New York State Department of Taxation and Finance

Instructions for Form IT-604
Claim for QEZE Tax Reduction Credit

IT-604-I

2009

Important information

File Form IT-604 only if you are claiming the qualified empire zone enterprise (QEZE) tax reduction credit. If you are claiming the QEZE credit for real property taxes, you must file Form IT-606, *Claim for QEZE Credit for Real Property Taxes*.

Form IT-604 has been divided into two sections. It is very important that you complete the appropriate section.

You must **attach all pages** (1 through 8) to your return, even though you only completed one section. You must attach copies of all empire zone (EZ) certificates of eligibility and EZ retention certificates issued by Empire State Development (ESD). Pass-through entities, such as partnerships, S corporations, and fiduciaries should distribute copies of the EZ retention certificate to their partners, shareholders, and beneficiaries for use in filing their tax returns claiming EZ credits.

All taxpayers must complete the information above Section 1 on page 1.

QEZEs **first** certified prior to April 1, 2005, should complete Section 1, Schedules A through I.

QEZEs first certified between August 1, 2002, and March 31, 2005, that conduct operations on real property they own or lease, that is located in an EZ and that is subject to a brownfield site cleanup agreement executed prior to January 1, 2006, must complete Section 2, Schedules J through Q.

QEZEs **first** certified on or after April 1, 2005, should complete Section 2, Schedules J through Q.

Note: If you are certified in multiple zones, you must complete **only** Section 1 (pages 1 through 4) or Section 2 (pages 5 through 8) based on the effective date of the **first** *Certificate of Eligibility* issued by ESD. **Do not complete both sections.**

Example: *Business A was certified in the Albany County Empire Zone on February 1, 2001. On October 15, 2005, the business was also certified in the Buffalo County Empire Zone. Because Business A was first certified on February 1, 2001, it must complete **only** Section 1 to compute its QEZE tax reduction credit.*

General information for all QEZEs

The Empire Zones (EZ) Program Act provides for the QEZE tax reduction credit for businesses certified as eligible to receive benefits under General Municipal Law (GML) Article 18-B and that qualify as a QEZE. The credit is available to 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 a limited liability company (LLC) if the LLC is treated as a partnership for federal tax purposes, and is subject to tax under Article 22.

The QEZE tax reduction credit is the product of:

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

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

If a business has been certified under GML Article 18-B (it has received its *Certificate of Eligibility* and *Empire Zone Retention Certificate* from ESD) 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 tax reduction credit. The business should complete Form IT-604 to claim the credit and file it with its New York State tax return.

Definitions for all QEZEs

A *qualified empire zone enterprise (QEZE)* is a business enterprise that is certified as eligible to receive benefits under GML Article 18-B prior to July 1, 2010, and that annually meets the employment test.

A QEZE also includes a clean energy enterprise (CEE) certified under GML Article 18-B that annually meets the employment test.

Tax year means the tax year of the business enterprise under Tax Law, Article 22.

Employment number means the average number of individuals employed full-time by the business enterprise for at least one-half of the tax year. For tax years beginning on or after January 1, 2005, all QEZEs will exclude from the employment number any individual employed within New York State in the immediately preceding 60 months by a related person to the QEZE (as related person is defined in Internal Revenue Code (IRC) section 465(b)(3)(C)).

The employment number will be computed for a QEZE's first tax year using only those employees employed full time on the last day of the short tax year if the QEZE meets the following criteria:

- The QEZE acquires real or tangible property during its first tax year from an entity that is not a related person;
- The QEZE has at least 190 full-time employees on the last day of the tax year, substantially all of whom were previously employed by the entity from which the taxpayer purchased its assets; and
- The QEZE has a first tax year of not more than seven months.

The term *related person* means a related person as defined in IRC section 465(b)(3)(C) or an entity that would have qualified 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 section 465(b)(3)(C) to see if the definition of *related persons* has been amended.

Related persons include the following:

- Members of a family, but only an individual's 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 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.
- 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.

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, 2010, on which the business enterprise was **first** certified under GML Article 18-B. Subsequent certifications will not change the test date.

Test year is the 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 that 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.

Employment increase factor is an amount which cannot exceed one, but that is the greater of 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**
- 100.

