New York State Department of Taxation and Finance

2009

Instructions for Form IT-601

Claim for EZ Wage Tax Credit

IT-601-I

General information

An *empire zone* (EZ) is an area within New York State that has been designated as an EZ pursuant to General Municipal Law (GML) Article 18-B. The area must be characterized by pervasive poverty, high unemployment, and general economic distress.

To be eligible to claim the EZ wage tax credit, a taxpayer must be certified under GML Article 18-B. A copy of the *Certificate of Eligibility* and the *Empire Zone Retention Certificate* issued by Empire State Development (ESD) must be attached to Form IT-601 each year the credit or carryforward of the credit is claimed. Pass-through entities, such as partnerships, S corporations, and LLCs, should distribute copies of the EZ retention certificate to their partners, shareholders, and members, to be attached to their tax returns when claiming EZ credits. For information on certification, call ESD at (518) 292-5240.

Eligibility requirements

The EZ wage tax credit is allowed for up to five consecutive tax years, beginning with the first tax year, in which all three of the following eligibility requirements are met.

— EZ wages are paid; and

— the average number of full-time employees in New York State for the current tax year (line 2) exceeds the average number of full-time employees in New York State during the four years immediately preceding the first tax year for which the EZ wage tax credit is claimed (line 3); and

— the average number of full-time employees in the EZ for the current year (line 5) exceeds the average number of full-time employees in the EZ or area comprising the EZ during the four years immediately preceding the first tax year for which the EZ wage tax credit is claimed (line 6).

Subsequent certification at the same or a different location in the same EZ or at a location in a different EZ shall not extend the five years that the credit is allowed.

Schedule A — Computation of EZ wage tax credit for the current tax year

An EZ wage tax credit cannot be computed in Schedule A for any tax year unless **all three** eligibility requirements are met for that tax year.

If you meet the three eligibility requirements, compute the EZ wage tax credit in Schedule A, Part 1, Part 2, Part 3, and Part 4.

The EZ wage tax credit in Part 1 is $3,000 multiplied by the average number of qualified targeted employees on line 8.

The EZ wage tax credit in Part 2 is $1500 multiplied by the average number of qualified employees on line 11.

The EZ wage tax credit in Part 3 is $3,500 multiplied by the average number of qualified targeted employees on line 14.

The EZ wage tax credit in Part 4 is $2,000 multiplied by the average number of qualified employees on line 17.

If you are a clean energy enterprise (CEE) only complete Part 1 to determine if you are eligible to compute the EZ wage tax credit for the current year.

The average number of employees on line 3 and line 6, once computed, remains the same for each of the five tax years for which the credit is claimed.

If line 2 exceeds line 3, continue with Part 2. If line 2 is less than line 3, you cannot compute a credit for the current tax year. However, if you are claiming any available EZ wage tax credit carryover from a preceding tax year, go to Schedule E, line 29.

If line 5 exceeds line 6, complete Schedule A. If line 5 is less than line 6, you cannot compute a credit for the current tax year. However, if you are claiming any available EZ wage tax credit carryover from a preceding tax year, go to Schedule E, line 29.

Schedule E — Computation of the EZ wage tax credit allowed for the current tax year

A taxpayer not allowed to compute an EZ wage tax credit in Schedule A may claim any available EZ wage tax credit carryforward from a preceding tax year in Schedule E. An EZ wage tax credit carryforward in Schedule E is available until used.

The EZ wage tax credit allowed in Schedule E (including any EZ wage tax credit carryforward) is limited to 50% of the tax imposed under section 601 of Article 22, Personal Income Tax, before the allowance of any tax credits.

Any portion of the EZ wage tax credit disallowed in Schedule E as a result of the above limitation may be carried forward on subsequent tax returns.

The EZ wage tax credit must be deducted after any tax credit that cannot be carried forward and before any tax credit that can be carried forward.

Schedule F — Computation of refundable portion of EZ wage tax credit

For tax years beginning on or after January 1, 1994, an Article 22 taxpayer qualifying as the owner of a new business under section 606(a)(10) may elect to treat 50% of the EZ wage tax credit available as a carryforward to following years as an overpayment to be refunded without interest or applied as a payment against next year's tax.

Line instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Individuals (including sole proprietors): Answer question 1. If you marked the *Yes* box, complete Parts 1 and 2. Then complete Schedule A and Schedule E. If you elect to claim the refund for a new business, also complete Schedule F. For the definition of an *owner of a new business*, see the instructions for line 38. If you marked the *No* box, continue with Schedule E, line 29, if applicable.

