TSB-M-06(1)C
TSB-M-06(2) I
Corporation Tax
Income Tax
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Qualified Empire Zone Enterprise (QEZE) Tax Credits

Governor George E. Pataki recently signed into law Chapters 63 and 161 of the Laws of 2005. This legislation, in part, extends and amends existing provisions, and adds new provisions, relating to the *Empire Zones Program Act*. This TSB-M includes information from prior legislation and from Chapters 63 and 161 of the Laws of 2005. As a result, this TSB-M supersedes TSB-M-03(4)C and TSB-M-03(3)I.

The following is a summary of the changes to the Empire Zones Program resulting from Chapters 63 and 161:

- the effective date for the Empire Zone (EZ) designations has been extended through June 30, 2011;
- each EZ will be designated as either an investment zone(IZ), or a development zone(DZ);
- effective for taxable years beginning on or after January 1, 2005, a business enterprise first certified prior to August 1, 2002, who has a base period of zero years or whose employment number is zero in the base period will now be subject to an additional employment test;
- effective for taxable years beginning on or after January 1, 2002, the term related person includes an entity which would have qualified as a related person to the QEZE if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate;
- effective for taxable years beginning on or after January 1, 2005, the QEZE employment number can include employees from a related person only if they were not employed within New York State in the immediately preceding 60 months;
- effective for taxable years beginning on or after January 1, 2005, a business enterprise, which is identical in ownership and operation to an existing taxpayer, can qualify as a new business if operating in different counties within New York State (the new business must use the remaining business tax benefit period of the existing taxpayer);
- eligible real property taxes will include property taxes paid by a lessee for taxable years beginning on or after January 1, 2005, under certain circumstances; and
- effective for taxable years beginning on or after January 1, 2005, PILOTs (payments in lieu of taxes) do not constitute eligible real property taxes to the extent the payment exceeds a limitation calculation.

In addition to the above changes, there are additional amendments for taxable years beginning on or after January 1, 2005, affecting business enterprises first certified on or after April 1, 2005:

- for purposes of the QEZE employment test, taxpayers will include their employees within the EZs in their statewide employment number;
- in order to meet the employment test, the employment number in the current tax year must exceed the employment number in the base period for both the EZs and the state (including the EZs);
- if a business enterprise has zero base period employment or a base period of zero years, it must qualify as a new business in order to meet the employment test;
- the base period is shortened from five years to four years;
- the benefit period is shortened from fifteen years to ten years;
- the real property tax credit calculation has been amended; and
- the real property tax credit is limited to the greater of the credit amount or the capital investment amount; however, the credit cannot exceed the eligible real property taxes paid.

General Information

The Empire Zones Program was enacted in 2000 and applies to taxable years beginning on or after January 1, 2001. The Program provides for two credits against corporate and personal income taxes for Qualified Empire Zone Enterprises (QEZEs) subject to tax under Articles 9-A (Franchise Tax on Business Corporations), 22 (Personal Income Tax), 32 (Franchise Tax on Banking Corporations) or 33 (Franchise Tax on Insurance Corporations) of the Tax Law. QEZEs that annually meet an employment test are entitled to the QEZE Credit for Real Property Taxes and the QEZE Tax Reduction Credit. For taxable years beginning on or after January 1, 2004, agricultural cooperatives subject to tax under Section 185 of Article 9 are eligible for the QEZE Credit for Real Property Taxes.

The QEZE tax credits for business enterprises first **certified before April 1, 2005**, are generally available for 14 taxable years provided the QEZE annually meets an employment test. The law provides that such business enterprise may be a QEZE for up to 15 years (the business tax benefit period). However, because the benefit period factor for year 15 is 0, there are no credits available for that year.

For business enterprises first **certified on or after April 1, 2005**, the QEZE tax credits are available for ten taxable years provided the QEZE annually meets an employment test. However, the QEZE tax credits are not available for any taxable year, including a short taxable year, which begins prior to January 1, 2005, if the business enterprise was first certified on or after April 1, 2005.

Section 969(a) of Article 18-B of the General Municipal Law provides that a designation of an area as an Empire Zone will remain in effect during the period beginning on the date of designation and ending June 30, 2011. Section 14(k) of the Tax Law provides that if the designation of an area as an Empire Zone is no longer in effect because section 969 of the General Municipal Law was not amended to extend the effective date of such designation, a business enterprise that was certified pursuant to Article 18-B of the General Municipal Law on the day immediately preceding the day on which such designation expired shall be deemed to continue to be certified for purposes of the QEZE tax benefits.

General definitions

A ***Qualified Empire Zone Enterprise*** (QEZE) means a business enterprise that has been certified under Article 18-B of the General Municipal Law and which annually meets an employment test during the business tax benefit period.

The ***business tax benefit period*** is:

- for businesses with a test date occurring on or before December 31, 2001, the first fifteen taxable years beginning on or after January 1, 2001, or
- for businesses with a test date occurring on or after January 1, 2002, but prior to April 1, 2005, the first fifteen taxable years following the test year, or
- for businesses which are first certified on or after April 1, 2005, the first ten taxable years starting with the taxable year in which the business enterprise's first date of certification occurs.

Base period means:

- the five taxable years immediately before the test year in the case of a business enterprise first **certified before April 1, 2005**. If the business enterprise has fewer than five such years, then the term *base period* means the smaller set of years.
- the four taxable years immediately before the taxable year it was first certified for a business enterprise first **certified on or after April 1, 2005**. If the business enterprise has fewer than four such tax years, then the term *base period* means such smaller set of years.

Note: The *base period* is zero years for a business enterprise which is first doing business in New York State in the tax year that the enterprise is first certified. (See *Additional employment test requirements for businesses with a base period of zero years or zero employment in the base period*)

The ***employment test*** will be met for a taxable year if:

- in the case of a business enterprise first **certified before April 1, 2005**; (i) the business enterprise's employment number in all Empire Zones for the taxable year equals or exceeds its employment number in all Empire Zones for the base period, and (ii) the business enterprise's employment number in New York State outside of the Empire Zones for the taxable year equals or exceeds its employment number in the State outside of the Empire Zones for the base period.

- in the case of a business enterprise first **certified on or after April 1, 2005**; (i) the business enterprise's employment number in New York State for the taxable year exceeds its employment number in the State for the base period, and (ii) the business enterprise's employment number in all Empire Zones for the taxable year exceeds its employment number in all Empire Zones for the base period.

Taxable year means the tax year of the business enterprise under Section 183, 184, 185 or former Section 186 of Article 9 (Corporation Tax), or under Article 9-A (Franchise Tax on Business Corporations), Article 22 (Personal Income Tax), Article 32 (Franchise Tax on Banking Corporations), or Article 33 (Franchise Tax on Insurance Corporations) of the Tax Law. If a business enterprise does not have a taxable year under the preceding sentence because it is exempt from taxation or otherwise not required to file a tax return under any of the above-referenced sections or articles, then *taxable year* means the business enterprise's taxable year for federal income tax purposes, or, if the enterprise does not have a taxable year for federal income tax purposes, the calendar year.

Test date means the later of July 1, 2000, or the date prior to July 1, 2011, on which the business enterprise was first certified under Article 18-B of the General Municipal Law. A business enterprise first certified under the General Municipal Law prior to July 1, 2000, is deemed to have a test date of July 1, 2000.

Test year means the last taxable year of the business enterprise ending **before** the test date. If a business enterprise does not have a taxable year that ends before the test date, then the enterprise will be deemed to have a test year that is either the last calendar year ending before its test date or, if the enterprise has as its taxable year a fiscal year, the last such fiscal year ending before its test date.

The term ***related person*** means related person as defined in section 465(b)(3)(C) of the IRC or an entity which would have qualified as a *related person* if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate.

Employment number means the average number of individuals (excluding general executive officers, in the case of a corporation) *employed full-time* by the business enterprise for at least one-half of the taxable year. The number of these individuals who are employed full-time by the business enterprise for at least one-half of the taxable year is computed by: (i) determining the number of individuals so employed on March 31, June 30, September 30, and December 31 during the applicable taxable year; (ii) adding together the number of such individuals determined on each of those dates; and (iii) dividing the sum by the number of such dates occurring within the applicable taxable year.

