

**New York State Tax Treatment of Refunds of the
Qualified Empire Zone Enterprise (QEZE)
Credit for Real Property Taxes**

This memorandum provides guidance concerning the New York State tax treatment of refunds or credits of the qualified empire zone enterprise (QEZE) credit for real property taxes when the refund or credit must be included in income on a taxpayer's federal tax return.

Background

Section 15 of the Tax Law provides for a qualified empire zone enterprise (QEZE) credit for real property taxes for businesses that were certified as eligible to receive benefits under General Municipal Law (GML) Article 18-B prior to July 1, 2010, and that annually meet an employment test. The credit is for eligible real property taxes paid or incurred on real property owned, or in some cases leased, by a QEZE that is located in an EZ in which the QEZE is certified.

The credit is allowed against the New York State corporate franchise tax and the personal income tax. Any amount of the credit that is not used in the tax year to reduce the taxpayer's tax may be refunded, or may be credited as an overpayment to the taxpayer's next year's estimated tax.

For federal income tax purposes, the Internal Revenue Service (IRS) has determined that all or a portion of the QEZE credit for real property taxes that is refunded, or credited as an overpayment to estimated tax, may be a recovery of property tax previously deducted and is therefore considered income to the taxpayer. Accordingly, all or a portion of any refund or credit to estimated tax (hereinafter, refund) of the QEZE credit for real property taxes may have to be included in the taxpayer's federal taxable income or federal adjusted gross income.

Note: The portion of the QEZE credit for real property taxes that is applied to reduce a taxpayer's New York State tax and not refunded or credited to estimated tax is not considered income for federal purposes and is not included when computing a taxpayer's federal taxable income or federal adjusted gross income.

Tax treatment for New York State purposes

For New York State corporate franchise tax and personal income tax purposes, any refund of the QEZE credit for real property taxes is considered a refund of franchise tax or income tax. This is the case even if the refund is treated as a recovery of real property taxes for federal income tax purposes. Accordingly, under existing New York State law, the amount of the refund of the QEZE credit for real property taxes included in the taxpayer's federal taxable income or federal adjusted gross income is not taxable to New York State. Therefore,

New York State taxpayers are allowed a subtraction for that refund amount in computing their New York taxable income.

The following sections describe how to report the subtraction on New York State corporate franchise tax returns and personal income tax returns, as well as the necessary amended return requirements.

Corporations subject to tax under Tax Law Article 9-A (Business Corporations), Article 32 (Franchise Tax on Banking Corporations), and Article 33 (Franchise Tax on Insurance Corporations)

Taxpayers who have QEZE credit for real property taxes included in their corporation's federal taxable income should follow these instructions for reporting the subtraction on their 2010 New York State corporate franchise tax return or on an amended return.

Instructions for tax year 2010 New York State franchise tax returns

- **Form CT-3, *General Business Corporation Franchise Tax Return***, and **Form CT-3-B, *Tax Exempt Domestic International Sales Corporation (DISC) Information Return*** – Include on line 15, *Other subtractions*, the amount of the refund of the QEZE credit for real property taxes that is included in the corporation's federal taxable income. Identify the subtraction as **S-13** on the list of subtractions required to be attached to the tax return.
- **Form CT-3-A, *General Business Corporation Combined Franchise Tax Return***, and **Form CT-3-A/B, *Subsidiary Detail Spreadsheet*** – Include on line 15, *Other subtractions*, the amount of the refund of the QEZE credit for real property taxes that is included in the corporation's federal taxable income. Identify the subtraction as **S-11** on the list of subtractions required to be attached to the tax return.
- **Form CT-32, *Banking Corporation Franchise Tax Return*** – Include on line 57, *Other subtractions from FTI*, the amount of the refund of the QEZE credit for real property taxes that is included in the corporation's federal taxable income. Identify the subtraction as **S-7** on the list of subtractions required to be attached to the tax return.
- **Form CT-32-A, *Banking Corporation Combined Franchise Tax Return*** – Include on line 55, *Other subtractions from FTI*, the amount of the refund of the QEZE credit for real property taxes that is included in the corporation's federal taxable income. Identify the subtraction as **S-8** on the list of subtractions required to be attached to the tax return.
- **Form CT-33, *Life Insurance Corporation Franchise Tax Return*** – Include on line 79, *Other subtractions*, the amount of the refund of the QEZE credit for real property taxes that is included in the corporation's federal taxable income. Identify the subtraction as **S-11** on the list of subtractions required to be attached to the tax return.

• **Form CT-33-A, Life Insurance Corporation Combined Franchise Tax Return -**

Include on line 83, *Other subtractions*, the amount of the refund of the QEZE credit for real property taxes that is included in the corporation's federal taxable income. Identify the subtraction as *S-II* on the list of subtractions required to be attached to the tax return.