Partnerships: Answer question 1. If you marked the *Yes* box, complete Parts 1 and 2. Then complete Schedule A and Schedule E. If you marked the *No* box, **stop;** you cannot claim an EZ wage tax credit for tax year 2009.

Husband and wife business that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit amount as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Answer question 1. If you marked the *Yes* box, complete Parts 1 and 2. Then complete Schedule A and Schedule E. If you elect to claim the refund for a new business, also complete Schedule F. For the definition of an *owner of a new business*, see the instructions for line 38. If you marked the *No* box, continue with Schedule E, line 29, if applicable.

Partners in a partnership, shareholders in a New York S corporation, and beneficiaries of an estate or trust: Complete Schedule B, Schedule C, and Schedule E. If you elect to claim the refund for a new business, also complete Schedule F. For the definition of an *owner of a new business,* see the instructions for line 38.

Fiduciaries: Answer question 1. If you marked the *Yes* box, complete Parts 1 and 2. Then complete Schedule A, Schedule D, and Schedule E. If you elect to claim the refund for a new business, also complete Schedule F. For the definition of an *owner of a new*

business, see the instructions for line 38. If you marked the *No* box, continue with Schedule E, line 29, if applicable.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-601.

Sole proprietors or partnerships (or LLCs that are treated as sole proprietors or partnerships) that are claiming the EZ wage tax credit for more than one business or have employees in more than one zone must complete a separate Form IT-601, lines 1 through 7 and Schedule A, for each business or zone. Combine all Form IT-601 line 20 amounts on one Form IT-601 and enter the total on line 25.

Line 1 — Mark an ***X*** in the *Yes* box if you paid EZ wages during the current tax year.

Mark an ***X*** in the *No* box if you did not pay EZ wages during the current tax year. You do **not** qualify to compute the EZ wage tax credit in Schedule A for the current tax year. However, you may claim as an EZ wage tax credit for the current tax year any EZ wage tax credit carryforward from a preceding tax year in Schedule E.

EZ wages are wages paid by a certified taxpayer for full-time employment during the tax year in an area designated or previously designated as an EZ, if such employment is in a job created in the EZ during the period of its designation as an EZ or within four years of the expiration of such EZ designation. This provides a taxpayer who located in the EZ in the last year of its designation the opportunity to compute the EZ wage tax credit for five consecutive tax years.

EZ wages for purposes of CEEs are wages paid by a certified taxpayer for full-time employment in New York State during the tax year, if the employment is in a job created in New York State during the period of designation for CEEs, which is on or after June 23, 2006.

Once certification under Article 18-B of the GML is revoked, any wages paid by the taxpayer on or after the effective date of such revocation will not constitute EZ wages.

Wages paid to individuals employed before an EZ is designated do not qualify as EZ wages.

The date of designation of the EZ is the date the zone was created. In the case of a business that was included as a result of a boundary amendment, the date of designation is the date the boundary was amended to include the business in the EZ. You can obtain this information from ESD at the telephone number on page 1.

Part 1 — Computation of average number of full-time employees in NYS for the current tax year and four-year test period

Enter for each date specified of the current tax year the number of full-time employees in New York State.

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 job that meets these requirements constitutes full-time employment if the job is continuous for at least three months.

Line 2 — Add the number of full-time (including full-time equivalent) employees on each date for the current tax year in the table and divide by the number of such dates occurring during the current tax year to obtain the average number of full-time employees for the current tax year.

Example:

Current tax year	March 31	June 30	Sept 30	Dec 31	Total
Number of full-time employees in NYS - *2009*	*0*	*100*	*125*	*175*	*400*
2 Average number of full-time employees in New York State for current tax year *(400 divided by 4)*				**2.**	*100*

Enter for each date specified of the four-year period immediately preceding the first tax year for which the EZ wage tax credit is claimed (that is, the four-year test period), the number of full-time employees in New York State.

Line 3 — Add the number of full-time employees on each date for the four-year test period in the table and divide by the number of such dates occurring during the four-year test period to obtain the average number of full-time employees for the four-year test period.

If the taxpayer provided full-time employment in New York State for only part of the four years immediately preceding the first year in which the EZ wage tax credit is claimed, then the four-year period will be deemed to refer to that part.

If the taxpayer did not provide full-time employment in New York State in any of the four years immediately preceding the first year in which the EZ wage tax credit is claimed, enter ***0*** on line 3.

Example:

A taxpayer began business in New York State on July 1, 2006, and had full time employees in New York State for the dates September 30, 2006, through December 31, 2008. The taxpayer would make no entries for the dates prior to July 1, 2006. Thus, the taxpayer would divide 790 by 10 to obtain 79.