Zone allocation factor is a percentage that represents your economic presence in the EZs in which you are certified. For a CEE the zone allocation factor equals 100%.

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).

Tax factor is the portion of the tax due under Tax Law, Article 22 that is attributable to the income of the QEZE.

Which sections of the form to complete

Sole proprietors — Complete Section 1 (Schedules A, B, C, D, E, F, H, and I) if first certified prior to April 1, 2005, or Section 2 (Schedules J, K, L, M, N, O, and Q) if first certified on or after April 1, 2005, or first certified between August 1, 2002, and March 31, 2005, and you conduct operations on real property owned or leased that is located in an EZ and is subject to a brownfield site cleanup agreement executed prior to January 1, 2006.

Partnerships — Complete Section 1 (Schedules A, B, C, D, H, and I) if first certified prior to April 1, 2005, or Section 2 (Schedules J, K, L, M, and Q) if first certified on or after April 1, 2005, or first certified between August 1, 2002, and March 31, 2005, and you conduct operations on real property owned or leased that is located in an EZ and is subject to a brownfield site cleanup agreement executed prior to January 1, 2006. Compute three of the four factors used to compute the QEZE tax reduction credit:

- The benefit period factor (from *Benefit period factor table* or line 56),
- The employment increase factor (Schedule C or Schedule L), and
- The zone allocation factor (Schedule D or Schedule M).

Do not compute the tax factor (Schedule E or Schedule N). The individual partners will compute their tax factors and claim the QEZE tax reduction credit on their own Form IT-604.

Fiduciaries — Complete Section 1 (Schedules A through I) if first certified prior to April 1, 2005, or Section 2 (Schedules J through Q) if first certified on or after April 1, 2005, or first certified between August 1, 2002, and March 31, 2005, and you conduct operations on real property owned or leased that is located in an EZ and is subject to a brownfield site cleanup agreement executed prior to January 1, 2006.

Partners in a partnership, shareholders in a New York S corporation, and beneficiaries of an estate or trust — Enter the employer identification number (EIN) of the QEZE business, the name of the business, the name of the EZ and the date of certification. This information can be obtained from your partnership, New York S corporation, or the fiduciary of the estate or trust. Complete Section 1 (Schedules E and F) if first certified prior to April 1, 2005, or Section 2 (Schedules N

and O) if first certified on or after April 1, 2005, or if first certified between August 1, 2002, and March 31, 2005, and you conduct operations on real property owned or leased that is located in an EZ and is subject to a brownfield site cleanup agreement executed prior to January 1, 2006.

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

General information for Section 1 — For QEZEs first certified prior to April 1, 2005

Complete this section **only** if the QEZE was first certified **prior to April 1, 2005. Do not complete Section 2**.

QEZEs first certified between August 1, 2002, and March 31, 2005, that conduct operations on real property they own or lease that is located in an EZ and that is subject to a brownfield site cleanup agreement executed prior to January 1, 2006, do not complete this section. Instead, complete Section 2, Schedules J through Q.

Eligibility for QEZEs first certified prior to April 1, 2005

A business enterprise that is first certified as eligible to receive benefits under GML Article 18-B **prior to** April 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 employment number determined for the base period.

Schedule A — Employment test for QEZEs first certified prior to April 1, 2005

The *employment test* will be met for a tax year if 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 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 ESD.

There are additional employment requirements for businesses with a base period of zero years or zero employment in the base period. See additional instructions below.

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 EZ, 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.

Base period is the five tax years immediately preceding the test year. If the business enterprise has fewer than five years preceding the test year, then your base period is the smaller set of years. If you are a business enterprise in your first tax year of doing business in New York State, your base period is zero years.

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, but prior to April 1, 2005).

However, owners of qualified investment projects (as defined under GML section 957(s)) that have been approved by the Commissioner of Economic Development, will be allowed an additional business tax benefit period of ten years for purposes of the QEZE tax reduction credit. For these owners, the business tax benefit period is extended to include an additional ten tax years starting when the business enterprise's benefit period commencement date occurs (but only for those years for which the employment test is met).

