



Employment Test for Businesses Certified By Empire State Development (ESD) On or After April 1, 2009

Legal name of business Federal employer identification number (EIN)

When completing this form, mark an X in the appropriate box for each Yes or No question. For the lines and questions that request dates, enter them in mm/dd/yy format using the preprinted slashes, unless otherwise indicated.

Step 1 - Certificate of Eligibility

- (a) Enter the 10-digit certification number from your Certificate of Eligibility issued by ESD. If you are certified in multiple empire zones (EZs), you must complete this form based on the effective date of the first (earliest) Certificate of Eligibility issued.
(b) Enter the effective date (not the issue date) from your Certificate of Eligibility. (This is your test date.)

Step 2 - Tax year

Enter the period on which your business's tax year is based. through mm dd mm dd

Tax year means the tax year of your business enterprise under Tax Law 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).

Step 3 - Test year and base period

- (a) Enter the dates of the last tax year ending before the test date determined in Step 1(b). (This is your test year.)
(b) Enter the dates of the three tax years immediately preceding the test year listed in 3(a) above. If you have fewer than three years preceding the test year, your base period is the smaller set of years.

If you do not have a base period, or if you have no employment numbers in your base period, continue with Step 4 below. If you had employees during any part of your base period, skip Step 4 and continue with Step 5.

Note: If you were certified in the EZ during your first tax year and are filing this form for credit or refund during your first tax year, the employment test is considered met for such tax year during any month in which your employment number exceeds zero. For example, ABC Inc. was created in February of 2010. They were certified in the EZ effective March 1, 2010. They hire 12 employees on October 15, 2010. ABC Inc. may file this form at any time after October 15, 2010, but before the end of their first tax year (2010), and will qualify for QEZE sales tax benefits for the remainder of that tax year. If this applies to you, continue below. At the end of your current tax year, you must qualify as a new business to continue claiming QEZE sales tax benefits for the upcoming year. If this does not apply, skip to Step 4.

- (c) Were you certified in the EZ during your first tax year? Yes No
• If Yes, continue with Step 3(d).
• If No, skip to Step 4.
(d) Are you submitting this form during your first tax year? Yes No
• If No, your first tax year has already ended. You must qualify as a new business to qualify for QEZE sales tax benefits. Continue with Step 4.
• If Yes, did you hire any full-time employees during your first tax year? Yes No
- If No, you do not qualify for QEZE sales tax benefits at this time because you do not have any employees.
- If Yes, enter the number of employees and the date of first hire.
Number of employees: Date of first hire:

The employment test is considered met for your first tax year during any month in which your employment number exceeds zero. You will be eligible for sales tax benefits for the remainder of your first tax year provided that you continue to have employees. Your QEZE eligibility will expire at the end of your first tax year and you must qualify as a new business to continue claiming QEZE sales tax benefits for the upcoming year. Include this completed worksheet with Form AU-12, Application for Credit or Refund of Sales or Use Tax - Qualified Empire Zone Enterprise (QEZE), or Form FT-500, Application for Refund of Sales Tax Paid on Petroleum Products.

EIN —

Step 4 – New business test

Business enterprises that have no base period or no employment numbers in the base period and have employment numbers in the most recently completed tax year **must** meet the new business test below to qualify for QEZE sales tax benefits. If this applies to you, continue below. If not, skip to Step 5.

(a) Is your business entity identical in ownership and operation to an existing business entity in New York State (NYS)?
(Identical in ownership and operation means that the new business entity has identical ownership to the existing entity and that the new business operation is the same type of operation as the existing entity.) Yes No

- If *No*, continue with Step 4(b).
- If *Yes*, is the other business entity operating in a **different county** in NYS? Yes No
 - If *No*, then your business entity is identical in ownership and operation to an existing business entity operating in the **same county** as your business. You do **not** qualify as a new business and are not eligible for QEZE sales tax benefits. Do not continue to Step 5, and **do not submit Form AU-12 or Form FT-500**.
 - If *Yes*, complete either (1) or (2) below (whichever is applicable); mark an **X** in the *New business* box at the beginning of Step 5.

(1) If the other business entity is **not certified** with the Tax Department as a QEZE for sales tax purposes, enter the legal name, federal EIN, and address of the other business entity:

Other business entity legal name	Other business entity federal EIN
Other business entity physical address Number and street	City State ZIP code

(2) If the other business entity was certified by ESD before April 1, 2009, and **is certified** with the Tax Department as a QEZE for sales tax purposes, enter the legal name, federal EIN, address, and 7-digit QEZE number from the other entity's Form DTF-81, *Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification*. You **must** also attach a copy of the other business entity's Form DTF-81. **Note:** Your benefit period will extend only for the remainder of the other business entity's existing benefit period.

