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## QEZE Sales Tax Credit or Refund

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### Introduction

The Empire Zones Program expired June 30, 2010. However, if your business is a *Qualified Empire Zone Enterprise* (QEZE) and is located in an area formerly designated as an empire zone, you may still be eligible to apply for a credit or refund of the sales tax paid on certain property and services. Your eligibility depends on:

- the date you were certified as an empire zone business by Empire State Development (ESD);
- whether you were required to be certified by the Tax Department as a QEZE; and
- the types of items and services you are buying or using.

This bulletin explains the QEZE sales tax credit or refund and how to claim it.

### Certification

You must have a *Certificate of Eligibility* and an *Empire Zone Retention Certificate* from ESD in order to apply for a credit or refund of sales tax.

You must pass an employment test to qualify for a QEZE credit or refund. See [TSB-M-09\(12\)S](#), *Changes to Qualified Empire Zone Enterprise (QEZE) Program (Articles 28 and 29) - Effective September 1, 2009*, for additional information on QEZE employment tests.

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*, from the Tax Department.

If you were certified by ESD on or after April 1, 2009, you don't need Form DTF-81 to claim a QEZE credit or refund, but there are additional limitations on the credit or refund you may receive. These limitations are described below in *Eligibility for a credit or refund*.

### Benefit period

If you were certified by ESD before April 1, 2009, and you qualify as a QEZE for sales tax purposes, your benefit period is 120 months from the effective date on Form DTF-81. If you were certified by ESD on or after April 1, 2009, your benefit period is 120 months, beginning on the first day of the month after the effective date on the *Certificate of Eligibility* issued by ESD.

These benefits are not retroactive. The QEZE sales tax credit or refund is available only for purchases made during your benefit period and only for tax years for which you pass the employment test.

You must pass the employment test every year to qualify for a QEZE credit or refund. If you don't pass the employment test, you will not qualify for the credit or refund for the following tax year. You may resume claiming benefits during the next tax year if you pass the employment test for that year.

## Basis for claim - what qualifies

**Tangible personal property and services** must be directly and predominantly (at least 50%<sup>1</sup>) used or consumed by the QEZE in an empire zone where the QEZE qualifies for benefits.

The credit or refund does not apply to sales tax paid on:

- purchases of taxable food and drink (such as sandwiches, heated food, heated drink, or restaurant meals);
- rent for hotel occupancy; or
- amusement charges (admission charges, club dues, or charges of a roof garden or cabaret).

**Utility services** and **prepaid telephone calling services** must be directly and exclusively (100%) used or consumed by the QEZE in an empire zone where the QEZE has qualified for benefits. Utility services include gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services of any nature.

**Telephone services** and **telephone answering services** must be delivered and billed to the QEZE at an address in an empire zone where the QEZE has qualified for benefits.

**Motor vehicles** must be predominantly (at least 50%) used by the QEZE in an empire zone where the QEZE has qualified for benefits. Predominant use in empire zones 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; or
- 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 use either hours of use or miles traveled to calculate the vehicle's usage. This QEZE credit or refund for tax paid on motor vehicles also applies to the special taxes on passenger car rentals. See Tax Bulletin [Sales Tax Rates, Additional Sales Taxes, and Fees \(TB-ST-825\)](#).

Certain tangible personal property related to a motor vehicle also qualifies if the motor vehicle qualifies, as described above. Property related to a motor vehicle includes a battery, diesel fuel, an engine, engine components, gasoline, a muffler, tires, and similar tangible personal property installed or used in or on a qualifying motor vehicle.

However, any charges for labor and towing are not refundable unless the work is performed at a facility that is located in an empire zone where the QEZE has qualified for benefits. Tax on these charges would also be refundable if the repaired (or serviced) vehicle is delivered to the QEZE at a location in a zone where the QEZE has qualified for benefits.

## Eligibility for a credit or refund

### Businesses certified before April 1, 2009

If your purchases qualify as described above, and you were certified by ESD before April 1, 2009, you may apply for a credit or refund of the 4% New York State sales tax and, if applicable, the 3/8% Metropolitan Commuter Transportation District (MCTD) tax.

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<sup>1</sup> The QEZE exemption predominant use threshold of *at least 50%* is prescribed by Tax Law section 1119(d). A predominant use threshold of *more than 50%* is the rule for other sales and use tax exemptions.

You may also apply for a credit or refund of the local tax if your purchase was made in a locality that enacted this credit/refund. These localities are:

- Allegany County,
- Cayuga County,
- City of Auburn,
- Erie County,
- Herkimer County,
- Montgomery County, and
- Niagara County.

### **Businesses certified on or after April 1, 2009**

If your purchases qualify and you were certified by ESD on or after April 1, 2009, you may claim a credit or refund of sales tax **only** if your purchases were made in the localities listed above. If you made qualifying purchases in one of the eligible localities, you may claim a credit or refund of the combined state and local rate of sales taxes paid. See [Publication 718-QZ](#), *Qualified Empire Zone Enterprise (QEZE) Sales and Use Tax Refund Rates*, for a listing of rates.

If you were certified by ESD on or after April 1, 2009, and the locality where you made the purchase is **not** listed above, **no credit or refund** of any sales taxes (New York State, MCTD, or local) is available.

### **How to claim your credit or refund**

Use [Form AU-12](#), *Application for Credit or Refund of Sales or Use Tax - Qualified Empire Zone Enterprise (QEZE)*, to apply for the QEZE credit or refund on qualifying purchases made on or after September 1, 2009. You may only file this form **once** each sales tax quarter. If you are registered for sales tax purposes, you may claim a credit when you file your sales tax return using [Schedule W](#), *Report of Purchases Eligible for Credit by a Qualified Empire Zone Enterprise (QEZE)*. You must also file [Form AU-12](#) when claiming a credit on Schedule W.

Use [Form FT-500](#), *Application for Refund of Sales Tax Paid on Petroleum Products*, to apply for a refund of sales tax paid on qualifying purchases of motor fuel or diesel motor fuel.

See Tax Bulletin [How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#) for additional information.

**Note:** The sales tax refund or credit on certain building materials used in an Empire Zone under Tax Law section 1119(a)(6) has expired. See [TSB-M-10\(6\)S](#), *Expiration of Refund or Credit for Sales Tax Paid on Building Materials Incorporated into Qualifying Real Property Located in an Empire Zone*.

**Note:** A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

## References and other useful information

**Tax Law:** Section s 14 and 1119(d)

### **Publications:**

[Publication 718-QZ](#), *Qualified Empire Zone Enterprise (QEZE) Sales and Use Tax Refund Rates*

### **Memoranda:**

[TSB-M-10\(6\)S](#), *Expiration of Refund or Credit for Sales Tax Paid on Building Materials Incorporated into Qualifying Real Property Located in an Empire Zone*

[TSB-M-09\(12\)S](#), *Changes to Qualified Empire Zone Enterprise (QEZE) Program (Articles 28 and 29) - Effective September 1, 2009*

### **Bulletins:**

[How to Apply for a Refund of Sales and Use Tax \(TB-ST-350\)](#)  
[Sales Tax Rates, Additional Sales Taxes, and Fees \(TB-ST-825\)](#)