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Office of Tax Policy Analysis
Taxpayer Guidance Division

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Corporation Tax
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Income Tax
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Temporary Deferral of Certain Tax Credits

Chapter 57 of the Laws of 2010 amended the Tax Law to add new sections 33 and 34 establishing the temporary deferral of certain tax credits. In addition, new sections were added under Article 9 (Corporation Tax), 9-A (Business Corporations), 22 (Personal Income Tax), 32 (Franchise Tax on Banking Corporations), and 33 (Insurance Franchise Tax) relating to the application of deferred tax credit amounts.

Effective for tax years beginning on or after January 1, 2010, and before January 1, 2013, certain tax credits will be subject to a temporary deferral in any tax year that the total amount of these credits that would otherwise be used to reduce a taxpayer's tax liability or be refunded or credited as an overpayment to estimated tax is in excess of $2 million.

Taxpayers will be allowed to claim the deferred tax credit amounts starting with tax years beginning on or after January 1, 2013. No interest will be paid on the deferred tax credit amounts.

The following credits allowable under Articles 9, 9-A, 22, 32, or 33 of the Tax Law[1] are subject to the temporary deferral:

- Investment tax credit
- Investment tax credit for the financial services industry
- Retail enterprise tax credit
- Historic barn rehabilitation credit
- Empire Zone (EZ) investment tax credit
- EZ investment tax credit for the financial services industry
- EZ employment incentive credit
- EZ employment incentive credit for the financial services industry
- EZ wage tax credit
- EZ capital tax credit
- Zone Equivalent Area wage tax credit
- Employment incentive credit
- Employment incentive credit for the financial services industry
- Qualified emerging technology company (QETC) employment credit
- QETC capital tax credit
- QETC facilities, operations, and training credit
- Special additional mortgage recording tax credit
- Credit for servicing certain mortgages
- Credit for employment of persons with disabilities
- Alternative fuels credit
- Credit for purchase of an automated external defibrillator

[1] Note: Not all of the credits are allowed under each article.

- Qualified empire zone enterprise (QEZE) credit for real property taxes
- QEZE tax reduction credit
- Low-income housing credit
- Green building credit
- Brownfield redevelopment tax credit
- Remediated brownfield credit for real property taxes for qualified sites
- Environmental remediation insurance credit
- Security training tax credit
- Credit for fuel cell electric generating equipment expenditures
- Conservation easement tax credit
- Empire State commercial production credit
- Biofuel production credit
- Clean heating fuel credit
- Credit for rehabilitation of historic properties
- Credit for companies who provide transportation to individuals with disabilities
- Power for jobs credit
- Solar energy system equipment credit
- Historic homeownership rehabilitation credit
- Credit for certain investments in certain capital companies

Determining if a taxpayer is subject to the temporary deferral and computing the amounts deferred

To determine if a taxpayer is subject to the temporary deferral of any of the above listed tax credits for the tax year and to compute the amounts deferred, the taxpayer must complete the following steps:

1. Compute the taxpayer's tax liability for the tax year without regard to any tax credits or payments of tax.

2. Determine the amount of each tax credit (include any carryover of the tax credit from the preceding tax years) that the taxpayer would have used to reduce the tax liability or have refunded or credited as an overpayment to estimated tax as if the temporary deferral of tax credits was **not** in effect. (If the amount of any nonrefundable credit exceeds the tax liability, do not include the excess credit.)

3. Add the amounts of each **nonrefundable tax credit subject to the temporary deferral (**from step *2*) that would have been used to reduce the tax liability.

4. Add the amounts of each **refundable tax credit subject to the temporary deferral** (from step *2*) that would have been used to reduce the tax liability or would have been refunded or credited as an overpayment to estimated tax.

5. Add the amounts determined in step *3* and step *4*.

   - If the result is $2 million or less, the taxpayer is **not** subject to the temporary deferral of tax credits and does not need to continue to steps *6* or *7*.

   - If the result is more than $2 million, the taxpayer is subject to the temporary deferral of tax credits. Continue with steps *6* and *7* to compute the amount of each tax credit subject to the temporary deferral that may be used, refunded, or credited as an overpayment to estimated tax for the tax year and the amount of each tax credit that must be deferred.

