of whose interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation 80% or more of whose voting stock is owned or controlled, directly or indirectly, by the taxpayer.
- A corporation that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.
- A corporation 80% or more of whose voting stock is owned or controlled, directly or indirectly, by the entity that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.

Cost is the basis of property as defined in IRC section 1012.

Life or useful life (of property) means the depreciable life as provided by IRC section 167 or 168.

Nonqualified nonrecourse financing is any amount for which a taxpayer is protected against loss and, generally, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used, or from someone related to a person (other than a taxpayer) who has an interest in the activity. Nonrecourse financing is nonqualified if it is not qualified commercial financing as defined in IRC section 49(a)(1).

Other basis means the adjusted basis for determining gain or loss used as the basis for depreciation under IRC section 167(g).

Principally used means used more than 50%. A building or an addition to a building is principally used in qualifying activities if more than 50% of its usable business floor space is used in qualifying activities. Floor space used for bathrooms, cafeterias, and lounges is not usable business floor space. Equipment is principally used in qualifying activities when it is used in such activities more than 50% of its operating time. Operating time may be determined based on actual time, cost allocations to individual business units, or any other reasonable method that accurately reflects operating time.

Purchase or sale of stocks, bonds, or other securities or commodities includes, but is not limited to, the issuance, entering into, assumption, offset, assignment, termination, or transfer of stocks, bonds, commodities, or other securities.

All references to *current tax year* mean the tax year covered by this claim.

When allowed

The credit is allowed only for the tax year in which qualified property is placed in service. However, if all of the credit cannot be used in the year the property is placed in service, you may carry over the unused amount to the following ten years (see *Carryover of unused investment credit* below).

Investment credit base

The investment tax credit is computed on the investment credit base. The investment credit base is the cost or other basis of the qualified property for federal income tax purposes. Do not include any amount that was expensed under IRC section 179(a). The basis of qualified property must include the remaining basis of other property exchanged or traded in for it. If a credit was previously allowed on the property exchanged or traded in, a disposition of property has occurred, and you may have to compute an addback of credit on early dispositions (see Part 7 instructions).

If qualified property is acquired to replace insured property that was stolen or destroyed by fire, storm, shipwreck, or other casualty, the basis of the replacement property is its cost reduced by any amount of gain not recognized for federal income tax purposes because the insurance proceeds were invested in the replacement property.

Investment credit base for replacement property that is similar or related in service or use to property destroyed as a direct result of the terrorist attacks of September 11, 2001

If replacement property is acquired that is similar or related in service or use to the property destroyed as a direct result of the terrorist attacks of September 11, 2001, and you chose not to defer the required amount to be recaptured, the investment credit base of the replacement property is computed without regard to any basis reduction required by IRC section 1033. For more information, see TSB-M-02(7)I.

If the qualified property is purchased using nonqualified nonrecourse financing, the investment credit base must be reduced by the amount of financing that would be excludable from the credit base pursuant to IRC section 49(a)(1). If, at the close of a tax year following the tax year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing for the property, the net decrease is to be treated as the cost or other basis of qualified property acquired, constructed, reconstructed, or erected during the year of the decrease.

Carryover of unused investment credit

If you cannot claim all of your credit because it is more than your New York State tax less other credits, you can carry over the unused amount to the following 10 years, or, if you are the owner of a new business, you may qualify for a refund (see *Refundable unused investment tax credit* below and the instructions for Part 9).

Refundable unused investment tax credit

If you are a sole proprietor or a partner in a new business, you can claim a refund of your unused credit instead of carrying over the unused amount to next year.

You can only make this election in the first five tax years (excluding short years) that you operate your new business.

You **cannot** claim a refund of unused credit if:

— you have operated your new business in New York State for more than five years, excluding short years of the business; or

— your new business is substantially similar in operation and ownership to a business that:

1. is (or was) subject to any of the following taxes:
   - franchise tax on transportation and transmission corporations and associations;
   - additional franchise tax on transportation and transmission corporations and associations;
   - franchise tax on farmers, fruit growers, and other like agricultural corporations organized and operated on a cooperative basis;
   - franchise tax on water-works companies, gas companies, electric or steam heating, lighting, and power companies;
   - franchise tax on business corporations;
   - franchise tax on banking corporations; or
   - franchise tax on insurance corporations;
2. would have been subject to the New York State unincorporated business tax (as such tax was in effect on January 1, 1980); or
3. had income or losses that are (or were) included in computing your New York State personal income tax.

