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Qualified Empire Zone Enterprise (QEZE) Tax Credits (Articles 9-A, 22, 32 and 33)

On May 15, 2000, Governor George E. Pataki signed Chapter 63 of the Laws of 2000. This legislation amended the Tax Law to provide benefits under the "Empire Zones Program Act," amending Articles 9-A (Franchise Tax on Business Corporations), 22 (Personal Income Tax), 32 (Franchise Tax on Banking Corporations) and 33 (Franchise Tax on Insurance Corporations) of the Tax Law to provide new tax credits for a Qualified Empire Zone Enterprise (QEZE) in New York State. For taxable years beginning on or after January 1, 2001, these business enterprises will be entitled to a credit for *eligible real property taxes* imposed on zone property and a tax reduction credit against their business and personal income taxes.

The credits are generally available for 14 taxable years provided the QEZE annually meets the employment test described below. (The legislation provides that a business enterprise may be a QEZE for up to 15 taxable years (the *benefit period*). However, because the *benefit period factor* for year 15 is 0, there is no credit available for that year.)

The Empire Zones Program Act, by declaration, also changed the term "economic development zone" to "empire zone" wherever it appeared in the Consolidated or Unconsolidated Laws of New York. 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 July 31, 2004. This memorandum assumes the statutory extension of these designations beyond July 31, 2004. However, whether or not these provisions are extended is a matter that will require specific legislative action.

For information concerning sales tax benefits under this Act, see TSB-M-01(1)S, Qualified Empire Zone Enterprise Exemptions (Articles 28 and 29).

General definitions

A *Qualified Empire Zone Enterprise* (QEZE) means a business enterprise that has been 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 *taxable year* if (1) the business enterprise's *employment number* in empire zones in which the enterprise is certified under Article 18-B of the General Municipal Law for the taxable year equals or exceeds its employment number in the zones for the *base period*, and (2) the business enterprise's employment number in New York State outside of the zones for the taxable year equals or exceeds its employment number in the State outside of the zones for the base period.

Taxable year means the taxable year of the business enterprise under Article 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.

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 (1) determining the number of individuals so employed on March 31, June 30, September 30 and December 31 during the applicable taxable year, (2) adding together the number of such individuals determined on each of those dates, and (3) dividing the sum by the number of such dates occurring within the applicable taxable year. *Employed full-time* means a job consisting of at least 35 hours per week and includes two or more jobs which together constitute the equivalent of a job of at least 35 hours per week.

Test date means the later of July 1, 2000, or the date prior to July 1, 2005, on which the business enterprise becomes certified under Article 18-B of the General Municipal Law. Accordingly, a business enterprise that has been certified under the General Municipal Law prior to July 1, 2000 is deemed to have a test date of July 1, 2000. That business enterprise does not need to be recertified under Article 18-B to qualify for the QEZE credits.

Test year means the last taxable year of the business enterprise ending on or before the test date.

Base period means the five taxable years immediately before the test year. If a business enterprise has fewer than five taxable years before the test year, then the term base period means the smaller set of taxable years. In the case of a new business enterprise that is first doing business and creating jobs in New York State, the employment numbers in the base period are zero. In the case of a newly designated zone or where the boundaries of an existing zone have been revised, the employment numbers in the base period are determined as if the new zone or the boundaries of the revised zone existed during the base period. Note: The employment numbers in the base period remain constant and do not have to be recomputed each time that the employment test is determined.

(Tax Law, Sections 14(a) through (g))

QEZE Credit for Real Property Taxes

Who is eligible

A taxpayer that is a QEZE, 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 an LLC if the LLC is treated as a partnership for federal tax purposes, and is subject to tax under Article 9-A, 22, 32 or 33 of the Tax Law, is allowed a credit against such tax, for *eligible real property taxes* imposed on property owned by a QEZE, a sole proprietor of a QEZE, an S corporation that is a QEZE, or a partnership that is a QEZE, including an LLC if the LLC is treated as a partnership for federal tax purposes.

(Tax Law, Section15(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 taxpayer's employment number in the empire zones in which the taxpayer is certified under Article 18-B of the General Municipal Law, for the taxable year, over the taxpayer's test year employment number in such zones, divided by the test year employment number in the zones (Note: Where a taxpayer's employment number in the zones (in which the taxpayer is certified) for the taxable year exceeds the taxpayer'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 taxpayer's employment number in the zones in which the taxpayer is certified, for the taxable year, over the taxpayer's test year employment number in such zones, divided by 100.