Number of full-time employees in NYS during four-year test period	March 31	June 30	Sept 30	Dec 31	Total
First year - *2008*	*100*	*100*	*100*	*100*	*400*
Second year - *2007*	*50*	*75*	*75*	*100*	*300*
Third year - *2006*			*40*	*50*	*90*
Fourth year - *2005*					
Total number of full-time employees in New York State for four-year test period					*790*
3 Average number of full-time employees in New York State for four-year test period.....				**3.**	*79*

Line 4 — The average number of full-time employees in New York State for the current tax year (line 2) must exceed the average number of full-time employees in New York State for the four-year test period (line 3). If you answer *No,* you do **not** qualify to compute the EZ wage tax credit in Schedule A for the current tax year. However, you may claim as an EZ wage tax credit for the current tax year any EZ wage tax credit carryforward from a preceding tax year in Schedule E.

If you are a CEE and answered *Yes* to question 4, go to Schedule A to compute the EZ wage tax credit for the current year. If you answered *No* to question 4, you cannot compute a credit in Schedule A for the current year. If, however, you have an EZ wage tax credit carryforward from a preceding tax year, go to Schedule E, line 29.

Part 2 — Computation of average number of full-time employees in the EZ for the current tax year and four-year test period

Enter for each date specified of the current tax year the number of full-time employees in the EZ.

Line 5 — Compute the average number of full-time employees for the current tax year in the table in the same manner as line 2.

Enter for each date specified of the four-year period immediately preceding the first tax year in which the EZ wage tax credit is claimed (that is, the four-year test period), the number of full-time employees in the area that currently constitutes the EZ.

Line 6 — Compute the average number of such employees for the four-year test period in the same manner as line 3.

Line 7 — The average number of full-time employees in the EZ for the current tax year (line 5) must exceed the average number of full-time employees in the area that currently constitutes the EZ

for the four-year test period (line 6). If you answer *No,* you do **not** qualify to compute the EZ wage tax credit in Schedule A for the current tax year. However, you may claim as an EZ wage tax credit for the current tax year any EZ wage tax credit carryforward from a preceding tax year in Schedule E.

Schedule A — Computation of EZ wage tax credit for the current tax year

Do not include in Schedule A an individual who has been employed within the immediately preceding 60 months by a related person, unless the related person never received an EZ or zone equivalent area (ZEA) wage tax credit for that employee. The term *related person* means a related person as defined in IRC section 465(b)(3)(C) or an entity that would have qualifed as a related person if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate. The information below represents the Internal Revenue Service (IRS) interpretation of the definition of *related persons* in IRC section 465(b)(3)(C) as contained in IRS Publication 925, *Passive Activity and At-Risk Rules*. When preparing your tax return, you should check IRC 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 an individual's brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and linear 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 interest 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 directly or indirectly 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.

Part 1 — Computation of EZ wage tax credit for qualified targeted employees

Taxpayers who are certified in an investment zone (including CEEs) — do not include employees whose wages are more than $40,000. See Part 3 on page 4.

Enter for each date specified of the current tax year the number of qualified targeted employees.

A *qualified targeted employee* for purposes of Parts 1 and 3 is an employee who:

— is employed full-time (see definition of full-time employment on page 2); and

— is working in a job created in the EZ since the EZ was designated (CEE's period of designation began June 23, 2006); and

— received EZ wages for more than half of the current tax year (see definition below); and

— received an hourly wage that is at least 135% of the minimum wage specified in section 652 of the Labor Law for more than half of the employee's period of employment during the current tax year; and

— meets the definition of a targeted employee below.

A *targeted employee* is a New York State resident who received EZ wages during the current tax year and who is **one or more** of the following:

— an eligible individual under the provisions of the targeted jobs tax credit (IRC section 51);

— an individual eligible for benefits under the provisions of the Workforce Investment Act as a dislocated worker or low-income individual (Public Law 105-220, as amended);

— a recipient of public assistance benefits at any time during the previous two years;

— an individual whose income is below the most recently established poverty rate promulgated by the U.S. Department of Commerce, Bureau of Census;

— a member of a family whose family income is below the most recently established poverty rate promulgated by the U.S. Department of Commerce, Bureau of Census; **or**

— an honorably discharged member of any branch of the armed forces of the United States.

Any employee who qualified as a targeted employee at the time of initial employment will qualify as a targeted employee for subsequent years as long as he or she continues to receive EZ wages and remains a resident of New York State.