For taxable years beginning on or after January 1, 2002, the *employment number* does not include individuals employed within the immediately preceding 60 months by a *related person* to the QEZE. However, for taxable years beginning on or after January 1, 2005, only individuals employed in New York State by a *related person* within the immediately preceding 60 months will be subject to this exclusion. For additional information on *related person*, see the attached Addendum on page 41.

Employed full-time means a job consisting of at least 35 hours per week and includes two or more jobs that together constitute the equivalent of a job of at least 35 hours per week. A seasonal business (a business that regularly operates for less than an entire tax year, e.g., ski resort) that employs individuals full-time for at least three months of continuous duration may include those individuals in the employment number.

Additional employment test requirements for businesses with a base period of zero years or zero employment in the base period

- In the case of a business enterprise first **certified on or after April 1, 2005**, if the base period is zero years or the base period employment is zero and the enterprise has an employment number in such zone of greater than zero with respect to a taxable year, then the *employment test* will be met only if the enterprise qualifies as a *new business.*

- In the case of a business enterprise first **certified on or after August 1, 2002 and before April 1, 2005**, if the base period is zero years and the enterprise has an employment number in the zone of greater than zero with respect to a taxable year, then the *employment test* will be met only if the enterprise qualifies as a *new business.*

- In the case of a business enterprise first **certified prior to August 1, 2002**, if the base period is zero years or the base period employment is zero and the enterprise is similar in ownership and operation to an existing or previously existing taxpayer, then the enterprise will be able to continue to access QEZE benefits for taxable years beginning on or after January 1, 2005, only if the enterprise was formed for a *valid business purpose* and not solely to gain empire zone benefits.

Valid business purpose means one or more business purposes, other than the avoidance or reduction of taxation, which alone or in combination constitute the primary motivation for some business activity or transaction, which activity or transaction changes in a meaningful way, apart from tax effects, the economic position of the taxpayer. The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

New business means any business entity, except one which is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under sections 183, 184, 185, or 186 of Article 9 of the Tax Law; or under Article 9-A, 32, or 33 of the Tax Law; or under Article 23, or which would have been subject to Article 23 (as such article was in effect on January 1, 1980), or the income (or losses) of which is (or was) includable under Article 22 of the Tax Law.

For taxable years beginning on or after January 1, 2005, a business which is identical in ownership and operation to an existing taxpayer will qualify as a *new business* if the two businesses are operating in different counties in the state. However, it should be noted that the new business will use the remaining *business tax benefit period* of the existing taxpayer to which it is identical.

Newly designated empire zones or changes in empire zone boundaries

In the case of a newly designated zone or if the boundaries of an existing zone have been revised, the employment number in the base period and test year are determined as if the new zone or the boundaries of the revised zone existed during the base period and test year and the business enterprise had been located in the new or revised zone.

Amendments to the General Municipal Law under section 957(d) will require that all new and existing empire zones be designated as either investment zones or development zones.

Relocation from a business incubator facility

If a business enterprise relocates to an Empire Zone from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space or business support services or both to newly established enterprises, the employment number in the base period is determined as if such business enterprise had been located in the Empire Zone during the base period.

QEZE Credit for Real Property Taxes

Who is eligible

A taxpayer that is subject to the tax imposed under Article 9-A, 22, 32, or 33, or under Section 185 of Article 9 of the Tax Law and is a QEZE, a sole proprietor of a QEZE, a shareholder of a New York S corporation that is a QEZE, or a partner in a partnership that is a QEZE, is allowed a credit against the tax imposed under Article 9-A, 22, 32, or 33 or under Section 185, Article 9 for *eligible real property taxes* based on the following rules and additional definitions. For purposes of this TSB-M, the term partnership includes an LLC which has elected to be treated as a partnership for federal and New York State income tax purposes and partner includes a member of an LLC which has elected to be treated as a partnership.

(Tax Law, section 15(a))

Definitions

The ***benefit period factors*** to be used in calculating the QEZE credit for real property taxes are listed in the following table:

Taxable year of the benefit period	Benefit period factor
Years 1-10	1.0
Year 11	.8
Year 12	.6
Year 13	.4
Year 14	.2
Year 15	0

The ***employment increase factor*** is an amount which cannot exceed 1, but that is the greater of the following:

1) The excess of the QEZE's employment number in the Empire Zones in which the QEZE is certified under Article 18-B of the General Municipal Law for the taxable year, over the QEZE's test year employment number in such empire zones, divided by the QEZE's test year employment number in the zones in which the QEZE is certified. (Note: Where a QEZE's employment number in the zones for the taxable year exceeds the QEZE's employment number in the zones for the test year, and the test year employment number is zero, the employment increase factor will be 1.0); **or**

2) The excess of the QEZE's employment number in zones in which the QEZE is certified under Article 18-B of the General Municipal Law for the taxable year, over the QEZE's test year employment number in such zones, divided by 100.

Net new employees is equal to the excess of the QEZE's *employment number* in the empire zones with respect to which the QEZE is certified for the taxable year over the QEZE's *employment number* in such zones for the *base period*.

Manufacturer means a taxpayer which during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture, or commercial fishing, or is a business engaged in emerging technologies as defined in section 3102-e of the Public Authorities Law.

Eligible real property taxes means the taxes imposed on real property that is owned by the QEZE and located in an Empire Zone in which the QEZE is certified under Article 18-B of the General Municipal Law. The real property taxes must be paid by the QEZE which is the owner of the real property or by a tenant provided that the tenant does not qualify as a QEZE or cannot treat such payment as eligible real property taxes. Such taxes must become a lien on the real property in a *taxable year* in which the owner of the property is both certified under Article 18-B of the General Municipal Law and a QEZE. In general, the lien date is the first day of the period for which the taxes are imposed.

In addition, for taxable years beginning on or after January 1, 2005, eligible real property taxes shall also include taxes paid by a QEZE which is a lessee of real property when the following conditions are met: (i) the taxes are paid by the lessee pursuant to a written lease executed or amended on or after June 1, 2005, (ii) such taxes must become a lien on the real property in a taxable year in which the lessee of the property is both certified under Article 18-B of the General Municipal Law and a QEZE, and (iii) the lessee made direct payment of such taxes to the taxing authority and received a receipt for such payment from the taxing authority.

Payments in lieu of taxes (PILOTs) made to the State, a municipal corporation or a public benefit corporation for property owned by the QEZE and located in an empire zone in which the QEZE is certified are considered eligible real property taxes if the PILOTs are made by the QEZE pursuant to a written agreement. For taxable years beginning on or after January 1, 2001 and prior to January 1, 2005, PILOTs made pursuant to a written agreement executed or amended on or after January 1, 2001, do not constitute eligible real property taxes unless the written agreement is approved by both the Department of Economic Development and the Office of Real Property Services as satisfying generally accepted and recognized norms and standards of real property tax appraisals. For taxable years beginning on or after January 1, 2005, PILOTs made pursuant to a written agreement executed or amended on or after January 1, 2001, do not constitute eligible real property taxes in any taxable year to the extent that such payment exceeds the product of (1) and (2) below.

1) The greater of:

    a) the basis for federal income tax purposes, calculated without regard to depreciation, (determined as of the effective date of the QEZE's certification) of real property including buildings and structural components of buildings, owned by the QEZE and located in the Empire Zones with respect to which the QEZE is certified; or

    b) the basis for federal income tax purposes, calculated without regard to depreciation, of such real property referenced in (a) above on the last day of the taxable year.

    It should be noted, however, that if the basis in either (a) or (b) above is further adjusted or reduced pursuant to any provision of the IRC, the QEZE may petition the Department of Taxation and Finance, the Department of Economic Development and the Office of Real Property Services to disregard such reduction or adjustment for this purpose.

2) The estimated effective full value tax rate within the county where such property is located as most recently reported to the Commissioner of Tax and Finance by the State Board of Real Property Services.

(Tax Law, section 15(c) through (e))

Calculation of the credit for a QEZE first certified before April 1, 2005

The amount of the credit is the product (or pro rata share of the product, in the case of a shareholder of a New York S corporation or a partner of a partnership) of the following three factors:

1) the *benefit period factor*;
2) the *employment increase factor*; and
3) the *eligible real property taxes*, paid or incurred by the QEZE, during the taxable year.