Amended return requirements for corporate franchise taxes

- A corporation that is filing an amended federal return to include a refund of QEZE credit for real property taxes in the corporation's federal taxable income must also file an amended New York State return within 90 days (120 days for a taxpayer making a combined return filed under Articles 32 or 33) to report the change. The corporation must file an amended New York State return even if there is no change in its New York State tax liability for that year.
- A corporation that receives a notice of federal audit changes due to a refund of a QEZE credit for real property taxes not being properly included in the corporation's federal taxable income must report the change to the Tax Department within 90 days (120 days for a taxpayer making a combined return) of the final federal determination. The corporation must file an amended New York State return even if there is no change in its New York State tax liability for that year.
- A corporation that filed an original or an amended New York State corporate franchise tax return and properly included a refund of QEZE credit for real property taxes in the corporation's federal taxable income, but did not subtract that refund amount when computing its ENI, should file an amended New York State return to claim a refund for any tax year where the statute of limitations for claiming a refund is still open.

When completing an amended corporate franchise tax return, the subtraction for the refund of QEZE credit for real property taxes should be entered on the *Other subtractions* line of the appropriate return and identified as *QEZE refund* in the list of subtractions required to be attached to the return.

If a corporation filed as part of a consolidated group for federal tax purposes but on a separate basis for New York State tax purposes, the corporation must submit a statement with its New York State amended franchise tax return indicating the changes that would have been made if the corporation had filed on a separate basis for federal tax purposes.

Taxpayers subject to tax under Tax Law Article 22 (Personal Income Tax)

Taxpayers who have a QEZE credit for real property taxes included in their FAGI or federal taxable income should follow these instructions for reporting the subtraction on their 2010 New York State income tax return or on an amended return.

Instructions for tax year 2010 New York State personal income tax returns

- **2010 Form IT-201, *Resident Income Tax Return (long form)*** - In the *Identify* area of line 31, *Other*, enter **S-37** and the dollar amount of the refund of QEZE credit for real property taxes that is included in the individual's FAGI. Include this same dollar amount in the total of the line 31 money column.
- **2010 Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*** - In the *Identify* area of line 29, *Other*, enter **S-38** and the dollar amount of the refund of QEZE credit for real property taxes that is included in the individual's FAGI. Include this same dollar amount in the total of the line 29 money column.
- **2010 IT-205, *Fiduciary Income Tax Return*** - Include as a subtraction on line 2, *New York modifications relating to amounts allocated to principal*, the amount of the refund of QEZE credit for real property taxes that is included in the federal taxable income of the estate or trust. Attach a sheet that identifies the subtraction modification for the refund of QEZE real property taxes on line 2 as **modification P**.

Amended return requirements for personal income tax

- A taxpayer who must file an amended federal return to include a refund of QEZE credit for real property taxes in the taxpayer's FAGI or federal taxable income must also file an amended New York State return within 90 days to report the change.
- A taxpayer that receives a notice of federal audit changes due to a refund of a QEZE credit for real property taxes not being properly included in the taxpayer's FAGI or federal taxable income is required to report the changes to the Tax Department within 90 days of the final federal determination. A New York State amended income tax return must be filed even if there is no change in the taxpayer's New York State tax liability for that year.
- A taxpayer that filed an original or an amended New York State income tax return and properly included a refund of QEZE credit for real property taxes in the taxpayer's FAGI or federal taxable income, but did not subtract that refund amount when computing the taxpayer's New York adjusted gross income or New York taxable income, should file an amended New York State return to claim a refund for any tax year where the statute of limitations for claiming a refund is still open.

Instructions for filing a New York State amended personal income tax return to report a subtraction of the QEZE credit for real property taxes

- **Form IT-201-X, *Amended Resident Income Tax Return*** - For tax years beginning **before 2007**, include the refund of QEZE credit for real property taxes as an increase in

Column (B), line 1, *Federal adjusted gross income*. Include the same amount as a decrease in Column (B), line 2, *New York adjustments*. Complete the remainder of the form following the Form IT-201-X instructions.

- **Form IT-201-X, Amended Resident Income Tax Return (long form)** - For tax years 2007, 2008, 2009, and 2010, in the *Identify* area of line 31, *Other*, enter **S-37** and the dollar amount of the refund of QEZE credit for real property taxes that is included in the individual's FAGI. Include this same dollar amount in the total of the line 31 money column. Complete the remainder of the form following the Form IT-201-X instructions.
- **Form IT-203-X, Amended Nonresident and Part-Year Resident Income Tax Return** - In the *Identify* area of line 29, *Other*, enter **S-38** and the dollar amount of the refund of QEZE credit for real property taxes that is included in the individual's FAGI. Include this same dollar amount in the total of the line 29 money column. Complete the remainder of the form following the Form IT 203-X instructions.
- **Form IT-205, Fiduciary Income Tax Return** - Mark the amended return box, complete the entire return, correct line 1, *Federal taxable income of fiduciary*, and line 2, *New York modifications relating to amounts allocated to principal*. Attach a sheet that explains the reason for the amendment and identifies the subtraction modification for the refund of QEZE real property taxes on line 2 as **modification P**.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.