If you are a shareholder of an S corporation that has an election in effect under Tax Law section 660, and the S corporation qualifies as a new business as defined in Tax Law section 210.12(j), you may qualify to have the excess credit that relates to your pro rata share of the corporation's credit refunded.

Early disposition of property and addback of credit on early dispositions

If property on which the investment tax credit was taken is disposed of or removed from qualified use before its useful life or specified holding period ends (see instructions for Part 7), the difference between the credit taken and the credit allowed for actual use must be added to your income tax in the year of disposition. You must also add to your income tax an additional amount computed by multiplying the addback of credit on early dispositions by the underpayment interest rate in effect on the last day of your tax year. The underpayment interest rate is not compounded. However, if the property was in qualified use for more than 12 consecutive years, the addbacks for credit and interest on early dispositions are not required.

Disposition of property also includes:

— a sale of property;

— the contribution of property to a partnership or corporation, unless a substantial interest in the ownership of the trade or business is retained by the transferor;

— the sale by a partner of his or her interest in a partnership;

— a gift of property;

— a reduction in the proportionate stock interest of an electing New York S corporation shareholder;

— conversion of property to personal use;

— a change in the location of the property to a situs outside New York State;

— an exchange of property for other property of like kind (including a trade-in of property);

— the theft or destruction of property; and

— an increase in nonqualified nonrecourse financing (but the addback of credit only applies for the portion of such increase).

Ordinarily, transfers by reason of death are not dispositions of property.

Use Part 7 of Form IT-252 to compute your addback of credit on early dispositions.

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, Part 2, Part 3, Part 4, Part 6, and Part 9. If applicable, also complete Part 5 and Part 7.

Fiduciaries: Complete Part 1, Part 2, Part 3, Part 4, Part 6, Part 8, and Part 9. If applicable, also complete Part 5 and Part 7.

Partnerships: Complete Part 1, Part 2, Part 3, Part 4, and Part 6. If applicable, also complete Part 5 and Part 7.

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 Part 1, Part 2, Part 3, Part 4, Part 6, and Part 9. If applicable, also complete Part 5 and Part 7.

Partners, shareholders of New York S corporations, and beneficiaries of estates and trusts: Complete Part 4 and Part 9. If applicable, also complete Part 5.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-252.

Eligibility requirements

To claim this credit, taxpayers must meet one of the three eligibility tests described below. However, if this is your first tax year, do not complete Parts 1, 2, and 3. Begin with Part 4.

1. **80% current-year test —** 80% or more 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. For example, if you have a quarterly average of 1,000 employees performing the administrative and support functions during your tax year, then a quarterly average of at least 800 (1,000 x 80%) of the employees must be located in New York State. (If the property is used by an affiliate in qualifying activities, it is the affiliate that must meet the eligibility test.) If you are claiming credit based on having met the 80% current-year test, complete Part 1. For more information on this eligibility test, see TSB-A-03(10)C, *Morgan Stanley & Co. Incorporated.*
2. **95% three-year back-office test —** The average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of the property and are located in New York State during the tax year the credit is claimed is equal to or greater than 95% of the average number of employees that perform these functions and are located in New York State during the 36 months immediately preceding the tax year for which the credit is claimed. The average number of employees must be computed on a quarterly basis. (If the property is used by an affiliate in qualifying activities, it is the affiliate that must meet the eligibility test.) If you are claiming credit based on the 95% three-year back-office test, complete Part 2. For more information on this eligibility test, see TSB-M-98(06)I, *Tax Credits for the Financial Services Industry.*
3. **90% end-of-year test —** The number of New York State employees employed during the current tax year must be equal to or greater than 90% of your New York State employees on
   a) December 31, 1998 (if you were a calendar year filer taxable in New York in 1998); or
   b) the last day of your first tax year ending after December 31, 1998.

If a taxpayer aggregates its uses of property for the purpose of the principally used test, each affiliate may satisfy the employment test individually, or the test may be satisfied by the aggregation of the taxpayer and its affiliates.

Employees performing administrative and support functions include all employees other than brokers, dealers, or investment advisors to regulated investment companies. Generally, any employee whose compensation for the tax year is based more than 50% on commissions will be presumed to be a broker, dealer, or investment advisor. However, if a taxpayer does not compensate those employees who are employed as brokers, dealers, or investment advisors on a commission basis, the taxpayer must specifically identify the employees performing those functions and must exclude those employees from the employment percentage calculation.