(1) x (2) x (3) = Amount of QEZE Credit for Real Property Taxes

(Tax Law, section 15(b)(1))

- **Limitation on the amount of the credit for a QEZE first certified on or after 8/1/02 and before 4/1/2005**

  The credit is limited to the greater of the following two amounts:

  1) the employment increase limitation, which is the product of (A) $10,000 and (B) the excess of the QEZE's employment number in the zones in which the QEZE is certified for the taxable year, over the QEZE's test year employment number in such zones; **or**

  2) the capital investment limitation.

The capital investment limitation is the product of (1) x (2).

1) 10% of the greater of:

   a) the cost or other basis for federal income tax purposes (determined on the later of 1/1/2001, or the effective date of the QEZE's certification) of real property, including buildings and structural components of buildings, owned by the QEZE and located in Empire Zones in which the QEZE is certified ; **or**

b) the cost or other basis for federal income tax purposes of such real property referenced in (a) above on the last day of the taxable year.

2) The greater of:

a) the percentage of the real property referenced in (1a) above physically occupied and used by the QEZE or by a *related person* to the QEZE; or

b) the percentage of the cost or other basis attributable to the construction, expansion or rehabilitation of the real property referenced in (1a) above (as opposed to the acquisition) by the QEZE. If such result is 50% or greater, then the percentage shall be deemed to be 100%.

(Tax Law, section 15(f))

Calculation of the credit for a QEZE first certified on or after April 1, 2005

The amount of the credit (or pro rata share of the amount, in the case of a shareholder of a New York S corporation or a partner in a partnership) is the greater of the following two amounts:

1) the credit amount; **or**

2) the capital investment amount.

However, the credit shall not exceed the amount of the taxpayer's *eligible real property taxes* for the *taxable year*.

- **Credit Amount**

The credit amount for a **QEZE which is certified only in an area or areas designated as an investment zone** or which is a *manufacturer* is the product of the following factors:

1) 25%; **and**

2) the total wages, health benefits and retirement benefits of *net new employees* for the *taxable year*. (The total wages, health benefits and retirement benefits for each net new employee can not exceed $40,000.)

The credit amount for a **QEZE which is certified in an area designated as a development zone** with the exception of *manufacturers*, or a **QEZE which is certified in both**

a development zone and an investment zone with the exception of *manufacturers*, is the product of the following factors:

1) 25%;

2) the total wages, health benefits and retirement benefits of *net new employees* for the *taxable year*. (The total wages, health benefits and retirement benefits for each net new employee can not exceed $40,000.); **and**

3) the development zone employment increase factor based upon *net new employees*, from chart below.

Development zone employment increase factor:

Net New Employees	Development Zone Employment Increase Factor
1 to 10	.25
11 to 49	.50
50 to 75	.75
76+	Net new employees divided by 100 up to 1.0

(Tax Law, section 15(b)(2))

- **Capital investment amount**

In the case of a **QEZE which is certified only in an area or areas designated as an investment zone** or which is a *manufacturer*, the capital investment amount shall be the product of (1) x (2).

1) 10% of the greater of:

   a) the cost or other basis for federal income tax purposes (determined on the later of 1/1/2001, or the effective date of the QEZE's certification) of real property, including buildings and structural components of buildings, owned by the QEZE and located in Empire Zones in which the QEZE is certified ; **or**

   b) the cost or other basis for federal income tax purposes of such real property referenced in (a) above on the last day of the taxable year.

2) The greater of:

   a) the percentage of the real property referenced in (1a) above, physically occupied and used by the QEZE or by a *related person* to the QEZE; **or**

b) the percentage of the cost or other basis attributable to the construction, expansion or rehabilitation of the real property referenced in (1a) above (as opposed to the acquisition) by the QEZE. If such percentage is 50% or greater, then the percentage shall be deemed to be 100%.

In the case of a **QEZE which is certified in an area designated as a development zone** with the exception of *manufacturers*, or a **QEZE which is certified in both a development zone and an investment zone** with the exception of *manufacturers*, the capital investment amount is the product of (1)x(2)x(3).

1) 10%

2) the amount of such cost or other basis which is attributable to the construction, expansion or rehabilitation (as opposed to the acquisition) of the real property, including buildings and structural components of buildings, owned by the QEZE and located in Empire Zones in which the QEZE is certified

3) the percentage of the real property physically occupied and used by the QEZE or by a *related person* to the QEZE. If 50% or more of the cost or other basis is attributable to the construction, expansion or rehabilitation of the real property (as opposed to the acquisition), then the occupancy percentage shall be deemed to be 100%

(Tax Law, section 15(f-1))

Application and refund of the credit

A business enterprise first **certified before April 1, 2005**, may be a QEZE for up to 15 years. However, since the *benefit period factor* for year 15 is zero, there is no credit available for that year. The credit will be available for each of the first 14 years during the *business tax benefit period*, but only for those taxable years for which the *employment test* is met. A business enterprise first **certified on or after April 1, 2005**, may be a QEZE for up to 10 years. The credit will be available for each of the 10 years but only for those taxable years for which the employment test is met. However, the credit is not available for a taxable year, including a short taxable year, which began prior to January 1, 2005.

A business enterprise that becomes a certified Empire Zone business under Article 18-B of the General Municipal Law and subsequently has its certification revoked under that article will cease to be a QEZE on the first day of the taxable year in which the business enterprise's certification is revoked for purposes of Articles 9-A, 22, 32 and 33 or under Section 185 of Article 9.

For taxpayers subject to tax under Section 185 of Article 9, the credit deducted for each taxable year cannot reduce the tax to an amount less than the minimum tax of $10.

For Article 9-A taxpayers, the credit deducted for each taxable year cannot reduce the tax to an amount less than the tax due on the minimum taxable income base or the fixed dollar minimum, whichever is higher.

For Article 32 and 33 taxpayers, the credit deducted for each taxable year cannot reduce the tax to an amount less than the fixed minimum tax of $250.

For Article 22 taxpayers, the credit deducted for each taxable year can reduce the tax to zero.

The credit may not be applied against the MTA surcharge under Article 9-A, 32, or 33.

Any amount of the credit not deductible in the current taxable year may be credited or refunded. The Tax Law does not allow for the payment of interest on the refund.

(Tax Law, section 14(i), 187(j), 210.27, 606(bb), 1456(o) and 1511(r))

Recapture of credit

For taxable years beginning on or after January 1, 2001, a portion of the QEZE real property tax credit must be recaptured if the amount of the real property taxes on which the credit was calculated is subsequently reduced by a final order in any proceeding under Article 7 of the Real Property Tax Law or other provision of law. The recapture amount is equal to the amount of the credit originally taken, less the amount of credit recalculated using the reduced real property taxes. However, for QEZEs certified on or after April 1, 2005, recapture is only necessary if the real property taxes are subsequently reduced to amount less than the original credit taken.

(Tax Law, section 15(g))

QEZE Tax Reduction Credit

Who is eligible

A taxpayer that is subject to tax under Article 9-A, 22, 32 or 33 of the Tax Law and is a QEZE, a sole proprietor of a QEZE, a shareholder of a New York S corporation that is a QEZE, or a partner in a partnership that is a QEZE, is allowed a credit against its Article 9-A, 22, 32 or 33 tax, based on the following rules and additional definitions. For purposes of this TSB-M, the term partnership includes an LLC which has elected to be treated as a partnership for federal and

New York State income tax purposes and partner includes a member of an LLC which has elected to be treated as a partnership.

(Tax Law, section 16(a))

Definitions

The ***zone allocation factor*** is the percentage that represents the QEZE's economic presence in Empire Zones in which the QEZE is certified under Article 18-B of the General Municipal Law.

The zone allocation factor is calculated by adding the two percentages determined in (1) and (2) below and then dividing the result by 2.

1) Determine the percentage of the QEZE's real and tangible personal property in Empire Zones by dividing the average value of the QEZE's real and tangible personal property, whether owned or rented to it, in Empire Zones in which the QEZE is certified, during the period covered by its return, by the average value of all the QEZE's real and tangible personal property, whether owned or rented to it, within the state during that period.

   Value of the QEZE's real and tangible personal property means the adjusted basis of the properties for federal income tax purposes (except that the value of rental property shall be eight times the gross rents payable by the QEZE for the rental property for the taxable year). However, if a QEZE has made a one-time, revocable election, which has not been revoked, to use fair market value as the value of all of its real and tangible personal property for purposes of the property factor of the business allocation percentage, the QEZE may also use fair market value for purposes of this computation.

