



Instructions for Form AU-12

Application for Credit or Refund of Sales or Use Tax – Qualified Empire Zone Enterprise (QEZE)

General information

Use Form AU-12 to apply for the QEZE credit or refund provided by Tax Law section 1119(d), effective for qualifying purchases made **on or after** September 1, 2009.

Use Form AU-11, *Application for Credit or Refund of Sales or Use Tax*, to claim

- a credit or refund based on purchases made **before** September 1, 2009, and
- a credit or refund under Tax Law section 1119(a)(6) for tax paid on building materials used in construction, expansion, or rehabilitation of real property located in an empire zone (EZ).

For more information, see TSB-M-09(12)S, *Changes to Qualified Empire Zone Enterprise (QEZE) Program (Articles 28 and 29) - Effective September 1, 2009*.

You **must attach** all required substantiation and documentation or your claim will not be processed. This includes:

- copy of the *Certificate of Eligibility* issued by Empire State Development (ESD);
- copy of the *Empire Zone Retention Certificate* (EZRC) issued by ESD;
- employment test worksheet:
 - Form AU-12.1, *Employment Test for Businesses Certified by Empire State Development (ESD) Before April 1, 2005*
 - Form AU-12.2, *Employment Test for Businesses Certified by Empire State Development (ESD) On or After April 1, 2005, and Before April 1, 2009*
 - Form AU-12.3, *Employment Test for Businesses Certified by Empire State Development (ESD) On or After April 1, 2009*
- documentation regarding your claim as described in *Basis for claim*
- invoices, receipts, proof of payment of tax, etc.

Who may file

You may apply for a credit or refund of sales tax paid on qualifying purchases if you are a QEZE for sales and use tax purposes and you meet the criteria below.

If you were certified by ESD **before** April 1, 2009, you must have:

- applied for and received Form DTF-81, *Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification*;
- received your EZRC from ESD; and
- passed the employment test for the tax year ending before the period covered by this claim.

If you meet these qualifications, you may use this form to claim a credit or refund for tax paid on qualifying purchases.

If you were certified by ESD **on or after** April 1, 2009, you must have:

- received your EZRC from ESD; and
- passed the employment test for the tax year ending before the period covered by this claim.

If you meet these qualifications, you may use Form AU-12 to claim a credit or refund for tax paid on qualifying purchases, but **only** if the qualifying purchase is made in a locality that has elected to provide the credit. For more information, see Publication 718-QZ, *Qualified Empire Zone Enterprise (QEZE) Sales and Use Tax Refund Rates*.

Applicant information

Enter the address for the EZ location where the items or services are being used. This may or may not be the main, or primary, address of the business.

If you are requesting a credit or refund for qualifying purchases made for more than one EZ location, attach a list containing the addresses of all EZ locations included in this claim.

Claiming credit on a sales tax return

If you're registered for New York State sales tax, you may report your QEZE credit on your sales tax return (Schedule W) to offset sales tax due.

- If you're applying part of your claim as a credit on Schedule W and requesting the balance as a refund, you must state these amounts separately in the applicable boxes.
- If the sales tax due on your return is less than the credit claimed, you **must** claim the remaining balance as a refund. You **may not** carry the balance forward on future returns.

Basis for claim

Mark an **X** in each appropriate box.

A – The property or service must be directly and predominantly (at least 50%) used or consumed by the QEZE in an EZ in which the QEZE has qualified for benefits. The credit or refund does not apply to purchases of taxable food and drink (items such as sandwiches, heated food, heated drink, or restaurant meals). The credit or refund also does not apply to rent for hotel occupancy or charges for admission to a place of amusement.

B – The utility services must be directly and exclusively (100%) used or consumed by the QEZE in an EZ in which the QEZE has qualified for benefits. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services of whatever nature.

C – The telephony and telegraphy, telephone and telegraph services, or telephone answering services must be delivered and billed to the QEZE at an address in an EZ in which the QEZE has qualified for benefits.

D – The vehicle must be predominantly (at least 50%) used by the QEZE in an EZ in which the QEZE has qualified for benefits. Predominant use in EZs will occur if any one of the following conditions is met:

- At least 50% of the vehicle's use is exclusively in such zones.
- At least 50% of the vehicle's use is in activities originating or terminating in such zones.
- At least 50% of the vehicle's use is a combination of use exclusively in such zones and in activities originating or terminating in such zones.

The QEZE may choose to compute the usage of the vehicle based on either hours of use or miles traveled. This QEZE credit or refund pertaining to motor vehicles also applies to the special taxes imposed under Tax Law Article 28-A on passenger car rentals.

E – Certain tangible personal property related to a motor vehicle; the motor vehicle must be used predominantly (at least 50%) by a QEZE in an EZ in which the QEZE has qualified for benefits, as described in box D. Examples of tangible personal property related to a motor vehicle include a battery, an engine, engine components, a muffler, tires and similar tangible personal property used in or on a motor vehicle.