The benefit period commencement date is determined by an election made by the business enterprise on its report for the tax year that includes the date of certification of the business enterprise at the location of the qualified investment project. The business enterprise can elect either (A) the business enterprise's date of certification under GML Article 18-B at the location of the qualified investment project, or (B) the date when property constituting a qualified investment project is first placed in service. If you choose to make the election under (B), attach a statement to the form. If no election is made, the benefit period commencement date will be (A) as described above.

If a QEZE that is an owner of a qualified investment project is also approved by the Commissioner of Economic Development as the owner of a significant capital investment project (as defined under GML section 957(t)), the business tax benefit period is increased to include an additional ten tax years beginning with the tax year in which the significant capital investment project is placed in service. The property must be placed in service during the business enterprise's business tax benefit period as described above.

If a QEZE is an owner of a qualified investment project, or a significant capital investment project, or both, the business tax benefit period may extend beyond ten years.

Benefit period factor is a number from zero to one, based on the tax year of the business tax benefit period, that is designed to phase out the benefit in the last five years of the business tax benefit period. (See Form IT-604, page 3, *Benefit period factor table*.) For an owner of a qualified investment project or a significant capital investment project, the benefit period factor will be 1.0 during the entire business tax benefit period.

Additional employment test requirements for businesses with a base period of zero years or zero employment in the base period

For a business enterprise first **certified prior to August 1, 2002**, if the base period is zero years or the base period employment is zero, and the enterprise is similar in ownership and operation to an existing or previously existing taxpayer, it can continue to access QEZE benefits only if the enterprise was formed for a valid business purpose and not solely to gain empire zone benefits.

Valid business purpose means one or more business purposes, other than the avoidance or reduction of taxation, which alone or combined are the primary motivation for some business activity or transaction that changes the economic position of the taxpayer in a meaningful way (apart from tax effects). The economic position of the taxpayer includes an increase in the market share of the taxpayer, or the entry by the taxpayer into new business markets.

For a business enterprise first **certified on or after August 1, 2002, and before April 1, 2005**, if the base period is zero years and the employment number in the zone is greater than zero in a tax year, then the enterprise meets the employment test **only** if it qualifies as a new business.

New business means any business entity, except one that is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under Tax Law, Article 9, section 183, 184, 185, or 186; Article 9-A, 32, or 33; Article 23 (or that would have been subject to Article 23 as this article was in effect January 1, 1980); or the income (or losses) of which is (or was) included under Article 22.

A business enterprise that is approved by the Commissioner of Economic Development as the owner of a qualified investment project or a significant capital investment project will be considered a new business for purposes of the QEZE tax reduction credit if

- it has a base period of zero years;
- it has placed property (or a project that includes such property) in service which comprises the qualified investment project or significant investment project; and
- it is certified by December 31, 2007.

For tax years beginning on or after January 1, 2005, a business that is identical in ownership and operation to an existing taxpayer will meet the new business test if the businesses are operating in different counties in the state. The new business **must use the remaining business tax benefit period** of the existing identical taxpayer.

Part 1 — Empire zone (EZ) employment

Compute your employment number within all EZs, whether certified in all zones or not, for the current tax year and the five-year base period. When computing this number, first exclude all employees who were not employed by the QEZE for at least one-half of the tax year.

For purposes of these instructions, all references to *current tax year* mean the tax year covered by this claim.

Line 1 — For each date specified of the current tax year, enter the number of full-time employees who are located within all EZs 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 tax year (even if you had no employees on those dates) to obtain the current tax year employment number. 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 who are located within all EZs 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 base period employment number. 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.

Example: *A QEZE, a calendar-year filer, begins business in New York on May 1, 2001, and is first certified on January 1, 2003. The QEZE's test date is January 1, 2003. The test year is the tax year ending December 31, 2002. The base period is May 1, 2001 - December 31, 2001, a short tax year. Since March 31, 2001, does not occur during this enterprise's tax year, no entry is made for this date. The QEZE has no employees on June 30, 2001. It hires three employees on July 1, 2001. The QEZE will compute its total number of full-time employees within all EZs in the base period as follows:*

Base period employment number	Tax year ending *(mm-yyyy)*	Mar 31	June 30	Sept 30	Dec 31	Total
Number in base year one	*12-2001*		*0*	*3*	*3*	*6*
Number in base year two						
Number in base year three						
Number in base year four						
Number in base year five						
Total number of full-time employees within all EZs in the base period						*6*

In this example, the employment number within all EZs in the base period would be 2 (six divided by three). The QEZE will divide the total number of full-time EZ employees by the number of dates that occurred in the QEZE's base period. The base period in this instance was only one short tax year.