Eligible real property taxes means the taxes imposed on real property that is owned by the taxpayer and located in the empire zones in which the taxpayer is certified under Article 18-B of the General Municipal Law, for the taxable year.

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

Amount of credit

The amount of the credit is the product (or pro rata share of the product, in the case of a shareholder of an S corporation or a member 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.

(i.e., (1) x (2) x (3) = Amount of QEZE credit for real property taxes)

(Tax Law, Section 15(b))

Application and refund of credit

Application

The credit is generally available for up to 14 years to taxpayers that continue to qualify. (The legislation provides that a business enterprise 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 14 taxable years next following the test year, but only for those taxable years for which the employment test is met. In the case of a QEZE with a test date falling within the year 2000, the 15-year period starts not in the year immediately following the test date, but in the year after that. A business enterprise may remain a QEZE for each year of the 15-year period. However, the credit is contingent upon the January 1, 2001 effective date of the applicable statutory provisions. These factors, together with the test date and the taxable year of the individual QEZE, must be taken into consideration in determining the actual duration of the credit period.

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 such 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 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 taxpayers, the credit deducted for each taxable year cannot reduce the tax to an amount less than the fixed dollar minimum tax.

For Article 33 taxpayers, the credit deducted for each taxable year cannot reduce the tax to an amount less than the fixed dollar minimum tax.

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

Refund of credit

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, Sections 14(i), 210.27, 606(bb), 1456(o) and 1511(r))

QEZE Tax Reduction Credit

Who is eligible

A taxpayer that is a QEZE, 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 an LLC if the LLC is treated as a partnership for federal tax purposes, and is subject to tax under Article 9-A, 22, 32 or 33 of the Tax Law, is allowed a credit against such tax, based on the following rules and additional definitions.

(Tax Law, Section 16(a))

Definitions

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

The percentage is calculated by adding the two percentages determined in (1) and (2) below and then dividing the result by 2. Where a taxpayer has only one percentage to determine from either (1) or (2) below, that percentage should be used as the zone allocation factor.

(1) Determine the percentage of the taxpayer's real and tangible personal property in empire zones by dividing the average *value of the taxpayer's real and tangible personal property*, whether owned or rented to it, in empire zones during the period covered by its return by the average value of all the taxpayer's real and tangible personal property, whether owned or rented to it, within the state during that period.

    Value of the taxpayer'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 8 times the gross rents payable for the rental property for the taxable year). However, if a taxpayer has made a one-time, revocable election, which has not been revoked, to use fair market value as the value of all of the taxpayer's real and tangible personal property for purposes of the property factor of the business allocation percentage, the taxpayer may also use fair market value for purposes of this computation.

(2) Determine the percentage of the taxpayer'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 in the computation of entire net income, during the taxable year, of employees within empire zones, except general executive officers, by the total wages, salaries and other personal service compensation, similarly computed, during the taxable year, of all the taxpayer'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 a business. Therefore, the reference to entire net income in (2) above, would be net profit (loss) or ordinary income (loss) for Article 22 purposes.

The *tax factor* is:

(1) in the case of Article 9-A taxpayers, the larger of the tax on the entire net income base or the minimum taxable income base;

(2) in the case of Article 32 taxpayers, the larger of the tax on entire net income or alternative entire net income;

(3) in the case of Article 33 taxpayers, the larger of the tax on entire net income or the entire net income plus compensation alternative; and

(4) in the case of Article 22 taxpayers, the tax as determined under Article 22.

(Tax Law, Sections 16(c) through (f))

Amount of credit

The amount of the credit is the product (or pro rata share of the product, in the case of a shareholder of an S corporation or a member of a partnership) of the following four factors:

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

(i.e., (1) x (2) x (3) x (4) = Amount of QEZE tax reduction credit)

(Tax Law, Section 16(b))

Application of credit

The credit is generally available for up to 14 years to taxpayers that continue to qualify. (The legislation provides that a business enterprise 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 14 taxable years next following the test year, but only for those taxable years for which the employment test is met. In the case of a QEZE with a test date falling within the year 2000, the 15-year period starts not in the year immediately following the test date, but in the year after that. A business enterprise may remain a QEZE for each year of the 15-year period. However, the credit is contingent upon the January 1, 2001 effective date of the applicable statutory provisions. These factors, together with the test date and the taxable year of the individual QEZE, must be taken into consideration in determining the actual duration of the credit period.

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 such 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 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 these taxpayers.