Employment test

You **must** pass an employment test at the end of every tax year (calendar or fiscal) to determine if you qualify for QEZE sales tax benefits for the next tax year. The effective date from your *Certificate of Eligibility* (issued by ESD) determines which worksheet you need to include.

- Form AU-12.1, if you were certified by ESD **before April 1, 2005**
- Form AU-12.2, if you were certified by ESD **on or after April 1, 2005, and before April 1, 2009**
- Form AU-12.3, if you were certified by ESD **on or after April 1, 2009**

If you were certified before April 1, 2009, complete the employment test using your base period information from your application for QEZE sales tax certification filed with the Tax Department (Form DTF-80, *Application for a Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification*;

Form DTF-82, *Application for a Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification — For businesses certified by Empire State Development before August 1, 2002*; Form DTF-83, *Application for a Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification — For businesses certified by Empire State Development on or after August 1, 2002, and before April 1, 2005*; or Form DTF-84, *Application for a Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification — For businesses certified by Empire State Development on or after April 1, 2005, and before April 1, 2009*.

If you have more than one EZ location, use the effective date from your first (earliest) *Certificate of Eligibility* to determine which worksheet you need to file.

You must complete and pass the employment test using your employment numbers for the tax year ending **before** the period covered by this application to qualify for the credit or refund being claimed. Once you have completed the employment test worksheet for a tax year, attach a copy of that worksheet to any subsequent claim for credit or refund to which that employment test applies.

If your credit or refund claim covers periods from more than one tax year, you must complete and attach employment test worksheets for each tax year required.

Here's an example:

A business was certified by ESD with an effective date of February 15, 2008, on its Certificate of Eligibility. The business applied for and received QEZE sales tax certification from the Tax Department effective October 1, 2008. The business files taxes on a calendar year basis.

At the end of December 2008, the business completed the employment test for the 2008 tax year (January through December 2008) and determined that it qualifies for QEZE sales tax benefits for 2009.

At the end of December 2009, the business completed the employment test for the 2009 tax year (January through December 2009) and determined that it qualifies for QEZE sales tax benefits for 2010.

In March 2010, the business files Form AU-12 to claim a refund of tax paid on qualifying purchases made during September through December 2009 and for January through February 2010. When filing Form AU-12 to claim the refund, it must complete and attach Form AU-12.2 for the 2008 tax year to support its claim for a refund for the September through December 2009 period, and Form AU-12.2 for the 2009 tax year to support its claim for a refund for the January through February 2010 period.

In June 2010, the business files Form AU-12 to claim a refund of tax paid on qualifying purchases made during March through May 2010. When filing Form AU-12 to claim the refund, it must attach a copy of its Form AU-12.2 for the 2009 tax year to support the refund claimed.

Documentation

- Explain the basis for the credit or refund claim in detail and send legible copies of all supporting documents (for example: invoices, receipts, proof of payment of tax, etc.).
- Your documents **must be** in a format that allows the Tax Department to determine the correct jurisdiction and amount for each credit or refund claimed. Cash receipts, register tapes, or other forms of receipts or invoices that don't identify the purchaser may not be accepted.
- Your documents must contain the address of the business receiving the property or services.
- If your form is incomplete, or if you don't provide necessary supporting documents, we may deny your application.
- If the invoices and credit memoranda to be submitted are voluminous, submit a schedule or a summary in table form. The schedule or summary should contain all pertinent information concerning these documents, such as invoice number, date of invoice, name of purchaser or supplier, item sold or purchased, amount of invoice excluding tax, amount of tax billed, taxing jurisdiction where sale or purchase was made, and the reason

the applicant is entitled to a credit or refund. We may request documentation to verify any schedule or summary that you submit.

- The supporting documents should include the vendor's name and address. If they don't, or if the transaction took place somewhere other than the vendor's address, you must:
 - include the vendor's name and location;
 - include the location where the transaction took place (generally, where you took title or possession); and
 - include the invoices showing the tax you paid.

Representative

If an outside individual or firm prepared the application (not the applicant or the owner, partner or an officer of the business listed as the applicant) the name and address should be included under *Representative's name* and *Representative's mailing address*. The representative's signature and the identification number of the firm should be included under *Representative's signature* and *Representative's ID number*. The representative must file a properly completed Form POA-1, *Power of Attorney*, authorizing him/her to act on the applicant's behalf and to receive information pertaining to the application for credit or refund. Form POA-1 is available on our Web site (see *Need help?*).

When to file your application

Generally, you must submit your application within **three years** from the date the tax was payable to the Tax Department, or **two years** from the date the tax was paid, whichever is later. **You may file this form only once each sales tax quarter.**

Where to file your application

Mail your completed application and all required substantiation and documentation to:

NYS TAX DEPARTMENT
TDAB – SALES TAX REFUNDS
W A HARRIMAN CAMPUS
ALBANY NY 12227

Need help?



Internet access: www.tax.ny.gov
(for information, forms, and publications)



Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.