If you **do not meet the eligibility requirements** as stated above, **do not complete Part 4.** You are **not eligible** for the investment tax credit.

Part 1 — 80% current-year test

Use Part 1 if you wish to claim the credit using the 80% current-year test eligibility method.

Line 1a — Enter the number of employees who perform administrative and support functions in New York State for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) occurring during the current tax year to obtain the total number of employees in New York State for the current tax year. Divide the total by four to obtain the average number of employees in New York State for the current tax year.

Line 1b — Enter the number of employees who perform administrative and support functions everywhere for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) occurring during the current tax year to obtain the total number of employees everywhere for the current tax year. Divide the total by four to obtain the average number of employees everywhere for the current tax year.

Line 2 — Divide line 1a by line 1b to obtain the percentage of employees who perform administrative and support functions in New York State for the current tax year. If your result equals or exceeds 80%, continue with Part 4; you qualify for the credit.

Part 2 — 95% three-year back-office test

Use Part 2 if you wish to claim the credit using the 95% three-year back-office test eligibility method.

Line 3a — Enter the number of employees who perform administrative and support functions in New York State for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) occurring during the current tax year to obtain the average number of employees for the current tax year.

Example 1:

Current tax year	March 31	June 30	Sept. 30	Dec. 31	Total
Number of administrative and support employees in New York State	*100*	*100*	*125*	*175*	*500*

3a. Average number of employees in New York State for current tax year *(500 divided by four)* *125*

Line 3b — Enter the number of employees who perform administrative and support functions in New York State on each of the dates listed for the 36-months immediately preceding the year in which the ITC is claimed. Add the number of employees for the 36-month period, and divide by the number of such dates (include 0 dates) occurring during the 36-month period, to obtain the average number of employees for the 36-month test period.

Example 2:

Number of administrative and support employees in New York State during the 36-month test period	March 31	June 30	Sept. 30	Dec. 31	Total
A. First year	*100*	*100*	*100*	*100*	*400*
B. Second year	*50*	*75*	*75*	*100*	*300*
C. Third year	*0*	*0*	*40*	*50*	*90*
D. Total number of administrative and support employees in New York State for 36-month test period *(400, + 300, + 90)*					*790*

3b. Average number of administrative and support employees in New York State for 36-month test period *(790 divided by 12) 66*

Line 4 — Divide line 3a by line 3b. If the result equals or exceeds 95%, continue with Part 4; you qualify for the credit.

Part 3 — 90% end-of-year test

Use Part 3 if you wish to claim the credit using the 90% end-of-year test eligibility method.

Line 5a — Enter the number of employees in New York State for each date specified for the current tax year. Add the number of these employees on each date (include 0 dates) then divide by four to obtain the average number of employees in New York State for the current tax year.

Line 5b — If you were subject to tax in New York State for tax year 1998, enter one of the following two numbers:

a) **Calendar year filer —** enter the number of employees in New York State on December 31, 1998.

b) **Fiscal year filer —** enter the number of employees in New York State on the last day of your first fiscal year ending after December 31, 1998.

Line 6 — Divide line 5a by line 5b. If the result equals or exceeds 90%, continue with Part 4; you qualify for the credit.

Part 4 — Computation of credit

Individual, partnership, and fiduciary

Line 7 — Enter your credit for investments in qualified property from line 25. See Part 6 instructions.

Beneficiary

Line 8 — Enter your share of the credit for investments in qualified property made by estates and trusts (from fiduciary's Form IT-252, Part 8, column C).

Partner

Line 9 — Enter your share of the total credit for investments in qualified property made by partnerships. This information should be provided to you by your partnership.

S corporation shareholder

Line 10 — Enter your share of the total credit for investments in qualified property made by S corporations. This information should be provided to you by your S corporation.

Line 12 — Enter the amount of credit that was allocated to beneficiaries in Part 8, column C.

Line 13

Partnerships — Enter the line 13 amount and code ***252*** on Form IT-204, line 147.

If the partnership has Article 9-A corporate partners, in addition to entering the amount of credit on Form IT-204, line 147, enter code ***252*** and the amount of investment credit **base** on Form IT-204, lines 144a through 144f.

Also see the instructions for Form IT-204-CP, lines 94a through 94f.

