



# Instructions for Form IT-604

## Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit

# IT-604-I

### New for 2002

Chapter 85 of the Laws of 2002 made numerous changes to the qualified empire zone enterprise (QEZE) credit for real property taxes and the QEZE tax reduction credit. The paragraphs below contain a brief summary of the legislative changes. These changes have been incorporated into these instructions. For more information about these credits and the legislative changes, see TSB-M-02(8)I, *Summary of Income Tax Legislative Changes Enacted in 2002*.

Visit the *Personal Income Tax Up-to-Date Information* page on our Web site at [www.tax.state.ny.us](http://www.tax.state.ny.us) for tax law changes or forms corrections that occurred after the forms and instructions were printed.

The new legislation resulted in the following changes to the Empire Zones Program:

- Qualifying taxpayers are assured that they can continue to claim the QEZE tax benefits during their benefit period even if the empire zones program is not extended under the General Municipal Law;
- Definitions of *employment test*, *employment number*, *tax year*, *test date*, *test year*, and *eligible real property taxes* have been amended;
- The *benefit period* has been renamed and redefined;
- A limitation and a recapture provision were added to the QEZE credit for real property taxes; and
- The computation of the *tax factor* for flow-through entities and combined filers has been codified.

Business enterprises whose eligibility may be affected by the changes regarding the employment test, employment number, test year, and eligible real property taxes are those that:

- have employees who were employed by a related person (as *related person* is defined in the Internal Revenue Code);
- have employees in empire zones (EZs) in which they are not certified;
- relocated to an EZ from a business incubator facility;
- are located in an EZ as a result of a boundary amendment;
- were certified under Article 18-B of the General Municipal Law on the last day of their tax year; or
- make payments in lieu of taxes (PILOT payments).

Unless otherwise noted, these changes are deemed to have been in effect since January 1, 2001.

### General information

For tax years beginning on or after January 1, 2001, the Empire Zones Program Act provides tax credits for a QEZE: the QEZE credit for real property taxes and the QEZE tax reduction credit. The credits are available to a sole proprietor of a QEZE, a shareholder of an S corporation that is a QEZE, or a member of a partnership that is a QEZE, including members of a limited liability company (LLC) if the LLC is treated as a partnership for federal tax purposes, and is subject to tax under Article 22.

### Eligibility

A business enterprise that had been certified as eligible to receive benefits under Article 18-B of the General Municipal Law prior to July 1, 2005, is a QEZE for each of the 15 tax years during its business tax benefit period, if in those tax years the business enterprise meets the annual employment test. To meet the employment test, the business enterprise's employment number for the tax year, both within all EZs (whether the QEZE is certified in a

particular EZ or not) and in New York State outside all EZs, must equal or exceed the average full-time employment number determined for the base period.

If a business has been certified under Article 18-B of the General Municipal Law (it has received its certificate of eligibility from Empire State Development) in one or more zones, the business does not need to apply for a separate certification from the Tax Department to take advantage of the QEZE credit for real property taxes or the QEZE tax reduction credit (credits against personal income taxes). The business should use Form IT-604, *Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit*, to claim the credits. Complete the form and file it with your New York State tax return. However, if your business wishes to make purchases exempt from **sales tax** under the QEZE program, you must file Form DTF-80, *Application for QEZE Sales Tax Certification*. You may find this application on our Web site ([www.tax.state.ny.us](http://www.tax.state.ny.us)).

### QEZE credit for real property taxes

The QEZE credit for real property taxes is allowed for taxes paid or incurred on real property owned by the QEZE and located in an EZ in which the QEZE is certified if the taxes become a lien on the real property during a tax year when the owner is both certified and a QEZE. The amount of the credit is the product of (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 current tax year.

A limitation on the amount of QEZE real property tax credit which may be claimed in a tax year was added for taxpayers who are first certified under Article 18-B of the General Municipal Law on or after August 1, 2002.

