



Instructions for Form CT-604

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

CT-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(5)C, *Summary of Legislative Changes Enacted in 2002*. Visit the *Corporation Tax Up-to-Date Information* page on our Web site at 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*, *taxable 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 taxpayers subject to tax under Article 9-A (general business corporations), Article 32 (banking corporations), and Article 33 (insurance corporations). These credits may not be applied against the Metropolitan Transportation Authority surcharge (MTA surcharge).

Eligibility

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, 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 corporate franchise taxes and personal income taxes). The business should use Form CT-604, *Claim for QEZE Real Property Tax Credit 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).

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 became a lien on the real property during a tax year in which 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 5.**

The QEZE credit for real property tax may not reduce the tax to less than:

- the larger of the tax on minimum taxable income or the fixed dollar minimum as computed under Article 9-A, or
- \$250 for Article 32 or 33 filers.

Any amount of the QEZE credit for real property taxes not deductible in the current tax year may be refunded without interest, or applied as an overpayment against next year's tax.

QEZE tax reduction credit

The QEZE tax reduction credit is allowed against a QEZE's corporate franchise tax under Article 9-A, 32, or 33, 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 may not reduce the tax to less than:

- the fixed dollar minimum under Article 9-A (however, a QEZE that has a zone allocation factor of 100% is not subject to this limitation and may reduce the tax to zero); or
- \$250 for Article 32 or 33 filers.

The QEZE tax reduction credit is not refundable. Any amount not deductible in the current year may not be refunded, carried over, or applied as an overpayment against next year's tax.

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 corporation, except a corporation 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.

Taxable year means the tax year of the business enterprise under section 183, 184, 185, or former section 186 of Article 9; Article 9-A, 32, or 33 of the Tax Law.

Employment number means the average number of individuals (excluding general executive officers) 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 6 for information regarding related persons.)

General executive officers are the chairman, president, vice president, secretary, assistant secretary, treasurer, assistant treasurer, comptroller, and any other officer charged with the general affairs of the corporation. A *general executive officer* is, therefore, an appointed or elected officer of the corporation having company-wide authority with respect to assigned functions or responsibility for an entire division of the company.

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:

Corporation A is a calendar-year taxpayer, certified on December 31, 2001. Corporation A's test year is January 1, 2000, through December 31, 2000. Corporation 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, Corporation 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, Corporation A would be eligible for the QEZE credit 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 5 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 4) 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 3 of Form CT-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 F on page 6.

Value of real and tangible personal property is the federal adjusted basis of your property (except rental property which is eight times your gross yearly rent). However, you may use fair market value when computing your QEZE property factor if you made a one-time revocable election to use fair market value as the value of all your real and tangible personal property for purposes of the property factor of the business allocation percentage and that election has not been revoked.

Eligible real property taxes are the taxes for the current tax year imposed on the QEZE's real property 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 is the tax calculated under each applicable article of the Tax Law that is based on income. If an Article provides for two tax measures based on income, the higher of the two is the tax factor. The tax factor is used only for computing the tax reduction credit (see Schedule F on page 6).

Partnerships and New York S corporations: Individuals who are partners or S corporation shareholders will compute their own tax factors on Form IT-604. Corporate partners will compute their tax factors on Form CT-604-CP.

Corporations that are members of a combined group: Compute the tax factor by multiplying the amount of combined tax as computed on income (the larger of the tax on entire net income or alternative net income) by a ratio, the numerator of which is the amount of income attributable to the QEZE allocated to New York State, and the denominator of which is the income of the combined group allocated to New York State. Combined groups which have members with net operating losses compute the ratio of QEZE income as described above without including net operating losses in either the numerator or the denominator of the ratio.

These ratios may not exceed 1.0.

Specific instructions

Instructions for corporations (other than New York S corporations)

If you are a corporation (other than a New York S corporation), that is eligible for the QEZE credit for real property taxes or the tax reduction credit, and are not claiming any other QEZE tax credits

from pass-through entities (such as partnerships), complete all applicable sections of Form CT-604 and transfer the amount of credit to your corporation franchise tax return.

If you are a corporation that is a QEZE and eligible for these credits and also have QEZE credits from a partnership that is a QEZE, complete Form CT-604 as instructed above and complete Form CT-604-CP to compute the credits from the partnership. Combine the totals from both forms and enter in the appropriate credit box on your franchise tax return.

Instructions for New York S corporations

If you are a New York S corporation, you will compute the QEZE credit for real property taxes on Form CT-604 and provide your shareholders with their pro rata share of the credit. You will compute three of the four factors used to compute the QEZE tax reduction credit on Form CT-604:

- the benefit period factor,
- the employment increase factor, and
- the zone allocation factor.

The S corporation will provide the shareholder(s) with each of these three factors. The shareholder will use these factors to calculate the tax reduction credit on their Form IT-604, *Claim for QEZE Real Property Tax Credit and Tax Reduction Credit*, for personal income taxpayers.

The fourth factor, the tax factor, is computed by the shareholders on Form IT-604 which is filed with their personal income tax return. (Corporate partners file Form CT-604-CP instead.)

Complete this form as follows:

1. Complete Schedules A, B, C, and D;
2. Complete Schedule E, Part 1, and transfer the amount of the QEZE credit for real property taxes from line 27 to Form CT-34-SH, line 19, and provide your shareholders with their pro rata share of this amount.
3. Transfer the factors used to compute the tax reduction credit as follows:
 - Transfer the employment increase factor from line 13 to Form CT-34-SH, line 20;
 - Transfer the zone allocation factor from line 19 to Form CT-34-SH, line 21;
 - Transfer the benefit period factor from line 20 to Form CT-34-SH, line 22.