2) Determine the percentage of the QEZE's wages in Empire Zones by dividing the total wages, salaries, and other personal service compensation computed on the cash or accrual basis according to the method of accounting used by the QEZE in the computation of entire net income, during the taxable year, of employees within Empire Zones in which the QEZE is certified, except general executive officers, by the total wages, salaries and other personal service compensation, similarly computed, during the taxable year, of all the QEZE's employees within the state, except general executive officers.

For Article 22 (personal income tax) purposes, references in the zone allocation factor to property, wages, salaries, and other personal service compensation are considered to be references to those items connected only with the conduct of the QEZE business. Therefore, the reference to entire net income in (2) above, would be net profit (loss) or ordinary income (loss) of the QEZE for Article 22 purposes.

(Tax Law, section 16(e))

The ***tax factor*** is calculated as detailed below. In all cases, the tax used to compute the credit is the tax before any deduction for credits. In no event may any of these ratios exceed 1.0. The Commissioner of the Department of Taxation and Finance may prescribe other methods which reasonably reflect the portion of tax attributable to the QEZE.

The ***tax factor*** for **corporate taxpayers** is calculated as follows:

1) Article 9-A: The larger of the tax on the entire net income base or the minimum taxable income base.

2) Article 32: The larger of the tax on entire net income or the alternative entire net income.

3) Article 33 (Life insurance filers): The larger of the tax on entire net income or entire net income plus compensation.

4) Article 33 (Non-life insurance filers): The larger of the tax on entire net income or entire net income plus compensation as calculated on a pro-forma return calculating a tax on income for the year.

The ***tax factor*** for **corporate partners** is the larger of the applicable tax determined in (1) through (4) above, multiplied by a ratio, the numerator of which is the *partner's income from the QEZE partnership* allocated within New York State and the denominator of which is the *partner's entire income* allocated within New York State. The term *partner's income from the QEZE partnership* means partnership items of income, gain, loss, deduction and New York modifications entering into entire net income, minimum taxable income, alternative entire net income, or entire net income plus compensation, as the case may be. If the partner's income from the partnership is zero or a loss, the tax factor is zero. The term *partner's entire income* means entire net income, minimum taxable income, alternative entire net income, or entire net income plus compensation, as the case may be. The Commissioner of the Department of Taxation and Finance may prescribe other methods which reasonably reflect the portion of tax attributable to the QEZE.

Example of tax factor calculation for corporate partners:

A corporation is a partner of a partnership that is a QEZE. The corporation's entire net income (ENI) before allocation is $1000. The corporation's entire net income before allocation is comprised of $600 business income and $400 investment income. The corporation's pro rata share of the QEZE partnership income is $300 (included in total ENI of $1000), of which $200 is includable in business income and $100 is includable in investment income. The business allocation percentage (BAP) of the corporation is 40% and the investment allocation percentage (IAP) of the corporation is 70%. The New York State tax rate to be used for purposes of this example is 7.5%. The tax factor for this corporate partner of a QEZE partnership is calculated as follows:

Corporation's tax on ENI allocated to New York State

Corporation's Total ENI	$1000	
Corporation's Total ENI allocated to New York State		
Business income x BAP = $600 x 40%	$ 240	
Investment income x IAP = $400 x 70%	$ 280	
Total corporation ENI allocated to New York State		$ 520
New York State tax on allocated New York ENI		$ 520 x 7.5% = $ 39.00

Corporation's pro rata share of QEZE partnership income allocated to New York State*

Corporation's pro-rata share of QEZE partnership income included in ENI $300

Allocated QEZE partnership income

QEZE partnership income includable in corp's business income x BAP = $200 x 40% =	$ 80
QEZE partnership income includable in corp's investment income x IAP = $100 x 70% =	$ 70
Corporation's pro rata share of QEZE partnership income allocated to New York State	$150

Tax factor calculation

$$\frac{\text{QEZE partnership income allocated to New York State}}{\text{Corporation's allocated New York ENI}} = \frac{\$\,150}{\$\,520} = .2885 \text{ QEZE allocation ratio}$$

Tax factor:

New York tax on allocated ENI x QEZE allocation ratio = Corporate partner's tax factor

$ 39.00 x .2885 = $ 11.25 tax factor

* The partnership income is allocated to New York State using the corporation's BAP and IAP since those are the ratios used to allocate partnership items of business and investment income to New York State for purposes of calculating the corporation's New York State tax.

The ***tax factor*** for **corporations who file a combined report** is the amount of combined tax (the larger of the applicable tax determined in (1) through (4) above) multiplied by a ratio, the numerator of which is the amount of income of the QEZE allocated to New York State, and the denominator of which is the combined group's income. Combined groups which have one or more members with losses (including the QEZE) compute the tax factor as described above without including the loss (es) in either the numerator or the denominator. The Commissioner of the Department of Taxation and Finance may prescribe other methods which reasonably reflect the portion of tax attributable to the QEZE.

The ***tax factor*** for **personal income tax taxpayers** is the tax required to be shown on the personal income tax return (as computed under section 601 paragraphs (a) through (d) of the Tax Law) multiplied by the following ratios. In no event may any of these ratios exceed 1.0.

1) Sole proprietors of QEZEs: The numerator of the ratio is the income from the QEZE (net profit from federal Schedule C and any modifications required under section 612 of the New York State Tax Law) which is allocable to New York State and included in the sole proprietor's New York adjusted gross income. If the QEZE's income is zero or a loss, the tax factor is zero. The income from the QEZE allocable to New York State is the QEZE's income from New York State sources. For a nonresident of New York State, this is the income from the QEZE included in the New York State amount column of Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*. The denominator of the ratio is New York adjusted gross income as shown on the sole proprietor's New York State return. Personal income tax taxpayers who have included losses in the computation of their New York State adjusted gross income compute the tax factor as described above without regard to the loss(es).

2) Personal income tax taxpayers that are partners of QEZE partnerships: The numerator of the ratio is the partner's income from the QEZE partnership allocable to New York State and included in New York adjusted gross income. The term "partner's income from the QEZE partnership" means partnership items of income, gain, loss, deduction and modifications entering into New York adjusted gross income. If the partner's income from the QEZE partnership is zero or a loss, the tax factor is zero. The income from the QEZE allocable to New York State is the QEZE partnership income from New York State sources. (This should be provided to the partner by the partnership.) For a nonresident of New York State, this is the partnership income from the QEZE partnership included in

the New York State amount column of Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*. The denominator of the ratio is New York adjusted gross income as shown on the partner's New York State tax return. Personal income tax taxpayers who have included losses in the computation of their New York State adjusted gross income compute the tax factor as described above without regard to the loss(es).

3) Shareholders of New York S corporations which are QEZEs: The numerator of the ratio is the shareholder's income from the New York S corporation which is a QEZE allocable to New York State and included in New York adjusted gross income. Do not include any wages paid by the QEZE S corporation to the shareholder in the shareholder's income from the QEZE S corporation allocable to New York State. If the shareholder's income from the QEZE S corporation is zero or a loss, the tax factor is zero. The income from the QEZE S corporation allocable to New York State is the QEZE S corporation income from New York State sources. (This should be provided to the shareholder by the New York S corporation.) For a nonresident of New York State, this is the New York S corporation income from the QEZE S corporation included in the New York State amount column of Form IT-203, *Nonresident and Part-Year Resident Return*. The denominator of the ratio is New York adjusted gross income as shown on the shareholder's return. Personal income tax taxpayers who have included losses in the computation of their New York State adjusted gross income compute the tax factor as described above without regard to the loss(es).

These provisions are effective for all tax years.

(Tax Law, section 16(f))

Amount of credit

The amount of the credit is the product of the following four factors:

1) the *benefit period factor* (see page 7);
2) the *employment increase factor* (see page 7);
3) the *zone allocation factor* (see page 14); and
4) the *tax factor* (see page 15).

(1) x (2) x (3) x (4) = Amount of QEZE Tax Reduction Credit

(Tax Law, section 16(b))

Application of the credit

A business enterprise first **certified before April 1, 2005**, may be a QEZE for up to 15 years. However, since the *benefit period factor* for year 15 is zero, there is no credit available for that year. The credit will be available for each of the first 14 years during the *business tax benefit period*, but only for those taxable years for which the *employment test* is met. A business enterprise first **certified on or after April 1, 2005**, may be a QEZE for up to 10 years. The credit will be available for each of the 10 years but only for those taxable years for which the employment test is met. However, the credit is not available for a taxable year, including a short taxable year, which began prior to January 1, 2005.