For Article 32 taxpayers, the credit deducted for each taxable year cannot reduce the tax to an amount less than the fixed dollar minimum tax.

For Article 33 taxpayers, the credit deducted for each taxable year cannot reduce the tax to an amount less than the fixed dollar minimum tax.

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

For purposes of all of the Articles listed above, any amount of the credit not deductible in the current taxable year may not be credited or refunded to the taxpayer.

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

EXAMPLE 1(a)

Company ABC, a corporation subject to tax under Article 9-A, was incorporated in New York State on January 2, 1990 and became zone-certified under Article 18-B of the General Municipal Law on July 15, 2001 (test date). For tax purposes, Company ABC files on a calendar year basis. Therefore, Company ABC's test year is 2000 and its base period is 1995-1999. All of Company ABC's activity in New York State is conducted in the zone in which it is certified.

EMPLOYMENT TEST:

Part 1: **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 the zone for the current taxable year (year claiming the credit) and the five year base period.

	Year	**Qtr 3/31**	**Qtr 6/30**	**Qtr 9/30**	**Qtr 12/31**	**Total**	**Average # employees (employment number)**
Number of full-time employees within the zone for the current taxable year:	2001	50	50	50	50	200	50
Number of full-time employees within the zone for the five-year base period:							
Base year 1:	1995	30	30	30	30	120	
Base year 2:	1996	30	30	30	30	120	
Base year 3:	1997	30	30	30	30	120	
Base year 4:	1998	30	30	30	30	120	
Base year 5:	1999	30	30	30	30	120	
Total full-time employees within the zone for the five-year base period:						600	
Average full-time employees within the zone in the five-year base period (total divided by 20 or number of dates in base period):							30

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

Part 2: **NON-ZONE 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 outside the zone for the current taxable year and five-year base period.

	Year	**Qtr 3/31**	**Qtr 6/30**	**Qtr 9/30**	**Qtr 12/31**	**Total**	**Average # employees (employment number)**
Number of full-time employees in New York State outside the zone for the current taxable year:	2001	0	0	0	0	0	0
Number of full-time employees in New York State outside the zone for the five-year base period:							
Base year 1:	1995	0	0	0	0	0	
Base year 2:	1996	0	0	0	0	0	
Base year 3:	1997	0	0	0	0	0	
Base year 4:	1998	0	0	0	0	0	
Base year 5:	1999	0	0	0	0	0	
Total full-time employees in New York State outside the zone for the five-year base period						0	
Average full-time employees in New York State outside the zone in the five-year base period (total divided by 20 or number of dates in base period):							0

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

The employment test for taxable year 2001 has been satisfied since both Parts 1 and 2 of the employment test have been met.

Part 3: TEST YEAR - Computation of average number of employees for the test year (taxable year ending 12/31/2000).

	Year	Qtr 3/31	Qtr 6/30	Qtr 9/30	Qtr 12/31	Total	Average # employees (employment number)
Number of full-time employees in the zone for the test year:	2000	40	40	40	40	160	40

EXAMPLE 1(b)

CREDIT FOR REAL PROPERTY TAXES:

Company ABC is a QEZE because it is a zone-certified business and has met the employment test for the current taxable year. Company ABC pays $1,000,000 of real property taxes in the current taxable year.

Current taxable year ending 12/31/2001		**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 zone in current taxable year (Part 1 of example 1(a))	50	
Average employment within the zone in test year (Part 3 of example 1(a))	40	
Excess of employment for taxable year over test year, divided by test year employment (50 - 40) ÷ 40 =	.25	
B. Average employment within the zone in current taxable year	50	
Average employment within the zone in test year	40	
Excess of employment for taxable year over test year, divided by 100 (50 - 40) ÷ 100 =	.10	
Higher of "A" or "B" above, not to exceed 1.0		.25

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Factor 3: Property taxes paid or incurred during taxable year		$1,000,000.00
Credit for real property taxes in current taxable year: Product of factors 1, 2, and 3		$250,000.00

EXAMPLE 1(c)

TAX REDUCTION CREDIT:

Company ABC has $500,000 of tax on its entire net income base for taxable year ending 12/31/2001, 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 this year. All of Company ABC's New York property and payroll is located within the zone in this year.