Provide the shareholders with these three factors to use to calculate their credit on Form IT-604. Do not prorate these percentages.

Instructions for corporate partners and shareholders of New York S corporations

Shareholders of New York State S corporations **do not** complete this form. You must use Form IT-604 to claim your credit if you are an individual, estate, or trust. Your S corporation will provide you with your pro rata share of the real property tax credit and the factors to use to compute your tax reduction credit on Form IT-604.

Corporate partners will use Form CT-604-CP if they are receiving pass-through credits from a partnership. Your partnership will provide you with the information you need to calculate the credit. If the corporation is receiving credits from a partnership and has its own QEZE credits, complete Form CT-604-CP for the partnership credit and Form CT-604 for the corporation QEZE credit. Transfer both amounts to the credit section of your corporation tax return.

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 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 *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 number 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 (excluding general executive officers) 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 the 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 that did not occur during your tax year. 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 (excluding general executive officers) 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 dates 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, a calendar-year filer, begins business in New York on January 1, 2000, and is certified on January 1, 2002. The QEZE's 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	Mar 31	June 30	Sept 30	Dec 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 within the EZ in the base period					11

*The average number of full-time employees within the EZ 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 QEZE real property tax credit from a prior year.

Part 2 — New York State employment outside EZs

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, outside the 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 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 the 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*) 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 15 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 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 16 - Column A — Enter the wages paid by the QEZE to its employees in EZs in which you are certified under Article 18-B of the General Municipal Law, in the current tax year. Exclude wages paid to general executive officers.

Line 16 - Column B — Enter the wages paid by the QEZE to its employees located within New York State for the current tax year. Exclude wages paid to general executive officers.

Schedule E, Part 1- QEZE credit for real property taxes computation

Line 22 — See page 3 for a definition of *eligible real property taxes*. Attach copies of any real property tax bills (including school tax bills), that are the basis for your QEZE credit.

Line 24 — 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:

Worksheet A

- a. The amount of credit originally allowed a. _____
- b. The amount of credit calculated using the reduced tax amount b. _____
- c. Recapture amount (*subtract line b from line a; enter result on line 24*) c. _____

Note: 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.

If the amount to be recaptured exceeds any credit to be claimed in this year, you have a net recapture. Add the amount of net recapture to the tax computed on your franchise tax return.

Line 26 — The credit limitation is the greater of the employment increase limitation or the capital investment limitation. (QEZE's 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.)

QEZE's certified on or after August 1, 2002: Complete Worksheet B and enter the larger of worksheet line 4 or worksheet line 10 on line 26:

On line 26, enter the greater of :

- 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**
- 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 6); **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 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

1. The QEZE's employment number for the current year in EZs in which the QEZE is certified (*see instructions below*) 1. _____
2. The QEZE's employment number for the test year in EZs in which the QEZE is certified (*see instructions below*) 2. _____
3. Subtract line 2 from line 1 3. _____
4. 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

5. Cost or other basis of real property 5. _____
6. Multiply line 5 by 10% (.10) 6. _____
7. The percentage of the QEZE's (and related person's) physical occupancy and use of the building 7. _____
8. 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. _____
9. Enter the greater of line 7 or 8 9. _____
10. Multiply line 6 by line 9 (*enter the greater of line 4 or the line 10 amount of this worksheet on line 26*) 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 page 6) physical occupancy and use of the real property, as measured in square feet.

Schedule E - Part 2 — QEZE credit for real property taxes application

(New York S corporations: Do not complete Schedule E, Part 2.)

Line 29 — If you are applying multiple credits, see your franchise tax return instructions to determine the order in which the credits should be applied. Enter the amount of any other credits you are

applying before this credit, including any QEZE tax reduction credit claimed on this form.

Line 36 — Any amount of credit not being utilized or refunded may be claimed as an overpayment of tax to be applied against the MTA surcharge or next year's tax liability. Enter this amount on the appropriate line of your franchise tax return.

Schedule F, Part 1 - QEZE tax-reduction credit computation

New York S corporations: Do not calculate the QEZE tax reduction credit on this form. Transfer the employment increase factor, zone allocation factor, and benefit period factor to Form CT-34-SH, and provide your shareholders with these factors.

The shareholders will calculate the QEZE tax reduction credit on Form IT-604, *Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit*.

Article 13 shareholders are not eligible for the QEZE tax reduction credit.

Line 40 — Article 9-A filers — Enter the larger of the tax on the entire net income base or the tax on the minimum taxable income base from Form CT-3 or CT-3-A.

Article 32 — Enter the larger of the entire net income base tax or the alternative entire net income base tax from Form CT-32 or CT-32-A.

Article 33 — Enter the larger of the tax on the entire net income base or the alternative tax from Form CT-33 or CT-33-A.

Combined filers: Multiply your combined tax (the larger of tax on entire net income or alternative net income) by the ratio of the QEZE's income allocated to New York State divided by the combined group's income allocated to New York State. Do not include in the numerator or the denominator any member's losses included in the combined group. Enter the result on Line 40.

Schedule F, Part 2 - QEZE tax reduction credit application

(New York S corporations: Do not complete Schedule F, Part 2.)

Note: This credit may not be refunded or carried forward. Any amount not deductible in the current tax year is lost.

Line 43 — If you are applying multiple credits, see your franchise tax return instructions to determine the order in which the credits should be applied.

Addendum

The information below represents the Internal Revenue Service (IRS) interpretation of the definition of *related persons* in section 465(b)(3)(C) of the IRC, as 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 persons* 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.

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