The credit is limited to the greater of the employment increase limitation or the capital investment limitation. Any taxpayer first certified before August 1, 2002, is not subject to this limitation in any year of the business tax benefit period. **The limitation is computed on Worksheet B on page 5.**

When the QEZE eligible real property taxes, which were the basis for a QEZE credit for real property taxes, are subsequently reduced as a result of a final order in any proceeding under Article 7 of the Real Property Tax Law or other provision of law, the QEZE must recapture a portion of the credit allowed in the year the final order is issued. The recapture amount is equal to the amount of credit originally taken, less the amount of credit recalculated using the reduced property taxes. If the taxes are reduced for more than one year, the QEZE must determine how much of the reduction is attributable to each year covered by the final order and calculate the amount of credit which is required to be recaptured for each year based on the reduction. **The recapture is computed on Worksheet A on page 4.**

Any amount of the QEZE credit for real property taxes not deductible in the current tax year may be refunded without interest.

### QEZE tax reduction credit

The QEZE tax reduction credit is allowed against a QEZE's income tax imposed under Article 22, and is the product of (1) the benefit period factor; (2) the employment increase factor; (3) the zone allocation factor; and (4) the tax factor.

The QEZE tax reduction credit is not refundable. Any amount not deductible in the current tax year may not be credited or refunded to the taxpayer.

## Definitions

A *qualified empire zone enterprise (QEZE)* is a business enterprise that is certified as eligible to receive benefits under Article 18-B of the General Municipal Law prior to July 1, 2005, and that annually meets the employment test.

The *employment test* will be met for a tax year if (1) the business enterprise's employment number in all EZs, whether the business enterprise is certified there or not, equals or exceeds its employment number in all EZs for the base period, and (2) the business enterprise's employment number in New York State outside all EZs for the tax year equals or exceeds its employment number in New York State outside all EZs for the base period. For information as to whether the business enterprise has employees in an EZ in which the business enterprise is not certified, you may contact Empire State Development.

For QEZEs certified on or after August 1, 2002, if the base period is zero years, and the QEZE has an employment number in the EZ greater than zero, the employment test will only be met if the QEZE qualifies as a *new business*.

A *new business* includes any business, except a business which is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under section 183, 184, 185, or 186 of Article 9; Article 9-A; Article 32; or that would have been subject to tax under Article 23 as it 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.

If there is a change in zone boundaries, or if the QEZE is in a newly designated zone, the QEZE will compute its employment test as if the boundaries of the revised or newly designated zone existed during its base period and test year. If a business moves to a location that later becomes part of an empire zone, the employment number is computed as if the business was located in the zone during its base period and test year.

If a business relocates to an EZ from a business incubator facility operated by a municipality or by a public or private not-for-profit entity, the QEZE will compute its employment test as if it were located in the EZ during the base period. A *business incubator facility* provides business support services or space, or both, to newly established enterprises.

*Tax year* means the tax year of the business enterprise under Article 22 of the Tax Law.

*Employment number* means the average number of individuals employed full-time by the business enterprise for at least one-half of the tax year.

Effective January 1, 2002, the employment number does not include individuals employed within the immediately preceding 60 months by a *related person* to the QEZE. *Related person* is defined in section 465(b)(3)(c) of the Internal Revenue Code (IRC). See page 5 for information regarding related persons.

*Full-time employment* means a job consisting of at least 35 hours per week or 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 consisting of at least 35 hours per week.

*Test date* is the later of July 1, 2000, or the date prior to July 1, 2005, on which your business enterprise was certified under Article 18-B of the General Municipal Law. Subsequent certifications will not change your test date.

*Test year* is your last tax year **ending before the test date**. If a business enterprise does not have a tax year that ends before the test date, the enterprise will be deemed to have a test year which will be either the last calendar year ending before its test date; or, if

the enterprise is a fiscal filer, the test year will be the fiscal year ending before its test date.

**Note:** The definition of test year has changed. If you were certified under Article 18-B of the General Municipal Law on the last day of your tax year, your test year has changed. This will also change your base period. You must recompute your test year and base period employment using this new definition.

*Example: Business A is a calendar-year taxpayer, certified on December 31, 2001. Business A's test year is January 1, 2000, through December 31, 2000. Business A's base period includes calendar years ending December 31, 1999; December 31, 1998; December 31, 1997; December 31, 1996; and December 31, 1995. Prior to the Tax Law change, Business A's test year was the calendar year ending December 31 2001, and its base period included the five calendar years preceding that year. As a result, the business would be eligible for the QEZE credits one year earlier than under the prior law.*

*Base period* is the five tax years immediately preceding the test year. If your QEZE has fewer than five preceding years, then your base period is the smaller set of years. If you are a new business enterprise in your first tax year of doing business in New York State, your base period is zero years.