Other business entity legal name	Other business entity federal EIN
Other business entity physical address Number and street	City State ZIP code
Other business entity 7-digit QEZE sales tax certification number	

(b) Is your business entity substantially similar in ownership and operation to an existing or previously existing business entity taxable, or previously taxable, under Tax Law, Article 9, section 183, 184, 185, or 186; Article 9-A, 32, or 33; Article 23 (or that would have been subject to Article 23 as this article was in effect January 1, 1980); or a business entity for which the income or losses were included for your taxes under Article 22? Yes No

- If *No*, mark an **X** in the *New business* box at the beginning of Step 5.
- If *Yes*, you do **not** qualify as a new business and are not eligible for QEZE sales tax benefits. Do not continue with Step 5, and **do not submit Form AU-12 or Form FT-500**.

Step 5 – Employment test

New business

If you qualify as a new business in Step 4, mark an **X** in the box to the right.
 As a new business, you will continue to qualify for QEZE sales tax benefits, provided that you continue to have full-time employees within EZs. If you are not a new business, continue with the employment test below.

Enter the number of full-time employees located in EZs for the tax year ending before the period covered by this claim. _____

Employment test tables

For the employment test tables in Parts A and B, *full-time employees* are individuals, not including general executive officers, employed for at least half of the tax year in a job of at least 35 hours per week. This 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, such as a ski resort) that employs individuals full-time for at least three months of continuous duration may include these individuals in the employment number if they are working in a job of at least 35 hours per week. **Note:** When completing the employment test tables, employment numbers for tax years beginning on or after January 1, 2002, cannot include individuals employed within the immediately preceding 60 months by a related person, as defined in Internal Revenue Code (IRC) section 465(b)(3)(C).

Part A – Employees within EZs

Determine the average number of full-time employees located in EZs for the tax year ending before the period covered by this claim and your base period. To qualify for QEZE sales tax benefits, the average number of EZ employees for the tax year ending before the period covered by this claim must exceed the average number of EZ employees for your base period.

Line 1 – Enter in column A the dates of the tax year ending before the period covered by this claim. Enter in columns B through E, for the dates shown, the total number of full-time employees within EZs.

	Column A Year	Column B March 31	Column C June 30	Column D Sept 30	Column E Dec 31	Column F Total (B + C + D + E)	Column G Average number of employees <i>(divide total in column F by the number of entries in B through E)</i>
1. Applicable tax year.....							1.

Line 2 – Enter in column A, lines 2 through 4, the tax years in the base period from Step 3(b). (Base period year 1 is the oldest tax year, base period year 3 is the most recent.) Enter in columns B through E, lines 2 through 4, for the dates shown, the total number of full-time employees within EZs.

	Column A Year	Column B March 31	Column C June 30	Column D Sept 30	Column E Dec 31	Column F Total (B + C + D + E)	Column G Average number of employees <i>(divide total in column F by the number of entries in B through E)</i>
2. Base period year 1						2.	
3. Base period year 2						3.	
4. Base period year 3						4.	
5. Total number of full-time employees within EZs during the base period <i>(add boxes 2 through 4)</i> . ..						5.	
6. Average number of full-time employees within EZs during the base period <i>(divide the total in box 5 by the number of entries in columns B through E, lines 2 through 4)</i>							6.

Is the employment number in box 1 **greater than** the employment number in box 6? Yes No

- If **No, stop**; you are not eligible for QEZE sales tax benefits for the tax year following the tax year entered on line 1.
- If **Yes**, continue with Part B.

EIN —

Part B – Employees in NYS, including EZs

Determine the average number of full-time employees located within NYS, including EZs. The average number of employees located in NYS, including EZs, for the tax year ending before the period covered by this claim must exceed the average number of employees located in NYS, including EZs, for your base period.

Line 7 – Enter in column A the dates of the tax year ending before the period covered by this claim. Enter in columns B through E, for the dates shown, the total number of full-time employees in NYS, including EZs.

	Column A Year	Column B March 31	Column C June 30	Column D Sept 30	Column E Dec 31	Column F Total (B + C + D + E)	Column G Average number of employees <i>(divide total in column F by the number of entries in B through E)</i>
7. Applicable tax year.....							7.

Line 8 – Enter in column A, lines 8 through 10, the tax years in the base period from Step 3(b). (Base period year 1 is the oldest tax year, base period year 3 is the most recent.) Enter in columns B through E, lines 8 through 10, for the dates shown, the total number of full-time employees in NYS, including EZs.

	Column A Year	Column B March 31	Column C June 30	Column D Sept 30	Column E Dec 31	Column F Total (B + C + D + E)	Column G Average number of employees <i>(divide total in column F by the number of entries in B through E)</i>
8. Base period year 1						8.	
9. Base period year 2						9.	
10. Base period year 3						10.	
11. Total number of full-time employees in NYS, including EZs, during the base period <i>(add boxes 8 through 10)</i>						11.	
12. Average number of full-time employees in NYS, including EZs, during the base period <i>(divide the total in box 11 by the number of entries in columns B through E, lines 8 through 10)</i>							12.

Is the employment number in box 7 **greater than** the employment number in box 12? Yes No

- If **No**, **stop**; you are not eligible for QEZE sales tax benefits for the tax year following the tax year entered on line 1.
- If **Yes**, you meet the employment test requirements for the tax year following the tax year entered on line 1.

Include this completed worksheet with:

- **Form AU-12; or**
- **Form FT-500, as applicable.**