

## Credits/Incentives:

### New York Tax Tribunal Overturns ALJ to Hold 100% Refunds on Investment Tax Credit Carryovers Allowed

*Decision DTA No. 829184*, N.Y. Tax App. Trib. (1/19/23). The New York Tax Tribunal (Tribunal) overturned an administrative law judge ruling from 2021 in the same case to hold that New York State Tax Law § 210-B (3)(d)1, which allows any taxpayer that is a new business to elect to receive a refund of 50% of its Empire Zone investment tax credit (EZ-ITC) carryover and any taxpayer that is the owner of a qualified investment project (QUIP) or significant investment project (SCIP) to elect to receive a refund of 50% of its EZ-ITC carryover, permits a taxpayer that is eligible for both a new business and an owner of a QUIP or SCIP to elect to receive both such refunds in a single year, “effectively resulting in a refund of 100% of the credit carryover for that year.” In doing so, the Tribunal explained that the New York State Legislature was deliberate in providing two bases for the refundability of the EZ-ITC carryover credit, but no language indicating that such two bases are mutually exclusive. Furthermore, the Tribunal reasoned that allowing the taxpayer in this case to claim refunds for the 2014 tax year at issue based both on its status as a new business and as the owner of a QUIP or SCIP “appears consistent with the economic development goals of the Empire Zone program and cannot be said to lead to an unreasonable or irrational result.” Please contact us with any questions.

URL: <https://www.dta.ny.gov/pdf/decisions/829184.dec.pdf>

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