*Employment increase factor* (see Schedule C on page 3) is an amount which cannot exceed one, but that is the greater of the following:

- (1) The excess of the QEZE's employment number in EZs in which the QEZE is certified for the current tax year over the QEZE's test year employment number in those zones, divided by the QEZE's test year employment number in those zones; or
- (2) The excess of the QEZE's employment number in the EZs in which it is certified for the current tax year over the QEZE's test year employment number in those zones, divided by 100.

*Business tax benefit period* means either: the first 15 tax years beginning on or after January 1, 2001 (if your test date occurred on or before December 31, 2001); or the 15 tax years after your test year (if your test date occurred on or after January 1, 2002).

*Benefit period factor* is a number from zero to one, based on the tax year of the business tax benefit period, and designed to phase out the benefit in the last five years of the business tax benefit period. See the *Benefit period factor table* on page 4 of Form IT-604.

*Zone allocation factor* (see Schedule D on page 4) is a percentage that represents your economic presence in the EZs in which you are certified. It is used only for computing the tax reduction credit (see Schedule G on page 5).

*Value of real and tangible personal property* is the federal adjusted basis of your property (except rental property which is eight times the gross rents payable for the rental property for the tax year).

*Eligible real property taxes* are the taxes for the current tax year imposed on the QEZE's real property that is connected to a business located in an EZ in which the QEZE is certified, provided that the taxes become a lien on the real property during a year in which the owner of the property is both certified and a QEZE. In addition, *eligible real property taxes* include payments made by the QEZE in lieu of taxes (PILOT payments), to the state, to a municipal corporation, or to a public benefit corporation. However, PILOT payments made by the QEZE under a written agreement executed or amended on or after January 1, 2001, will not constitute eligible real property taxes unless both the Department of Economic Development and the Office of Real Property Services approve the written agreement.

*Tax factor* (see Schedule E on page 4) is the portion of the tax due under Article 22 of the Tax Law that is attributable to the income of the QEZE. The tax factor is used only for computing the tax reduction credit (see Schedule G on page 5).

**Partnerships and New York S corporations:** Partners and shareholders will compute their own tax factors based on their individual personal income tax return. Partners and S corporation shareholders will compute their tax factor on their individual Form IT-604.

These ratios may not exceed 1.0.

**Specific instructions**

**Sole Proprietors:** Complete Schedules A through G.

**Partnerships:** Complete Schedules A, B, C, D, and F. A partnership does not compute the QEZE tax reduction credit (Schedule G). The individual partners may claim this credit on their personal income tax return.

**Fiduciaries:** Complete Schedules A through H.

**Partners in a partnership, shareholders in a New York S corporation, and beneficiaries of an estate or trust:**

Enter the employer identification number of the QEZE business, the name of the business, the name of the EZ, and the date of certification on the front of Form IT-604. This information can be obtained from your partnership, New York S corporation, or the fiduciary of the estate or trust. Complete Schedules E, F, and G.

**Schedule A — Eligibility requirements**

To qualify for the QEZE real property tax and QEZE tax reduction credits, you must be certified under Article 18-B of the General Municipal law prior to July 1, 2005, (or prior to August 1, 2004, if the empire zone program provided for under the General Municipal Law is not extended), and you must meet an annual employment test. Complete Schedule A to determine if you meet the annual employment test. If you answer *No* on either line 3 or line 6, you do **not** qualify for the QEZE credit for real property taxes or the QEZE tax reduction credit for the current tax year. Do not complete the rest of this form unless you are required to recapture the QEZE real property tax credit from a prior year.

**Part 1 — EZ employees -** Computation of average number of full-time employees within all EZs whether certified in all zones or not, for the current tax year and the five-year base period.

Refer to the definitions on page 2 of these instructions when computing the eligibility requirements. The computation of the average number of employees to be included in the current tax year and the base period has changed. If you claimed either QEZE credit in a previous year, you must use the new rules to recompute your base period employment for this year. Generally, you will use the same tax years in the base period that you used in the previous base period computation.