A business enterprise that becomes a certified Empire Zone business under Article 18-B of the General Municipal Law and subsequently has its certification revoked under that article will cease to be a QEZE on the first day of the taxable year in which the business enterprise's certification is revoked for purposes of Articles 9-A, 22, 32 and 33.

For Article 9-A taxpayers, the credit deducted for each taxable year cannot reduce the tax to an amount less than the fixed dollar minimum. However, Article 9-A taxpayers that have a *zone allocation factor* of 100% are not subject to this limitation and the credit deducted for each taxable year can reduce the tax to zero.

For Article 32 and 33 taxpayers, the credit deducted for each taxable year cannot reduce the tax to an amount less than the fixed minimum tax of $250.

For Article 22 taxpayers, the credit deducted for each taxable year can reduce the tax to zero.

The credit may not be applied against the MTA surcharge under Article 9-A, 32, or 33.

Any amount of the credit not deductible in the current taxable year may not be credited, carried over or refunded.

(Tax Law, Sections 14(i), 210.28, 606(cc), 1456(p) and 1511(s))

EXAMPLE 1 – QEZE first certified prior to 8/1/2002

Company ABC, a corporation subject to tax under Article 9-A, was incorporated in New York State on January 2, 1990, and became first certified under Article 18-B of the General Municipal Law on July 15, 2002 (test date). For tax purposes, Company ABC files its tax returns on a calendar-year basis. Company ABC conducts business in only one zone in which it is certified, and has no other operations in New York State outside Empire Zones (EZs).

EMPLOYMENT TEST:

Part 1: EMPIRE ZONE EMPLOYEES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year within all zones for the current taxable year (year claiming the credit) and the five-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees within all EZs for the current taxable year:	2005	51	51	51	50	203	50.75
Number of full-time employees within all EZs for the five-year base period:							
Base Year 1:	1996	31	31	31	29	122	
Base Year 2:	1997	28	32	32	32	124	
Base Year 3:	1998	31	31	31	29	122	
Base Year 4:	1999	30	30	30	30	120	
Base Year 5:	2000	30	30	30	30	120	
Total full-time employees within all EZs for the five-year base period:						608	
Average full-time employees within all EZs in the five-year base period (total divided by the number of dates in base period, in this example there are 20):							30.40

The average number of full-time employees within all EZs (employment number) in the current taxable year exceeds the average number of full-time employees within all EZs (employment number) for the base period.

Part 2: NEW YORK STATE EMPLOYEES OUTSIDE EMPIRE ZONES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year in New York State outside the Empire Zones for the current taxable year and five-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in New York State outside EZs for the current taxable year:	2005	0	0	0	0	0	0
Number of full-time employees in New York State outside EZs for the five-year base period:							
Base Year 1:	1996	0	0	0	0	0	
Base Year 2:	1997	0	0	0	0	0	
Base Year 3:	1998	0	0	0	0	0	
Base Year 4:	1999	0	0	0	0	0	
Base Year 5:	2000	0	0	0	0	0	
Total full-time employees in New York State outside the EZs for the five-year base period:						0	
Average full-time employees in New York State outside EZs in the five-year base period (total divided by the number of dates in base period, in this example there are 20):							0

The average number of full-time employees in New York State outside the Empire Zones (employment number) in the current taxable year equals the average number of full-time employees in New York State outside the Empire Zones (employment number) for the base period.

The employment test for taxable year 2005 has been satisfied since both Parts 1 and 2 of the employment test have been met.

Part 3: TEST YEAR EMPLOYMENT NUMBER- Computation of average number of full-time employees (excluding general executive officers) for the test year (taxable year ending 12/31/2001). Include only employees working in EZs in which the QEZE is certified.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in EZs in which the QEZE is certified for the test year:	2001	40	40	40	40	160	40

Part 4: COMPUTATION OF THE AMOUNTS OF EMPIRE ZONE CREDITS

CREDIT FOR REAL PROPERTY TAXES:

Company ABC is a QEZE because it is a certified business and has met the employment test for the current taxable year. Company ABC paid $75,000 of eligible real property taxes in the current taxable year.

Current Taxable Year Ending 12/31/2005		Computation
Factor 1: Benefit period factor Years one through ten, enter 1.0		1.0
Factor 2: Employment increase factor		
A. Average employment within the EZs in which the QEZE is certified in the current year	50.75	
Average employment within the EZs in which the QEZE is certified in the test year	40	
Excess of employment for taxable year over test year, divided by test year employment (50.75-40=10.75)÷ 40=	.2688	
B. Average employment within the EZs in which the QEZE is certified in the current taxable year	50.75	
Average employment within the EZs in which the QEZE is certified in the test year	40	
Excess of employment for taxable year over test year, divided by 100 (50.75 – 40 = 10.75) ÷ 100 =	.1075	
Higher of *A* or *B* above, not to exceed 1.0		.2688
Factor 3: Real Property taxes paid or incurred during taxable year		$ 75,000.00
Credit for Real Property Taxes in current taxable year: Product of factors 1,2, & 3		$20,160.00

TAX REDUCTION CREDIT:

Company ABC computes $500,000 of tax on its entire net income base for its taxable year ending 12/31/2005, which is greater than the amount of tax on its minimum taxable income base. It has $5,000,000 of property and $1,000,000 of payroll within the zone in which it is certified in the current tax year. All of Company ABC's New York property and payroll is located within this zone.

Current Taxable Year Ending 12/31/2005		Computation
Factor 1: Benefit period factor Year one through ten, enter 1.0		1.00
Factor 2: Employment increase factor		
A. Average employment within EZs in which the QEZE is certified in the current tax year	50.75	
Average employment within EZs in which the QEZE is certified in the test year	40	
Excess of employment for taxable year over test year divided by test year employment (50.75 – 40 = 10.75) ÷ 40 =	.2688	
B. Average employment within EZs in which the QEZE is certified in current taxable year	50.75	
Average employment within EZs in which the QEZE is certified in test year	40	
Excess of employment for the taxable year over test year divided by 100 (50.75 – 40 = 10.75) ÷ 100 =	.1075	
Higher of "A" or "B" above not to exceed 1.0		.2688
Factor 3: Zone allocation factor		
A. Zone property in taxable year	$5,000,000	
New York State property in taxable year	$5,000,000	
Zone property percentage $5,000,000 ÷ $5,000,000 =	100%	
B. Zone payroll in taxable year	$1,000,000	
New York State payroll in taxable year	$1,000,000	
Zone payroll percentage $1,000,000 ÷ $1,000,000 =	100%	
C. Total of zone property and payroll percentages divided by 2 (100% + 100% = 200%) ÷ 2 = 100%		1.00
Factor 4: Tax Factor (amount of tax on entire net income base)		$500,000.00
Tax Reduction Credit for current taxable year: Product of factors 1,2,3 & 4		$134,400.00

EXAMPLE 2 – QEZE first certified on or after 8/1/02 and before 4/1/2005

Company XYZ, a corporation subject to tax under Article 9-A, was incorporated in New York State on January 15, 1990 and became first certified under Article 18-B of the General Municipal Law on December 31, 2002 (test date). For tax purposes, Company XYZ files its tax return on a calendar-year basis. Company XYZ has business activity in New York State both inside and outside empire zones. Company XYZ is certified in one empire zone.

EMPLOYMENT TEST:

Part 1:EMPIRE ZONE EMPLOYEES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year within all zones for the current taxable year (year claiming the credit) and five-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees within all EZs for the current taxable year:	2005	430	430	430	430	1720	430
Number of full-time employees within all EZs for the five-year base period:							
Base Year 1:	1996	350	350	350	350	1400	
Base Year 2:	1997	350	350	350	350	1400	
Base Year 3:	1998	350	350	350	350	1400	
Base Year 4:	1999	350	350	350	350	1400	
Base Year 5:	2000	350	350	350	350	1400	
Total full-time employees within all EZs for the five-year base period:						7000	
Average full-time employees within all EZs in the five-year base period (total divided by the number of dates in base period, in this example there are 20):							350

The average number of full-time employees within all EZs (employment number) in the current taxable year exceeds the average number of full-time employees within all EZs (employment number) for the base period.