Current taxable year ending 12/31/2001		**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 zone in current taxable year	50	
Average employment within the zone in test year	40	
Excess of employment for taxable year over test year, divided by test year employment (50 - 40) ÷ 40 =	.25	
B. Average employment within the zone in current taxable year	50	
Average employment within the zone in test year	40	
Excess of employment for taxable year over test year, divided by 100 (50 - 40) ÷ 100 =	.10	
Higher of "A" or "B" above, not to exceed 1.0		.25

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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%
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, and 4		$125,000.00

EXAMPLE 2(a)

Company XYZ, a corporation subject to tax under Article 9-A, was incorporated in New York State on January 15, 1990 and became zone-certified under Article 18-B of the General Municipal Law on September 1, 2001 (test date). For tax purposes, Company XYZ files on a calendar year basis. Therefore, Company XYZ's test year is 2000 and its base period is 1995-1999. Company XYZ has business activity in New York State both within and without the zone in which it is certified.

EMPLOYMENT TEST:

Part 1: **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 the zone for the current taxable year (year claiming the credit) and five year base period.

	Year	**Qtr 3/31**	**Qtr 6/30**	**Qtr 9/30**	**Qtr 12/31**	**Total**	**Average # employees (employment number)**
Number of full-time employees within the zone for the current taxable year:	2001	450	450	450	450	1800	450
Number of full-time employees within the zone during the five-year base period:							
Base year 1:	1995	350	350	350	350	1400	
Base year 2:	1996	350	350	350	350	1400	
Base year 3:	1997	350	350	350	350	1400	
Base year 4:	1998	350	350	350	350	1400	
Base year 5:	1999	350	350	350	350	1400	
Total full-time employees within the zone for the five-year base period:						7,000	
Average full-time employees within the zone in the five-year base period (total divided by 20 or number of dates in base period):							350

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

Part 2: **NON-ZONE 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 outside the zone for the current taxable year and five year base period.

	Year	**Qtr 3/31**	**Qtr 6/30**	**Qtr 9/30**	**Qtr 12/31**	**Total**	**Average # employees (employment number)**
Number of full-time employees in New York State outside the zone for the current taxable year:	2001	300	300	300	300	1200	300
Number of full-time employees in New York State outside the zone for the five-year base period:							
Base year 1:	1995	200	200	200	200	800	
Base year 2:	1996	200	200	200	200	800	
Base year 3:	1997	200	200	200	200	800	
Base year 4:	1998	200	200	200	200	800	
Base year 5:	1999	200	200	200	200	800	
Total full-time employees in New York State outside the zone for the five-year base period:						4,000	
Average full-time employees in New York State outside of the zone in the five-year base period (total divided by 20 or number of dates in base period):							200

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

The employment test for taxable year 2001 has been satisfied since both Parts 1 and 2 of the employment test have been met.

Part 3: TEST YEAR – Computation of average number of employees for the test year (taxable year ending 12/31/2000).

	Year	Qtr 3/31	Qtr 6/30	Qtr 9/30	Qtr 12/31	Total	Average # employees (employment number)
Number of full-time employees in the zone for the test year:	2000	400	400	400	400	1600	400

EXAMPLE 2(b)

CREDIT FOR REAL PROPERTY TAXES:

Company XYZ is a QEZE because it is a zone-certified business and has met the employment test for the current taxable year. Company XYZ paid $1,000,000 of real property taxes in the current taxable year.

Current taxable year ending 12/31/2001		**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 zone in current taxable year (Part 1 of example 2(a))	450	
Average employment within the zone in test year (Part 3 of Example 2(a))	400	
Excess of employment for taxable year over test year, divided by test year employment (450 - 400) ÷ 400 =	.125	
B. Average employment within the zone in current taxable year	450	
Average employment within the zone in test year	400	
Excess of employment for taxable year over test year, divided by 100 (450 - 400) ÷ 100 =	.50	
Higher of "A" or "B" above, not to exceed 1.0		.50

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Factor 3: Property taxes paid or incurred during the taxable year		$1,000,000.00
Credit for real property taxes in current taxable year: Product of factors 1, 2, and 3		$500,000.00

EXAMPLE 2(c)

TAX REDUCTION CREDIT:

Company XYZ has $2,000,000 of tax due on its entire net income base for taxable year ending 12/31/2001, 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 this 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 12/31/2001		**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 zone in current taxable year	450	
Average employment within the zone in test year	400	
Excess of employment for taxable year over test year, divided by test year employment (450 - 400) ÷ 400 =	.125	
B. Average employment within the zone in current taxable year	450	
Average employment within the zone in test year	400	
Excess of employment for taxable year over test year, divided by 100 (450 - 400) ÷ 100 =	.50	
Higher of "A" or "B" above, not to exceed 1.0		.50

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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%
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, and 4		$500,000.00