6. For each **nonrefundable tax credit subject to the temporary deferral**:

   a. Multiply the amount of the tax credit that would have been used to reduce the tax liability (as determined in step *2*) by a fraction. The numerator of the fraction is $2 million and the denominator of the fraction is the amount determined in step *5*.

      The result is the amount of the tax credit that is **not** deferred and that can be used to reduce the tax liability.

   b. Subtract the amount of tax credit as determined in step *6a* from the amount of that tax credit as determined in step *2*.

      The result is the amount of the nonrefundable tax credit that must be deferred. Deferred nonrefundable tax credit amounts will accumulate as a taxpayer's *temporary deferral nonrefundable payout credit* and can be claimed in tax years beginning on or after January 1, 2013 (see *Application of deferred credits* on page 4).

7. For each **refundable tax credit subject to the temporary deferral**:

   a. Multiply the amount of the tax credit that would have been used to reduce the tax liability or would have been refunded or credited as an overpayment to estimated tax (as determined in step *2*) by a fraction. The numerator of the fraction is $2 million and the denominator of the fraction is the amount determined in step *5*.

      The result is the amount of the tax credit that is **not** deferred and that can be used to reduce the taxpayer's tax liability or that can be refunded or credited as an overpayment to estimated tax.

   b. Subtract the amount of credit as determined in step *7a* from the amount of that credit as determined in step *2*.

The result is the amount of the refundable tax credit that must be deferred. Deferred refundable tax credit amounts will accumulate as a taxpayer's *temporary deferral refundable payout credit* and can be claimed in tax years beginning on or after January 1, 2013, (see *Application of deferred credits* on page 4).

Combined filers under Article 9-A, 32, or 33

Corporations that are required or permitted to file combined returns under Article 9-A, 32, or 33 must use the total tax credits and the tax liability of the combined group to determine whether the combined group is subject to the temporary deferral of tax credits.

Application of deferred tax credits

Nonrefundable tax credits. The accumulated amounts of nonrefundable tax credits that are deferred in tax years beginning on or after January 1, 2010, and before January 1, 2013, are combined and will constitute a taxpayer's *temporary deferral nonrefundable payout credit*.

Taxpayers are allowed to first claim the *temporary deferral nonrefundable payout credit* for the tax year beginning on or after January 1, 2013, and before January 1, 2014.

- **Taxpayers subject to tax under Article 22.** Any amount of the *temporary deferral nonrefundable payout credit* that is not deductible in the tax year beginning on or after January 1, 2013, and before January 1, 2014, may be carried over to the following year or years to be deducted from the taxpayer's tax until the accumulated credit amount is exhausted.

- **Taxpayers subject to tax under Article 9, 9-A, 32, or 33.** The amount of the *temporary deferral nonrefundable payout credit* deducted for the tax year cannot reduce the tax to an amount less than the applicable minimum tax. Any excess may be carried over to the following year or years to be deducted from the taxpayer's tax until the accumulated credit amount is exhausted.

Refundable tax credits. The accumulated amounts of refundable tax credits that are temporarily deferred in tax years beginning on or after January 1, 2010, and before January 1, 2013, are combined and will constitute a taxpayer's *temporary deferral refundable payout credit*.

Taxpayers are allowed to claim the *temporary deferral refundable payout credit* over a period of three tax years as follows:

Tax year	Claim amount allowed
Beginning on or after January 1, 2013, and before January 1, 2014	50% of the total accumulated credit
Beginning on or after January 1, 2014, and before January 1, 2015	75% of the balance of the accumulated credit
Beginning on or after January 1, 2015, and before January 1, 2016	The remaining balance of the accumulated credit

- **Taxpayers subject to tax under Article 22.** If the amount of the *temporary deferral refundable payout credit* allowed for each year exceeds the taxpayer's tax for the year, the excess will be refunded.

- **Taxpayers subject to tax under Article 9, 9-A, 32, or 33.** The amount of the *temporary deferral refundable payout credit* allowed for each tax year cannot reduce the tax to an amount less than the applicable minimum tax. Any amount of credit not deductible in the current tax year may be credited or refunded.

Estimated tax for individuals, estates, and trusts

Taxpayers must consider the temporary deferral of credits when calculating and making estimated tax payments for tax years 2010, 2011, and 2012.