Part 2: NEW YORK STATE EMPLOYEES OUTSIDE EMPIRE ZONES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year in New York State outside the Empire Zones for the current taxable year and five-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in New York State outside EZs for the current taxable year:	2005	300	300	300	300	1200	300
Number of full-time employees in New York State outside EZs for the five-year base period:							
Base Year 1:	1996	200	200	200	200	800	
Base Year 2:	1997	200	200	200	200	800	
Base Year 3:	1998	200	200	200	200	800	
Base Year 4:	1999	200	200	200	200	800	
Base Year 5:	2000	200	200	200	200	800	
Total full-time employees in New York State outside the EZs for the five-year base period:						4,000	
Average full-time employees in New York State outside EZs in the five-year base period (total divided by the number of dates in base period, in this example there are 20):							200

The average number of full-time employees in New York State outside the EZs (employment number) in the current taxable year exceeds the average number of full-time employees in New York State outside the EZs (employment number) for the base period.

The employment test for taxable year 2005 has been satisfied since both Parts 1 and 2 of the employment test have been met.

Part 3: TEST YEAR EMPLOYMENT NUMBER – Computation of average number of full-time employees (excluding general executive officers) for the test year (taxable year ending 12/31/2001). Include only employees working in EZs in which the QEZE is certified.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in EZs in which the QEZE is certified for the test year:	2001	400	400	400	400	1600	400

Part 4: COMPUTATION OF THE AMOUNTS OF EMPIRE ZONE CREDITS

CREDIT FOR REAL PROPERTY TAXES:

Company XYZ is a QEZE because it is a certified business and has met the employment test for the current taxable year. Company XYZ paid $140,000 of eligible real property taxes in the current taxable year.

Current Taxable Year Ending 12/31/2005		Computation
Factor 1: Benefit period factor Years one through ten, enter 1.0		1.0
Factor 2: Employment increase factor		
A. Average employment within the EZs in which the QEZE is certified in the current year	430	
Average employment within the EZs in which the QEZE is certified in the test year	400	
Excess of employment for taxable year over test year, divided by test year employment (430-400=30)÷ 400=	.075	
B. Average employment within the EZs in which the QEZE is certified in the current taxable year	430	
Average employment within the EZs in which the QEZE is certified in the test year	400	
Excess of employment for taxable year over test year, divided by 100 (430 – 400 = 30) ÷ 100 =	.300	
Higher of *A* or *B* above, not to exceed 1.0		.30
Factor 3: Real Property taxes paid or incurred during taxable year		$ 140,000.00
Credit for Real Property Taxes in current taxable year: Product of factors 1,2, & 3		$42,000.00

Company XYZ is subject to the limitation on the amount of QEZE credit for real property taxes it may take in any tax year (since it was first certified after 8/1/2002). The limitation is the greater of the employment increase limitation or the capital investment limitation, computed as follows:

Limitation of the amount of QEZE credit for real property taxes

Employment increase limitation: Increase in employment number in EZs in which the QEZE is certified in the current year over the test year, times $10,000.

Current year employment number (430) less test year employment number (400) = Increase in employment number (30)

Employment increase (30) x $10,000 = $300,000 Employment increase limitation

Capital investment limitation: 10% of the cost or other basis of the real property times the greater of (1) the percentage of physical occupation of the real property by the QEZE (including related persons) or (2) the percentage of the cost or other basis attributable to the rehabilitation, construction or expansion of the real property.

Company XYZ's basis of the real property for federal income tax purposes on 12/31/2002 is $7,000,000, and this basis does not include any amounts attributable to the construction, expansion or rehabilitation of the property. The property is 100% occupied by Company XYZ (the QEZE).

Capital investment limitation computation:

10% x basis x percentage of occupation by the QEZE = 10% (.10) x $7,000,000 x 100% (1) = $700,000

Since the capital investment limitation ($700,000) is greater than the employment increase limitation ($300,000), the capital investment limitation is used to determine the maximum amount of QEZE credit for real property taxes allowed in the current tax year. Accordingly, since the credit ($42,000) does not exceed the limitation ($700,000), the amount of the QEZE credit for real property taxes for the tax year ending 12/31/2005 is $42,000.

TAX REDUCTION CREDIT:

Company XYZ has $2,000,000 of tax on its entire net income base for taxable year ending 12/31/2005, which is greater than the amount of tax on its minimum taxable income base. It has $7,500,000 of property and $4,500,000 of payroll within the zone in the current tax year. Company XYZ also has $7,500,000 of property and $4,500,000 of payroll in New York State outside the zone in this year.

Current Taxable Year Ending 12/31/2005		Computation
Factor 1: Benefit period factor Year one through ten, enter 1.0		1.00
Factor 2: Employment increase factor		
A. Average employment within EZs in which the QEZE is certified in the current tax year	430	
Average employment within EZs in which the QEZE is certified in the test year	400	
Excess of employment for taxable year over test year divided by test year employment (430 – 400 = 30) ÷ 400 =	.075	
B. Average employment within EZs in which the QEZE is certified in current taxable year	430	
Average employment within EZs in which the QEZE is certified in test year	400	
Excess of employment for the taxable year over test year divided by 100 (430 – 400 = 30) ÷ 100 =	.30	
Higher of "A" or "B" above not to exceed 1.0		.30
Factor 3: Zone allocation factor		
A. Zone property in taxable year	$7,500,000	
New York State property in taxable year	$15,000,000	
Zone property percentage $7,500,000 ÷ $15,000,000 =	50%	
B. Zone payroll in taxable year	$4,500,000	
New York State payroll in taxable year	$9,000,000	
Zone payroll percentage $4,500,000 ÷ $9,000,000 =	50%	
C. Total of zone property and payroll percentages divided by 2 (50% + 50% = 100%) ÷ 2 = 50%		.50
Factor 4: Tax Factor (amount of tax on entire net income base)		$2,000,000.00
Tax Reduction Credit for current taxable year: Product of factors 1,2,3 & 4		$300,000.00

EXAMPLE 3 – QEZE first certified on or after 4/1/05 in an investment zone

Company ABC, a corporation subject to tax under Article 9-A, was incorporated in New York State on September 19, 2000, and became first certified under Article 18-B of the General Municipal Law on April 20, 2005. The zone in which Company ABC is certified is designated an investment zone. Company ABC is not located in (or certified in) any other EZs. For tax purposes, Company ABC files on a calendar-year basis. Company ABC conducts business activities in New York State both inside and outside empire zones.

EMPLOYMENT TEST:

Part 1: EMPIRE ZONE EMPLOYEES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year within all zones for the current taxable year (year claiming the credit) and the four-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees within all EZs for the current taxable year:	2005	50	50	50	50	200	50
Number of full-time employees within all EZs for the four-year base period:							
Base Year 1:	2001	35	35	35	35	140	
Base Year 2:	2002	40	40	40	40	160	
Base Year 3:	2003	40	40	40	40	160	
Base Year 4:	2004	45	45	45	45	180	
Total full-time employees within all EZs for the four-year base period:						640	
Average full-time employees within all EZs in the four-year base period (total divided by the number of dates in base period, in this example there are 16):							40

The average number of full-time employees within all EZs (employment number) in the current taxable year exceeds the average number of full-time employees within all EZs (employment number) for the base period.

Part 2:NEW YORK STATE EMPLOYEES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year in New York State for the current taxable year and four-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in New York State for the current taxable year:	2005	145	145	145	145	580	145
Number of full-time employees in New York State for the four-year base period:							
Base Year 1:	2001	135	135	135	135	540	
Base Year 2:	2002	135	135	135	135	540	
Base Year 3:	2003	135	135	135	135	540	
Base Year 4:	2004	135	135	135	135	540	
Total full-time employees in New York State for the four-year base period:						2160	
Average full-time employees in New York State in the four-year base period (total divided by the number of dates in base period, in this example there are 16):							135

The average number of full-time employees in New York State (employment number) in the current taxable year exceeds the average number of full-time employees in New York State (employment number) for the base period.

The employment test for taxable year 2005 has been satisfied since both Parts 1 and 2 of the employment test have been met.