Line 17a — If line 15 is greater than line 16, subtract line 16 from line 15 and enter the result here and on line 30a. Do not complete line 17b. If line 16 is greater than line 15, do not make an entry on this line; go to line 17b to calculate your net recaptured investment tax credit.

Line 17b — If line 16 is greater than line 15, subtract line 15 from line 16 and enter the result here.

Individuals: Enter the amount from line 17b and code ***252*** on Form IT-201-ATT, line 20, or Form IT-203-ATT, line 19.

Fiduciaries: Include the amount from line 17b on Form IT-205, line 12.

Part 5 — Summary of addback of credit on early dispositions

Individual and partnership

Line 18 — Enter your addback of credit on early dispositions from Part 7, line 29. See Part 7 instructions.

Beneficiary

Line 19 — Enter your share of the addback of credit on early dispositions made by estates and trusts from the fiduciary's Form IT-252, Part 8, column D, on line 19.

Partner

Line 20 — Enter your share of the addback of credit on early dispositions made by partnerships. This information should be provided to you by your partnership.

S corporation shareholder

Line 21 — Enter your share of the addback of credit on early dispositions made by S corporations. This information should be provided to you by your S corporation.

Fiduciary

Line 22 — Enter your share of the addback of credit on early dispositions from Part 8, *Fiduciary* line, column D.

Line 23

Partnerships: Enter the amount from line 23 and code ***252*** on Form IT-204, line 148.

All others: Enter the amount from line 23 on line 16.

Part 6 — Investments in qualified property

Fill in columns A through F for qualified property that was placed in service. Enter in column D the property's useful life under IRC section 167, even if the property is subject to the provisions of IRC section 168 on or after October 1, 1998.

Column F — Multiply column E amount by the credit rate of 4%.

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

— For depreciable property under IRC section 167, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is the number of months of useful life of the property.

— For property subject to the provisions of IRC section 168, multiply the credit by a fraction; the numerator is the number of months of qualified use, and the denominator is
  - 36 for three-year property,
  - the number of months you chose for buildings or structural components of buildings, or
  - 60 for all other classes of property.

Part 7 — Early dispositions of qualified property and addback of credit on early dispositions

Fill in columns A through H if you have claimed the credit on property that was disposed of or was removed from qualified use (a) during this tax year, and (b) prior to the end of its useful life or specified holding period. Do **not** include property that has been in qualified use for more than 12 consecutive years.

Enter in column D:

— For depreciable property under IRC section 167, the number of months of useful life of property.

— For recovery property under IRC section 168:
  - 36 for three-year property,
  - the number of months you chose for buildings or structural components of buildings, or
  - 60 for all other classes of property.

Enter in column E the number of months that the property was not in qualified use (cannot be greater than the amount in column D).

Line 27 — Enter on line 27 the applicable underpayment interest rate in effect on the last day of your tax year. Visit our Web site at *www.tax.ny.gov* to find the rate.

Part 8 — Beneficiary's and fiduciary's share of investment tax credit and addback of credit on early dispositions

If an estate or trust allocates or assigns the credit or addback of credit on early dispositions to its beneficiaries, base the division on each beneficiary's proportionate share of qualified investments made by the estate or trust.

Part 9 — Application of credit and computation of carryover

Line 30b

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 31 — If you are applying any credits against the tax before this credit, enter those amounts here.

When applying credits, use the following rules:

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

Line 33 — Enter the amount from line 30a or line 32, whichever is less.

If your total credits from all sources are **$2 million or less**, enter the amount from line 33 and code ***252*** 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 33, but do not enter the amount from line 33 on your tax return. See Form IT-500, *Income Tax Credit Deferral,* to determine the proper amount to enter on your tax return.

Line 35 — If you qualify as an owner of a new business, you may claim a refund of your credit instead of carrying it over to the next year. See page 2 for information about refundable unused investment tax credits.

If you qualify as an owner of a new business, enter the amount from line 34 or line 13, whichever is less. All others, enter ***0***.

If your total credits from all sources are **$2 million or less,** enter the amount from line 35 and code ***252*** 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 35, but do not enter the amount from line 35 on your tax return. See Form IT-500, *Income Tax Credit Deferral,* to determine the proper amount to enter on your tax return.

Line 37 — A credit amount in excess of the tax due can only be carried over for a maximum of up to 10 years. Enter any expiring credit amount on this line.