Special rule for tax year 2010. As a result of the temporary deferral of certain tax credits, a taxpayer's 2010 estimated income tax may be underpaid.

To avoid the penalty for underpayment of estimated tax for individuals, estates, and trusts for the 2010 tax year, the total amount of estimated tax paid and withholding tax (if applicable) must be:

- at least 90% (66 2/3% for farmers and fishermen) of the amount of income tax due as shown on the taxpayer's return for tax year 2010; **or**

- 100% of the tax shown on the taxpayer's return for tax year 2009 (110% of that amount if he or she is not a farmer or a fisherman and his or her New York adjusted gross income shown on that return is more than $150,000 or, if married filing separately for 2010, more than $75,000). To qualify for this provision, the taxpayer must have filed a return for tax year 2009, and it must have been for a full 12-month year.

Note: In determining whether a taxpayer paid 100% (or 110%, if applicable) of the tax shown on the taxpayer's 2009 tax return, the taxpayer must recompute his or her 2009 tax as if the temporary deferral of credits had been in effect for tax year 2009.

No penalty will apply to any shortfall in a taxpayer's April 15, 2010, or June 15, 2010, estimated tax payment that is attributable to this amendment, provided:

- the taxpayer has timely made the April 15, 2010, and June 15, 2010, estimated payments, if applicable, and

- the shortfall was attributable to the deferral of credits.

However, to avoid a penalty for the estimated tax due on September 15, 2010, the taxpayer must include in the September 15, 2010 estimated tax payment any shortfall of estimated tax due.

Estimated tax for corporations

Taxpayers must take into account the temporary deferral of tax credits when calculating and making estimated tax payments for tax years 2010, 2011, and 2012.

Taxpayers must calculate any mandatory first installment payments made on or after August 11, 2010, as if the deferral of tax credits was in effect for the tax year upon which the first installment is based.

No penalty for underpayment of estimated taxes will apply to any shortfall in an installment payment(s) for a tax year beginning in 2010 if:

- the payment(s) was timely made,

- the shortfall was attributable to the temporary deferral of tax credits, and

- the payment due date was prior to August 11, 2010.

However, to avoid a penalty for any installment payment due on or after August 11, 2010, any shortfall in a payment due prior to August 11, 2010, must be included with the next installment payment due on or after August 11, 2010.

When calculating the underpayment of estimated tax penalty for a tax year beginning in 2010, the exceptions described in Tax Law sections 1085(d)(1) and 1085(d)(2), based on the preceding year's return, shall be calculated as if the deferral of tax credits had been in effect for that preceding year. **Note:** These exceptions do not apply to *large corporations*.

A *large corporation* is one that had, or whose predecessor had, allocated entire net income (ENI) of at least $1 million for any of the three tax years preceding the tax year involved. A *large corporation*, in the case of a non-life insurance corporation subject to tax under Tax Law Article 33, section 1502-a, is one that had direct premiums subject to the premiums tax under Tax Law Article 33, section 1502-a, exceeding $3,750,000 for any of the three immediately preceding tax years beginning on or after January 1, 2003. However, health maintenance organizations (HMOs) subject to Article 33 meet the definition of a large corporation satisfying the $1 million ENI requirement.

For payment due dates for corporate filers, see the instructions for Form CT-400, *Estimated Tax for Corporations*.

Additional information for corporate fiscal-year filers whose tax years began on or after June 1, 2009, but before January 1, 2010

2009 corporate extension request forms. When computing the mandatory first installment (MFI) of estimated tax for the next tax year, the franchise tax and the Metropolitan Transit Authority (MTA) surcharge, as computed using the worksheet in the instructions, must be recomputed as if the temporary deferral of tax credits had been in place for whichever tax year on which the MFI is being based.

2009 corporate tax returns. When computing the MFI for both franchise and MTA taxes for the next tax year beginning in 2010, taxpayers must recompute their tax for the tax year beginning in 2009, which is the year upon which the 2010 MFI is based, as if the deferral of credits had been in place for that 2009 year.

Forms and instructions

Beginning with tax year 2010, new Form IT-500, *Income Tax Deferral Credit*, and new Form CT-500, *Corporation Tax Deferral Credit*, will provide taxpayers with detailed instructions and schedules regarding the temporary deferral of tax credits. These new forms and instructions will be available on the department Web site in late December 2010.