**Line 1 —** For each date specified of the current tax year, enter the number of full-time employees who are located in an EZ whether the QEZE is certified in the EZ or not. Divide the total number of full-time EZ employees for the current tax year by the number of dates occurring during the current year (even if you had no employees on those dates) to obtain the average number of full-time EZ employees for the current tax year. Make no entries for any dates prior to the date you began business in New York. Do not include those dates in the calculation.

**Line 2 —** For each date specified of the base period, enter the number of full-time employees who are located in an EZ whether the QEZE is certified in the EZ or not. Divide the total number of full-time EZ employees for each date specified of the five year base period by the number of dates occurring during the five year base period (even if you had no employees on those dates) to obtain the average number of full-time EZ employees for the base period. Make no entries for any date prior to the date you began business in New York and do not include those dates in the calculation.

For QEZEs that are first certified on or after August 1, 2002, if the base period is zero years (there are no dates occurring during your base period) and your employment number in EZs is greater than

zero during the current tax year, the employment test will be met only if the enterprise qualifies as a *new business*, as new business in defined on page 2 of these instructions.

*Example: A QEZE calendar-year filer begins business in New York on January 1, 2000, and is certified on January 1, 2002. The QEZE test date is January 1, 2002. The test year is the tax year ending December 31, 2001. The base period is January 1, 2000 - December 31, 2000. The QEZE will compute its total number of full-time EZ employees for the base period as follows:*

Base period number of full-time EZ employees	March 31	June 30	September 30	December 31	Total
Number in base year one	0	3	4	4	11
Number in base year two					
Number in base year three					
Number in base year four					
Number in base year five					
Total full-time employees in all EZs in the base period					11

2. Average number of full-time employees within all EZs in the base period .. (11 divided by 4) ..... 2.85\*

\* The QEZE will divide the total number of full-time EZ employees by the number of dates that occurred during the QEZE's base period. The base period in this instance was only one year.

**Line 3 —** The average number of full-time EZ employees for the current year (line 1) must equal or exceed the average number of full-time EZ employees for the base period (line 2) to qualify for the QEZE credit for real property taxes or the QEZE tax reduction credit. If you check *No*, you do **not** qualify for either credit. Do not complete the rest of this form unless you are required to recapture the QEZE real property tax credit from a prior year.

**Part 2 — New York State employment outside empire zones -** Complete Part 2 in the same manner as you completed Part 1; however, include only those employees who are not located in any EZ, but who are located within New York State.

**Line 6 —** The average number of full-time employees in New York State, outside the EZs, for the current year (line 4) must equal or exceed the average number of full-time employees in New York State and outside EZs for the base period (line 5) to qualify for the QEZE credit for real property taxes or the QEZE tax reduction credit. If you check *No*, you do **not** qualify for either credit. Do **not** complete the rest of this form unless you are required to recapture the QEZE real property tax credit from a prior year.

**Schedule B — Computation of average number of full-time employees in the EZs in which you are certified for the test year**

**Line 7 —** Divide the total number of full-time EZ employees for your test year by the number of dates occurring during the year (even if you had no employees on those dates) to obtain the average number of full-time EZ employees for your test year. Make no entries for any dates that did not occur during your test year. Do not include those dates in the calculation. Include only the employees working in EZs in which you are certified.

**Schedule C — Employment increase factor**

The employment increase factor (see *Definitions* on page 2) cannot exceed 1.0. If your test year employment number is zero and your current year employment number is greater than zero, your employment increase factor is 1.0.

**Line 8 —** Include the current year employment number working in the EZs in which you are certified on this line. Include only full-time employees who worked at least one-half of your tax year.

**Note:** If you have employment in a zone in which you are not certified, your current year employment number will not be the same as the number computed on line 1. For purposes of this calculation, you will include only those employees working in zones in which you are certified.

**Schedule D — Zone allocation factor**

This factor represents the economic presence of the QEZE in an EZ. The *zone allocation factor* is a percentage computed using two factors: a property factor and a payroll factor. The percentage is calculated by adding the two percentages determined on lines 16 and 17 and then dividing the result by two.