Part 3: TEST YEAR EMPLOYMENT NUMBER – Computation of average number of full-time employees (excluding general executive officers) for the test year (taxable year ending 12/31/2004). Include only employees working in EZs in which the QEZE is certified.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in EZs in which the QEZE is certified for the test year:	2004	45	45	45	45	180	45

Part 4: COMPUTATION OF THE AMOUNTS OF EMPIRE ZONE CREDITS

CREDIT FOR REAL PROPERTY TAXES:

Company ABC is a QEZE because it is a certified business and has met the employment test for the current taxable year. Company ABC paid $100,000 of eligible real property taxes in the current taxable year.

The QEZE employs 10 net new employees in the empire zone. Eight of them were each paid $36,000 in wages and $2,000 in health and retirement benefits and the other 2 employees were each paid $45,000 in wages and $2,000 in health and retirement benefits.

In May of 2005, Company ABC purchased the property for $500,000 and invests another $150,000 into the property in capital improvements for tax year 2005. Company ABC's occupancy is 80% and the remaining 20% is occupied by an unrelated party.

Current Taxable Year Ending 12/31/2005		
A. Credit Amount: Eligible wages and benefits paid to net new employees (8*$38,000 + 2*$40,000) * 25%	$96,000	
B. Capital Investment Amount: Basis in the property ($650,000) * 10% * percentage of occupancy (80%)	$52,000	
C. Eligible real property taxes paid or incurred during taxable year	$100,000	
The credit is equal to the greater of *A* or *B*, not to exceed *C*.		$96,000

TAX REDUCTION CREDIT:

Company ABC has $1,000,000 of tax due on its entire net income base for taxable year ending 12/31/2005, which is greater than the amount of tax on its minimum taxable income base. It has $2,500,000 of property and $3,000,000 of payroll within the zone in this year. Company ABC has a total of $5,000,000 of property and a total of $6,000,000 of payroll in New York State in this year.

Current Taxable Year Ending 12/31/2005		Computation
Factor 1: Benefit period factor Year one through ten, enter 1.0		1.00
Factor 2: Employment increase factor		
A. Average employment within EZs in which the QEZE is certified in the current tax year	50	
Average employment within EZs in which the QEZE is certified in the test year	45	
Excess of employment for taxable year over test year divided by test year employment (50 – 45 = 5) ÷ 45 =	.11	
B. Average employment within EZs in which the QEZE is certified in current taxable year	50	
Average employment within all EZs in which the QEZE is certified in test year	45	
Excess of employment for the taxable year over test year divided by 100 (50 – 45 = 5) ÷ 100 =	.05	
Higher of "A" or "B" above not to exceed 1.0		.11
Factor 3: Zone allocation factor		
A. Zone property in taxable year	$2,500,000	
New York State property in taxable year	$5,000,000	
Zone property percentage $2,500,000 ÷ $5,000,000 =	50%	
B. Zone payroll in taxable year	$3,000,000	
New York State payroll in taxable year	$6,000,000	
Zone payroll percentage $3,000,000 ÷ $6,000,000 =	50%	
C. Total of zone property and payroll percentages divided by 2 (50% + 50% = 100%) ÷ 2 = 50%		.50
Factor 4: Tax Factor (amount of tax on entire net income base)		$1,000,000.00
Tax Reduction Credit for current taxable year: Product of factors 1,2,3 & 4		$55,000.00

EXAMPLE 4 - QEZE first certified on or after 4/1/05 in a development zone

Company RST, a corporation subject to tax under Article 9-A, was incorporated in New York State on February 5, 2000, and became first certified under Article 18-B of the General Municipal Law on April 27, 2005. The zone in which Company RST was certified is designated a development zone, and the company is NOT a manufacturer. For tax purposes, Company RST files on a calendar-year basis. Company RST conducts business activities in New York State both inside and outside empire zones.

EMPLOYMENT TEST:

Part 1: EMPIRE ZONE EMPLOYEES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year within all zones for the current taxable year (year claiming the credit) and the four-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees within all EZs for the current taxable year:	2005	500	500	500	500	2000	500
Number of full-time employees within all EZs for the four-year base period:							
Base Year 1:	2001	450	450	450	450	1800	
Base Year 2:	2002	450	450	450	450	1800	
Base Year 3:	2003	450	450	450	450	1800	
Base Year 4:	2004	450	450	450	450	1800	
Total full-time employees within all EZs for the four-year base period:						7200	
Average full-time employees within all EZs in the four-year base period (total divided by the number of dates in base period, in this example there are 16):							450

The average number of full-time employees within all EZs (employment number) in the current taxable year exceeds the average number of full-time employees within all EZs (employment number) for the base period.

Part 2: NEW YORK STATE EMPLOYEES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year in New York State for the current taxable year and four-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in New York State for the current taxable year:	2005	575	575	575	575	2300	575
Number of full-time employees in New York State for the four-year base period:							
Base Year 1:	2001	500	500	500	500	2000	
Base Year 2:	2002	500	500	500	500	2000	
Base Year 3:	2003	500	500	500	500	2000	
Base Year 4:	2004	500	500	500	500	2000	
Total full-time employees in New York State for the four-year base period:						8000	
Average full-time employees in New York State in the four-year base period (total divided by the number of dates in base period, in this example there are 16):							500

The average number of full-time employees in New York State (employment number) in the current taxable year exceeds the average number of full-time employees in New York State (employment number) for the base period.

The employment test for taxable year 2005 has been satisfied since both Parts 1 and 2 of the employment test have been met.

Part 3: TEST YEAR EMPLOYMENT NUMBER – Computation of average number of full-time employees (excluding general executive officers) for the test year (taxable year ending 12/31/2004). Include only employees working in EZs in which the QEZE is certified.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in EZs in which the QEZE is certified for the test year:	2004	450	450	450	450	1800	450

Part 4: COMPUTATION OF THE AMOUNTS OF EMPIRE ZONE CREDITS

CREDIT FOR REAL PROPERTY TAXES:

Company RST is a QEZE because it is a certified business and has met the employment test for the current taxable year. Company RST paid $175,000 of eligible real property taxes in the current taxable year.

The QEZE employs 50 net new employees in the empire zone. Forty-five employees were each paid $32,000 in wages and $3,000 in health and retirement benefits and the other 5 employees were each paid $45,000 in wages and $5,000 in health and retirement benefits.

In June of 2005, Company RST purchased the property for $750,000 and invests another $200,000 into the property in capital improvements for tax year 2005. Their occupancy is 40% and the remaining 60% is occupied by an unrelated party.

Current Taxable Year Ending 12/31/2005		
A. Credit Amount: 25% of eligible wages and benefits paid to net new employees times the appropriate development zone employment increase factor (45*$35,000 + 5*$40,000) *25% * .75	$332,812.50	
B. Capital Investment Amount: 10% of the cost or other basis attributable to construction, expansion, or rehabilitation times the percentage of occupancy $200,000 * 10% * 40%	$8,000	
C. Eligible real property taxes paid or incurred during taxable year	$175,000	
The credit is equal to the greater of *A* or *B*, not to exceed *C*.		$175,000

TAX REDUCTION CREDIT:

Company RST has $500,000 of tax due on its entire net income base for taxable year ending 12/31/2005, which is greater than the amount of tax on its minimum taxable income base. It has $2,500,000 of property and $5,625,000 of payroll within the zone in this year. Company RST has a total of $10,000,000 of property and a total of $7,500,000 of payroll in New York State in this year.

Current Taxable Year Ending 12/31/2005		Computation
Factor 1: Benefit period factor Year one through ten, enter 1.0		1.00
Factor 2: Employment increase factor A. Average employment within EZs in which the QEZE is certified in the current tax year Average employment within EZs in which the QEZE is certified in the test year Excess of employment for taxable year over test year divided by test year employment (500 – 450 = 50) ÷ 450 = B. Average employment within EZs in which the QEZE is certified in current taxable year Average employment within EZs in which the QEZE is certified in test year Excess of employment for the taxable year over test year divided by 100 (500 – 450 = 50) ÷ 100 = Higher of "A" or "B" above not to exceed 1.0	 500 450 .1111 500 450 .50	.50
Factor 3: Zone allocation factor A. Zone property in taxable year New York State property in taxable year Zone property percentage $2,500,000 ÷ $10,000,000 = B. Zone payroll in taxable year New York State payroll in taxable year Zone payroll percentage $5,625,000 ÷ $7,500,000 = C. Total of zone property and payroll percentages divided by 2 (25% + 75% = 100%) ÷ 2 = 50%	 $2,500,000 $10,000,000 25% $5,625,000 $7,500,000 75%	.50
Factor 4: Tax Factor (amount of tax on entire net income base)		$500,000.00
Tax Reduction Credit for current taxable year: Product of factors 1,2,3 & 4		$125,000.00

EXAMPLE 5 - QEZE first certified on or after 4/1/05 in both a development zone and investment zones

Company MNO, a corporation subject to tax under Article 9-A, was incorporated in New York State on May 5, 2000, and became first certified under Article 18-B of the General Municipal Law on October 5, 2005. Company MNO is certified in three empire zones A, B, and C (location A is an investment zone, location B is a development zone and location C is an investment zone), and the company is NOT a manufacturer. For tax purposes, Company MNO files on a calendar-year basis. Company MNO conducts business activities in New York State both inside the three zones and outside empire zones.