The Department of Labor (DOL) is required to provide a certificate verifying the targeted status of an individual for use by an employer seeking wage tax credits under the EZ program. The Tax Department will only recognize Form ES-450B, *Empire Zone Targeted Status Certification*, issued by the DOL, and signed by a DOL representative as proof of targeted status under the Wage Tax Credit program.

Additional information can be obtained by contacting the Department of Labor by calling 1 800 HIRE-992, or on the Web at *www.labor.state.ny.us*.

You must **attach Form ES-450B for each employee** listed in Schedule A, Part 1 and Part 3.

An employee received EZ wages *for more than half of the current tax year* when:

— the employee worked for a business that is certified under GML Article 18-B; **and**

— for more than half of the current tax year:

- the employee was employed by the EZ business; and
- the employee worked at the EZ location; and
- the business was located in the EZ; and
- the zone designation was in effect (CEE's period of designation began on June 23, 2006).

For purposes of computing the EZ wage tax credit amount, the requirement that an employee must receive EZ wages for more than half of the current tax year is not applicable in the first tax year, provided the taxpayer:

- acquires real or tangible personal property during its first year from an entity, which is not a *related person* as defined in Internal Revenue Code (IRC) section 465(b)(3)(C); and

- has a short tax year of not more than seven months; and
- has, on the last day of the tax year, at least 190 full-time employees, the majority of whom were previously employed by the entity whose assets the taxpayer purchased.

Line 8 — Add the number of qualified targeted employees for the current tax year in the table and divide by the number of such dates (include ***0*** dates) occurring during the current tax year to obtain the average number of qualified targeted employees for the current tax year (see the example under the line 2 instructions).

Example:

On March 1, 2009, a calendar-year taxpayer, located in a previously designated EZ, applies for certification under GML Article 18-B. The taxpayer is notified that such certification is effective September 1, 2009. For purposes of the EZ wage tax credit, the taxpayer is deemed to have been certified as of January 1, 2009, the first day of the taxpayer's taxable year in which the taxpayer applied for certification. The taxpayer files a tax return for the tax year January 1, 2009 through December 31, 2009. Assuming the taxpayer met the eligibility requirements, the taxpayer would include in Schedule A, line 8, line 11, line 14 and line 17, any qualified employees who received EZ wages for more than six months of the tax year January 1, 2009 through December 31, 2009. If the taxpayer filed a tax return for the short tax year September 1, 2009 through December 31, 2009, the taxpayer would include in Schedule A, line 8, line 11, line 14 and line 17, any qualified employees who received EZ wages for more than two months of the tax year September 1, 2009 through December 31, 2009.

Part 2 — Computation of EZ wage tax credit for qualified employees not included in Schedule A, Part 1

Taxpayers who are certified in an investment zone (including CEEs) — do not include employees whose wages are more than $40,000. See Part 4 below.

Enter for each date specified of the current tax year the number of qualified employees, not included in Schedule A, Part 1.

A *qualified employee* for purposes of Parts 2 and 4 is an employee who:

— is employed full-time (see definition of *full-time employment* on page 2); and

— received EZ wages for more than half of the current tax year (see definition of *for more than half the current tax year* in Schedule A, Part 1 on page 3); and

— is working in a job created in the EZ since the EZ was designated. (CEE's period of designation began on June 23, 2006.)

Note: Do not include a qualifying employee in Part 2 that is listed in Part 1, Part 3, or Part 4.

Line 11 — Add the number of qualified employees for the current tax year in the table and divide by the number of such dates (include ***0*** dates) occurring during the current tax year to obtain the average number of qualified employees for the current tax year (see the example under the line 2 instructions).

Part 3 (for taxpayers certified in an investment zone only) — Computation of EZ wage tax credit for qualified targeted employees whose wages are more than $40,000 for the tax year

For taxpayers who are certified in an investment zone (including CEEs), enter for each date specified of the current tax year the number of qualified targeted employees whose wages are more than $40,000 for the tax year. For the definitions of *qualified targeted employee* and *targeted employee*, see the instructions under Part 1 on page 3.

Line 14 — Add the number of qualified targeted employees for the current tax year in the table and divide by the number of such dates (include ***0*** dates) occurring during the current tax year to obtain the average number of qualified targeted employees for the current tax year (see the example under the line 2 instructions).

Part 4 (for taxpayers certified in an investment zone only) — Computation of EZ wage tax credit for qualified employees not included in Schedule A, Part 3, whose wages are more than $40,000 for the tax year

For taxpayers who are certified in an investment zone (including CEEs), enter for each date specified of the current tax year the number of qualified employees not included in Schedule A, Part 3 whose wages are more than $40,000 for the tax year. For the definition of *qualified employee*, see the instructions under Part 2 above.