**Line 14, Column A** — Enter the QEZE's average value of real and tangible personal property (see *Definitions*), whether owned or rented, that is located within the EZs in which you are certified under Article 18-B of the General Municipal Law in your current tax year.

**Line 14, Column B** — Enter the QEZE's average value of real and tangible personal property (see *Definitions*) located within New York State in your current tax year.

**Line 15, Column A** — Enter the wages paid by the QEZE to its full-time employees in EZs in which you are certified under Article 18-B of the General Municipal Law in the current tax year.

**Line 15, Column B** — Enter the wages paid by the QEZE to its full-time employees located within New York State for the current tax year.

**Schedule E — Tax factor**

**Line 21 — Sole proprietors of QEZEs:** This 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 your New York adjusted gross income. If the QEZE's income is zero or a loss, the tax factor is zero. The income 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 your Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*.

**Partners of QEZE partnerships:** This is the income from the QEZE partnership allocable to New York State and included in New York adjusted gross income. The *income from the partnership* means partnership items of income, gain, loss, deduction, and modifications entering into New York adjusted gross income. If the income from the partnership is zero or a loss, enter "0" on line 21. Your tax factor is zero. The income allocable to New York State is the partnership income from New York State sources. This amount should be provided to you by your partnership. For a nonresident of New York State, this is the partnership income from the QEZE included in the *New York State amount* column of your Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*.

**Shareholders of New York S corporations that are QEZEs:** This is the 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 to you by the New York S corporation. The income allocable to New York State is the QEZE S corporation income from New York State sources. This amount should be provided to you by the New York S corporation. For a nonresident of New York State, this is the New York S corporation income from the QEZE included in the *New York State amount* column of your Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*.

**Line 23** — Divide the amount on line 21 by the amount from line 22 (carry result to four decimal places). This amount cannot exceed one.

**Schedule F — QEZE credit for real property taxes computation**

**Line 27** — See page 2 for a definition of *eligible real property taxes*. Attach copies of any real property tax bills (including school tax bills) that are the basis of your QEZE credit.

**Line 29 Partners, shareholders, and beneficiaries** — If you were a partner in a partnership, a shareholder of a New York S corporation, or a beneficiary of an estate or trust and received a share of the QEZE credit for real property taxes from that entity, enter your share of the credit on line 29. This information can be obtained from your partnership, New York S corporation, or the fiduciary of the estate or trust. If you belong to more than one partnership, New York S corporation, or estate or trust, enter the total of all your shares of the credit on line 29.

**Line 31** — If the QEZE's eligible real property taxes, which were the basis for a credit previously claimed, are subsequently reduced, the QEZE must add back a recapture amount computed as follows:

<b>Worksheet A</b>	
a. The amount of credit originally allowed .....	a. _____
b. The amount of credit calculated using the reduced tax amount .....	b. _____
c. Recapture amount ( <i>subtract line b from line a; enter result on line 31</i> ) .....	c. _____
<b>Note:</b> If property taxes are reduced for more than one tax year, you must determine how much of the reduction is attributable to each year and recapture the apportioned amount for each year.	

**Line 32** — Subtract line 31 from line 30 and continue on line 33. If line 31 is more than line 30, you have a net recapture. Do not complete line 33 and line 34. Fiduciary: Transfer any net recapture amount to the total line of Schedule H, column D. All others: Transfer any net recapture amount to Form IT-201-ATT, line 26; Form IT-203-B, line 10; or Form IT-204, line 39.

**Line 33** — The credit limitation is the greater of the employment increase limitation or the capital investment limitation.

QEZEs first certified under Article 18-B of the General Municipal Law prior to August 1, 2002: You do not have a credit limitation in any year of your business tax benefit period. Do not make an entry on this line.

QEZEs certified on or after August 1, 2002: Complete Worksheet B and enter the larger of worksheet line 4 or worksheet line 10 on line 33:

On line 33, enter the greater of :

- Worksheet B, line 4 — The *employment increase limitation*, calculated by multiplying the excess of the QEZE's employment number in the zones in which the QEZE is certified for the tax year over the QEZE test year employment number by \$10,000 (see definition of *employment number* on page 2); **or**
- Worksheet B, line 10 — The *capital investment limitation*, calculated at 10% of the cost or other basis of the real property multiplied by the greater of:
  - the sum of the percentage of the property which is physically occupied and used by the QEZE or by a related person to the QEZE, as *related person* is defined in IRC section 465(b)(3)(c) (see definition on page 5); **or**

- the percentage of the cost or other basis attributable to the construction, expansion, or rehabilitation of the real property (as opposed to the acquisition). 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 this percentage shall be deemed to be 100%.