EMPLOYMENT TEST:

Part 1: EMPIRE ZONE EMPLOYEES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year within all zones for the current taxable year (year claiming the credit) and the four-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees within all EZs for the current taxable year:	2005	669	677	677	677	2700	675
Number of full-time employees within all EZs for the four-year base period:							
Base Year 1:	2001	650	650	650	650	2600	
Base Year 2:	2002	650	650	650	650	2600	
Base Year 3:	2003	650	650	650	650	2600	
Base Year 4:	2004	650	650	650	650	2600	
Total full-time employees within all EZs for the four-year base period:						10,400	
Average full-time employees within all EZs in the four-year base period (total divided by the number of dates in base period, in this example there are 16):							650

The average number of full-time employees within all EZs (employment number) in the current taxable year exceeds the average number of full-time employees within all EZs (employment number) for the base period.

Part 2: NEW YORK STATE EMPLOYEES - Computation of average number of employees (excluding general executive officers) employed full-time for at least one-half of the taxable year in New York State for the current taxable year and four-year base period.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in New York State for the current taxable year:	2005	983	995	995	995	3968	992
Number of full-time employees in New York State for the four-year base period:							
Base Year 1:	2001	875	875	875	875	3500	
Base Year 2:	2002	875	875	875	875	3500	
Base Year 3:	2003	875	875	875	875	3500	
Base Year 4:	2004	875	875	875	875	3500	
Total full-time employees in New York State for the four-year base period:						14,000	
Average full-time employees in New York State in the four-year base period (total divided by the number of dates in base period, in this example there are 16):							875

The average number of full-time employees in New York State (employment number) in the current taxable year exceeds the average number of full-time employees in New York State (employment number) for the base period.

The employment test for taxable year 2005 has been satisfied since both Parts 1 and 2 of the employment test have been met.

Part 3: TEST YEAR EMPLOYMENT NUMBER – Computation of average number of full-time employees (excluding general executive officers) for the test year (taxable year ending 12/31/2004). Include only employees working in EZs in which the QEZE is certified.

	Year	March 31	June 30	September 30	December 31	Total	Average # of employees
Number of full-time employees in EZs in which the QEZE is certified for the test year:	2004	650	650	650	650	2600	650

Part 4: COMPUTATION OF THE AMOUNTS OF EMPIRE ZONE CREDITS

CREDIT FOR REAL PROPERTY TAXES:

Company MNO is a QEZE because it is a certified business and has met the employment test for the current taxable year. Company MNO paid $150,000 of eligible real property taxes in the current taxable year as follows: location A $75,000, location B $50,000 and location C $25,000.

The QEZE employs 25 net new employees in the empire zones. Fifteen work at location A and were each paid $38,000 in wages and $3,000 in health and retirement benefits. Eight work at location B and were each paid $45,000 in wages and $5,000 in health and retirement benefits. The remaining two work at location C and were each paid $20,000 in wages and $3,000 in health and retirement benefits.

In November of 2005, Company MNO purchased property for $1,000,000 (A - $500,000, B- $300,000, and C- $200,000) and invests another $400,000 in capital improvements (A- $250,000, B - $150,000 and C - $0). Their occupancy at each location is 100%.

Current Taxable Year Ending 12/31/2005		
A. Credit Amount: 25% of eligible wages and benefits paid to net new employees times the appropriate development zone employment increase factor		
(23*$40,000 + 2*$23,000) *25% * .50	$120,750	
B. Capital Investment Amount: 10% of the cost or other basis attributable to construction, expansion, or rehabilitation times the percentage of occupancy $400,000 * 10% * 100%	$40,000	
C. Eligible real property taxes paid or incurred during taxable year	$150,000	
The credit is equal to the greater of *A* or *B*, not to exceed *C*.		$120,750

TAX REDUCTION CREDIT:

Company MNO has $700,000 of tax due on its entire net income base for taxable year ending 12/31/2005, which is greater than the amount of tax on its minimum taxable income base. It has $2,500,000 of property and $6,000,000 of payroll within the zones in this year. Company MNO has a total of $5,000,000 of property and a total of $8,000,000 of payroll in New York State in this year.

Current Taxable Year Ending 12/31/2005		Computation
Factor 1: Benefit period factor Year one through ten, enter 1.0		1.00
Factor 2: Employment increase factor		
A. Average employment within EZs in which the QEZE is certified in the current tax year	675	
Average employment within EZs in which the QEZE is certified in the test year	650	
Excess of employment for taxable year over test year divided by test year employment (675 – 650 = 25) ÷ 650 =	.0385	
B. Average employment within EZs in which the QEZE is certified in current taxable year	675	
Average employment within EZs in which the QEZE is certified in test year	650	
Excess of employment for the taxable year over test year divided by 100 (675 – 650 = 25) ÷ 100 =	.25	
Higher of “A” or “B” above not to exceed 1.0		.25
Factor 3: Zone allocation factor		
A. Zone property in taxable year	$2,500,000	
New York State property in taxable year	$5,000,000	
Zone property percentage $2,500,000 ÷ $5,000,000 =	50%	
B. Zone payroll in taxable year	$6,000,000	
New York State payroll in taxable year	$8,000,000	
Zone payroll percentage $6,000,000 ÷ $8,000,000 =	75%	
C. Total of zone property and payroll percentages divided by 2 (50% + 75% = 125%) ÷ 2 = 62.5%		.625
Factor 4: Tax Factor (amount of tax on entire net income base)		$700,000.00
Tax Reduction Credit for current taxable year: Product of factors 1,2,3 & 4		$109,375.00

Addendum

The information below represents the Internal Revenue Service's interpretation of the definition of *related person* in section 465(b)(3)(C) of the Internal Revenue Code. Section 465 concerns the limitations on deductions to the amounts at-risk and the information below is contained in IRS Publication 925, *Passive Activity and At-Risk Rules*. In future years, you should check section 465(b)(3)(C) to see if the definition of related *person* has been amended.

Related person includes:

- Members of a family, but only brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.),
- Two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test,
- The fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts,
- A tax-exempt educational or charitable organization and a person who directly or indirectly controls it (or a member of whose family controls it),
- A corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation,
- A trust fiduciary and a corporation of which more than 10% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust,
- The grantor and fiduciary, or the fiduciary and beneficiary, of any trust,
- A corporation and a partnership if the same persons own over 10% in value of the outstanding stock of the corporation and more than 10% of the capital interest or the profits in the partnership,
- Two S corporations if the same persons own more than 10% in value of the outstanding stock of each corporation,
- An S corporation and a regular corporation if the same persons own more than 10% in value of the outstanding stock of each corporation,
- A partnership and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership,
- Two partnerships if the same persons own more than 10% of the capital or profits of each,
- Two persons who are engaged in business under common control, and
- An executor of an estate and a beneficiary of that estate.

To determine the direct or indirect ownership of the outstanding stock of a corporation, apply the following rules:

(1) Stock owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries.

(2) Stock owned directly or indirectly by or for an individual's family is considered owned by the individual. The family of an individual includes only brothers and sisters, half-brothers and half-sisters, a spouse, ancestors, and lineal descendants.

(3) Any stock in a corporation owned by an individual (other than by applying rule 2) is considered owned directly or indirectly by the individual's partner.

When applying rule (1), (2),or (3), stock considered owned by a person under rule (1) is treated as actually owned by that person. However, if a person constructively owns stock because of rule (2) or (3), he or she does not own the stock for purposes of applying either rule (2) or (3) to make another person the constructive owner of the same stock.