Line 17 — Add the number of qualified employees for the current tax year in the table and divide by the number of such dates (include ***0*** dates) occurring during the current tax year to obtain the average number of qualified employees for the current tax year (see the example under the line 2 instructions).

Part 5 — Computation of EZ wage tax credit for the current year

Line 20 — If you computed an EZ wage tax credit on line 20, you must list each employee used to compute the EZ wage tax credit in the additional information sections below Parts 1 through 4 of Schedule A.

Schedule B — Partnership, S corporation, and estate and trust information

Enter the appropriate information for each partnership, S corporation, or estate or trust for which you receive a share of the EZ wage tax credit. If you need more space, attach a separate schedule.

Schedule C — Partner's, shareholder's, or beneficiary's share of credit

Enter your share of the total credit received from a partnership, New York S corporation, or an 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 on the appropriate line.

Partner

Line 21 — Enter your share of the partnership's EZ wage tax credit. This information should be provided to you by the partnership. If you are claiming a credit from more than one partnership, combine all amounts on line 21.

S corporation shareholder

Line 22 — Enter your share of the S corporation's EZ wage tax credit. This information should be provided to you by the S corporation. If you are claiming a credit from more than one S corporation, combine all amounts on line 22.

Beneficiary

Line 23 — Enter your share of the estate or trust's EZ wage tax credit. This information should be provided to you by your fiduciary. If you are claiming a credit from more than one estate or trust, combine all amounts on line 23.

Schedule D — Beneficiary's and fiduciary's share of credit

An estate or trust must complete Schedule D. If an estate or trust allocates or assigns the credit to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust. If you need more space, attach a separate schedule.

Schedule E — Computation of the EZ wage tax credit allowed for the current tax year

Line 29 — Enter the amount of the EZ wage tax credit carryforward from the tax year immediately preceding the current tax year.

Line 31 — Enter the tax shown on Form IT-201, line 39, **and** Form IT-230-I, Worksheet A, line 1; or Form IT-203, line 46 and Form IT-203-ATT, line 18; or Form IT-205, line 8 if a resident, or line 9 if a nonresident or part-year resident.

Line 37 — Subtract line 36 from line 30 to arrive at the unused EZ wage tax credit available to be carried forward to future years. You will need to refer to this figure when completing your 2010 Form IT-601. Any portion of the EZ wage tax credit (including any wage tax credit carryforward from a preceding tax year) that is disallowed in the current tax year as a result of the limitation may be carried forward.

Schedule F — Computation of refundable portion of EZ wage tax credit

Line 38 — Certain qualified taxpayers may elect to treat a portion of the current year's EZ wage tax credit available as a carryforward as an overpayment of tax to be refunded. The election applies to an EZ wage tax credit computed for the current tax year beginning on or after January 1, 1994.

The election may be made by an Article 22 taxpayer qualifying as the owner of a new business under section 606(a)10. Once made, the election may not be revoked. Interest will not be paid on any overpayment of tax refunded on line 40.

An *owner of a new business* under Article 22, section 606(a)10, means an individual who is either a sole proprietor or a member of a partnership **unless** any of the following apply:

— the business entity of which the individual is an owner is substantially similar in operation and in ownership to:
  - a business entity taxable or previously taxable under Article 9-A; Article 9 section 183, 184, 185, or 186; Article 32; or Article 33 of the Tax Law; or
  - a business entity that would have been subject to tax under Article 23 (as it was in effect on January 1, 1980); or
  - a business entity with income or losses that are or were includable under Article 22 if the intent and purpose of section 606(k)(5) with respect to refunding of credit to new business would be evaded; or

— the individual operated the new business entity in New York State for more than five tax years (excluding short tax years of the business).

An *owner of a new business* under Article 22 also includes a shareholder of a New York S corporation, **unless** the S corporation is a corporation:

— in which over 50% of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned or controlled either directly or indirectly by a taxpayer subject to tax under Article 9-A; Article 9, section 183, 184, 185, or 186; Article 32; or Article 33 of the Tax Law; or

— that is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under Article 9-A, Article 9, section 183, 184, 185, or 186; Article 32; Article 33; or Article 23 (the New York State unincorporated business tax as it was in effect on January 1, 1980); or that has income or losses that are or were includable under Article 22 of the Tax Law, whereby the intent and purposes of section 210.19(e) with respect to refunding of credit to new businesses would be evaded; or

— that has been in operation in New York State for more than five tax years (excluding short tax years of the business).