The *cost or other basis* of the real property (*Worksheet B*, line 5) is the greater of:

- the cost or other basis of the real property for federal income tax purposes on the later of January 1, 2001, or on the effective date of certification under Article 18-B of the General Municipal Law; **or**
- the cost or other basis of the real property for federal income tax purposes on the last day of the tax year.

Any taxpayer certified before August 1, 2002, is not subject to this limitation in any year of the business tax benefit period.

**Worksheet B**

**Employment increase limitation**

- The QEZE's employment number for the current year in EZs in which the QEZE is certified (*see instructions below*) ..... 1. \_\_\_\_\_
- The QEZE's employment number for the test year in EZs in which the QEZE is certified (*see instructions below*) ..... 2. \_\_\_\_\_
- Subtract line 2 from line 1 ..... 3. \_\_\_\_\_
- Multiply line 3 by \$10,000 ..... 4. \_\_\_\_\_

*Employment number* for purposes of the employment increase limitation does not include employees in zones in which the QEZE is not certified. If you have employees in zones in which you are not certified either during the current year or test year, the employment number computed on this worksheet will not be the same as the number computed in Schedule A. Include only full-time employees who worked at least one-half of your tax year.

**Capital investment limitation**

- Cost or other basis of real property ..... 5. \_\_\_\_\_
- Multiply line 5 by 10% (.10) ..... 6. \_\_\_\_\_
- The percentage of the QEZE's (and related person's) physical occupancy and use of the building ..... 7. \_\_\_\_\_
- Percentage of line 5 attributable to the construction, rehabilitation, or expansion of building for which the credit is claimed (*if 50% or more, enter 100%*) ..... 8. \_\_\_\_\_
- Enter the greater of line 7 or 8 ..... 9. \_\_\_\_\_
- Multiply line 6 by line 9 (*enter the greater of the line 4 or the line 10 amount of this worksheet on line 33*) ..... 10. \_\_\_\_\_

**Instructions for worksheet**

**Line 5** — Enter the greater of the cost or other basis of real property on the later of January 1, 2001, or the date of the QEZE certification, **or** the cost or other basis on the last day of the current tax year for real property, including buildings and structural components of buildings owned by the QEZE and located in the EZ.

**Line 7** — Enter the percentage of the QEZE's (and any related person's, as *related person* is defined on this page) physical occupancy and use of the real property, as measured in square feet.

**Schedule G — QEZE tax reduction credit computation**

**Partners and shareholders** — Complete all of Schedule G. The amounts to be entered on lines 35, 36, and 37 can be obtained from your partnership or New York S corporation. If you belong to more than one partnership or New York S corporation, a separate Schedule G must be completed for each entity. Transfer the total of all schedules as instructed below line 41.

**Line 40 Beneficiaries of estates or trusts** — Enter your share of the tax reduction credit from the estate or trust. This amount can be obtained from the fiduciary of the estate or trust. If you belong to more than one estate or trust, enter the total of all your shares of the credit on line 40.

**Schedule H — Beneficiary's and fiduciary's share of credit**

An estate or trust must complete Schedule H. If an estate or trust allocates or assigns the credits to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust. Transfer the amount from the *Fiduciary* line of Schedule H, column C to Form IT-205, line 33. Transfer the amount from the *Fiduciary* line of Schedule H, column D to Form IT-205, line 12. Transfer the amount from the *Fiduciary* line of Schedule H, column E to Form IT-205, line 10.

The information below represents the Internal Revenue Service (IRS) interpretation of the definition for *related person* from section 465(b)(3)(C) of the IRC, which is contained in IRS Publication 925, *Passive Activity and At-Risk Rules – For use in preparing 2001 Returns*. When preparing your tax return, you should check section 465(b)(3)(C) to see if the definition of *related person* has been amended.

**Related persons** include:

- 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.

---