

1981 LEGISLATION

INVESTMENT CREDIT

Chapter 103 of the Laws of 1981 amended section 606(a) of Article 22 of the New York State Tax Law. This legislation was enacted on May 15, 1981.

The amendment to section 606(a)(1), which took effect immediately, changed the investment credit allowed for qualified property as follows:

- (a) For qualified property acquired after December 31, 1978 and prior to June 1, 1981 the investment credit allowed is 4%.
- (b) For qualified property acquired after May 31, 1981 and prior to July 1, 1982 the investment credit allowed is 5%.
- (c) For qualified property acquired after June 30, 1982 the investment credit allowed is 6%.

New section 606(a)(9) was added and takes effect for taxable years beginning on and after January 1, 1981. It provides for the investment credit to flow through to shareholders of subchapter S corporations when all the shareholders of a subchapter S corporation make an election to be taxed under new section 660 of Article 22 of the New York State Tax Law. See Technical Service Memo TSB-M-81-(11)-I dated July 28, 1981 for more detailed information on investment credits allowed shareholders of subchapter S corporations.

The amendment to section 606(a)(5) and new section 606(a)(10) takes effect for taxable years beginning on and after January 1, 1982.

- (a) Section 606(a)(5) provides for a taxpayer who qualifies as an owner of a new business to make an election to have the excess investment credit refunded without interest rather than carried over to succeeding years.
- (b) Section 606(a)(10) defines who qualifies as an owner of a new business for purposes of the new election under section 606(a)(5). An individual who is either a sole proprietor or a member of a partnership shall qualify as an owner of a new business unless:
  - 1. The individual previously received a refund of an investment credit.
  - 2. The business, of which the individual is an owner, is substantially similar in operation and ownership to a business entity that is taxable or previously taxable under the New York State Tax Law.
  - 3. The individual has operated the new business entity in New York State for more than four years prior to the first day of the taxable year during which such individual first became eligible for the investment credit for which the refund is claimed.

New section 606(a)(11) takes effect June 1, 1981 and applies to investments made on or after June 1, 1981. This section extends the investment credit provisions to certain "retail enterprises" that would otherwise not qualify for the investment credit but would qualify for an investment credit under Internal Revenue Code section 38 pursuant to the provisions of Internal Revenue Code section 48(g). Internal Revenue Code section 38 provides for an investment credit for qualified investments in certain property and Internal Revenue Code section 48(g) provides for an investment credit for qualified rehabilitation expenditures. "Retail enterprises" means a taxpayer who is a registered vendor under Article 28 of the New York State Sales and Use Tax, primarily engaged in the final sale to consumers of tangible personal property and otherwise eligible for a Federal investment credit under Internal Revenue Code section 38.