New York State Department of Taxation and Finance

Instructions for Form IT-248

Claim for Empire State Film Production Credit

IT-248-I

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

Tax Law sections 24 and 606(gg) provide for tax credits for the film and television production industry. The Empire State film production credit (also referred to as the *film production credit*) is available to taxpayers subject to tax under Article 22 (personal income tax) or Article 9-A (general business corporations). Form IT-248 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-248, *Claim for Empire State Film Production Credit*.

The amount of credit allowed is allocated by the New York State Governor's Office for Motion Picture and Television Development. **Submit a copy of your certificate of tax credit from this office for the credit allowed.** However, if your credit is allocated from funds from additional pool 2, you cannot claim the film production credit before the later of:

- the tax year the production of the qualified film is complete, or
- the tax year immediately following the allocation year assigned on your certificate.

For more information, refer to TSB-M-10(7)C, *Summary of Budget Bill Corporation Tax Changes Enacted in 2010,* or contact the New York State Governor's Office for Motion Picture and Television Development.

The credit is based on the qualified production costs paid or incurred in the production of certain qualified films and television shows. If the amount of film production credit shown on your certificate of tax credit received from the New York State Governor's Office for Motion Picture and Television Development is at least one million dollars but less than five million dollars, the credit must be claimed over a two-year period. If the amount of the credit allocated is five million dollars or more, the credit must be claimed over a three-year period.

If the amount of the credit allowable for any tax year exceeds the tax for that year, the excess is treated as an overpayment to be credited or refunded. No interest will be paid on the refund.

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

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 film production credit by filing Form IT-248:

- 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-248, *Claim for Empire State Film 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. If applicable, also complete Part 4.

Partnerships: Complete Part 1 and if applicable, Part 4.

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. Complete Part 1. If applicable, also complete Part 4.

Partners in a partnership, shareholders of a New York S corporation, and beneficiaries of an estate or trust: Complete Part 1, lines 3 through 7, Part 2, and if applicable, Part 4.

Fiduciaries: Complete Parts 1 and 3. An estate or trust that divides the credit among itself and its beneficiaries must submit Form IT-248 with Form IT-205, showing each beneficiary's share of the credit. If applicable, also complete Part 4.

Note: If more than one of the above applies to you, complete all appropriate parts on one Form IT-248.

Lines A and B – If your credit is from additional pool 2, the Governor's Office for Motion Picture and Television Development must list an allocation year on your certificate of tax credit. If you are assigned an allocation year, report it on line A. If you are a partner in a partnership, enter the allocation year assigned to the partnership on line B.

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. Submit a copy of the certificate with Form IT-248. If you have more than one certificate, include the total from all certificates on line 1 and submit copies of all certificates.

Line 2 – If the amount on line 1 is **less** than $1,000,000, enter the amount from line 1 on line 2. Do not complete worksheet A or B.

If the amount on line 1 is at **least** $1,000,000 but **less** than $5,000,000, complete Worksheet A.

If the amount on line 1 is at **least** $5,000,000, complete Worksheet B.

Note: Due to this limitation, it is the entity's responsibility to ensure that the correct shareholder, partner, beneficiary, or member receives the correct amount of the credit to be reported in succeeding tax years.

Worksheet A

1 Enter the amount from Form IT-248, line 1 ..... 1 _____

2 Divide line 1 by two *(see instructions below)* 2 _____

This is the amount of credit that may be claimed for this tax year and for the 2013 tax year.

Worksheet A instructions

Individuals: Enter the amount from Worksheet A, line 2, on Form IT-248, line 2, and on Worksheet C, line 1.

Partnerships: Enter the amount from Worksheet A, line 2, on Form IT-248, lines 2 and 9. Enter the line 9 amount and code ***B48*** on Form IT-204, line 147.

Fiduciaries: Include the line 2 amount on the total line of Part 3. Provide your beneficiaries with their share of the line 2 amount to claim on their 2012 and 2013 tax returns.

Worksheet B

1 Enter the amount from Form IT-248, line 1 ..... 1 _____

2 Divide line 1 by three *(see instructions below)* 2 _____

This is the amount of credit that may be claimed for this tax year and for each of the next two tax years.

Worksheet B instructions

Individuals: Enter the amount from Worksheet B, line 2, on Form IT-248, lines 2 and 10, and on Worksheet C, line 1.

Partnerships: Enter the amount from Worksheet B, line 2, on Form IT-248, lines 2, 9, and 10. Enter the line 9 amount and code ***B48*** on Form IT-204, line 147. Enter the line 10 amount and code ***C48*** on Form IT-204, line 147.

Fiduciaries: Include the line 2 amount on the total line of Part 3. Provide your beneficiaries with their share of the line 2 amount to claim on their 2012, 2013, and 2014 tax returns.

Line 3 – Partners, shareholders, and beneficiaries: Enter the amount from Part 2, line 8.

Line 4

Individuals: Include the amount from your 2011 Form IT-248, line 9.

Partners, beneficiaries, and shareholders: Include the amount from your 2011 Form IT-248, line 9.

Partnerships: Do not make an entry on line 4. Credit carryovers from partnerships, S corporations, estates and trusts that were limited in prior years are claimed by partners, shareholders, and beneficiaries of those entities for the year in which the credit certificate was issued.

Fiduciaries: Only include on this line the fiduciary portion of the credit from prior years.

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 film production credit. If you need more space, submit a separate schedule (be sure to include your name and taxpayer identification number). Report the current year amount in column D. **Partners:** find your current year amount on Form IT-204-IP, line 51, code *248*.

Also report any 2013 and 2014 amounts on lines 9 and 10. **Partners:** Find your 2013 and 2014 amounts on Form IT-204-IP, line 51, codes *B48* and *C48* respectively.

Part 3 – Beneficiary's and fiduciary's share of Empire State film 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. Include **both** the line 2 and line 3 amounts in the total to be allocated.

Part 4 – Amount of credit to be claimed in succeeding tax years

Complete this part if the amount on line 1 is at least $1,000,000 or if you had an amount on your 2011 Form IT-248, line 10.

Lines 9 and 10

Individuals: Complete Worksheet C to compute the amount of credit to be claimed on your 2013 return.

Partnerships: Do not use Worksheet C. Enter the amount from line 9 and code ***B48*** on Form IT-204, line 147. Enter the amount from line 10 and code ***C48*** on Form IT-204, line 147**.**

Partners, beneficiaries, and shareholders: Do not use Worksheet C. Include on line 9 the amount of credit reported to you by your partnership, estate, trust, or S corporation to be claimed for 2013. **Partners:** Find this amount on Form IT-204-IP, line 51, code *B48.*

Include on line 10 the amount of credit reported to you by your partnership, estate, trust, or S corporation to be claimed for 2014. **Partners:** Find this amount on Form IT-204-IP, line 51, code *C48.*

Worksheet C

1 Enter the amount (if any) from Worksheet A, line 2, or Worksheet B, line 2 ..... 1 _____

2 Enter the amount (if any) from your 2011 Form IT-248, line 10 ..... 2 _____

3 Credit to be claimed for 2013 *(add lines 1 and 2; enter here and on Form IT-248, line 9)* ..... 3 _____