Line 3 — The EZ employment number for the current tax year (line 1) must equal or exceed the EZ employment number in the base period (line 2) to qualify for the QEZE tax reduction credit. If you marked *No,* you do **not** qualify for the credit. **Do not** complete the rest of this form.

Part 2 — New York State employment outside all EZs

Complete Part 2 in the same manner as you completed Part 1; however, include only those employees who are located outside all EZs but located within New York State. When computing this number, first exclude all employees who were not employed by the QEZE for at least one-half of the tax year.

Line 6 — The employment number in New York State, outside all EZs, for the current tax year (line 4) must equal or exceed the employment number in New York State, outside all EZs, in the base period (line 5) to qualify for the QEZE tax reduction credit. If you marked *No,* you do **not** qualify for the credit. **Do not** complete the rest of this form.

Schedule B — Computation of test year employment number within the EZs in which you are certified

Line 7 — Divide the total number of full-time employees within the EZs 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 your test year employment number. 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 within EZs in which you are certified that were employed by the QEZE for at least one-half of the tax year.

Schedule C — Employment increase factor

The employment increase factor (see *Definitions for all QEZEs* on page 1) cannot exceed 1.0. If your test year employment number is zero, and your current tax year employment number is greater than zero, your employment increase factor is 1.0.

Line 8 — Include on this line the current tax year employment number in the EZs in which you are certified.

Note: If you have employment in an EZ in which you are not certified, your current tax 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 EZs in which you are certified that were employed by the QEZE for at least one-half of the tax year.

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 for all QEZEs* on page 1), whether owned or rented, that is located within the EZs in which you are certified under GML Article 18-B in your current tax year.

Line 14, column B — Enter the QEZE's average value of real and tangible personal property (see *Definitions for all QEZEs* on page 1) located within New York State in your current tax year.

Line 16, column A — Enter the wages paid or accrued by the QEZE to its employees in EZs in which you are certified under GML Article 18-B in the current tax year. Exclude wages paid to general executive officers.

Line 16, column B — Enter the wages paid or accrued 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 — Tax factor

Line 21

Sole proprietors of QEZEs — This is the income from the QEZE (net profit from federal Schedule C and any modifications required under the New York State Tax Law, section 612) that is allocable to New York State and included in your New York adjusted gross income. If the QEZE's income is zero or a loss, the tax factor is zero. The income allocable to New York State is the QEZE's income from New York State sources. For a nonresident of New York State, this is the income from the QEZE included in the *New York State amount* column of your Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*.

Partners of QEZE partnerships — This is the income from the QEZE partnership allocable to New York State and included in New York adjusted gross income. The *income from the partnership* means partnership items of income, gain, loss, deduction, and modifications entering into New York adjusted gross income. If the income from the partnership is zero or a loss, enter ***0*** on line 21. Your tax factor is zero. The income allocable to New York State is the partnership income from New York State sources. This amount should be provided to you by your partnership. For a nonresident of New York State, this is the partnership income from the QEZE included in the *New York State amount* column of your Form IT-203.

Shareholders of New York S corporations that are QEZEs

This is the income from the New York S corporation that is a QEZE, allocable to New York State and included in New York adjusted gross income. Do not include any wages paid to you by the New York S corporation. The income allocable to New York State is the QEZE S corporation's income from New York State sources. This amount should be provided to you by the New York S corporation. For a nonresident of New York State, this is the New York S corporation's income from the QEZE included in the *New York State amount* column of your Form IT-203.

Line 22 — Enter your New York adjusted gross income from Form IT-201, line 33; Form IT-203, line 32, or Form IT-205, item B. However, do not include any losses that were included in the computation of your New York adjusted gross income.

Schedule F — QEZE tax reduction credit

Partners and shareholders — Complete all of Schedule F. The amounts to be entered on lines 25, 26, and 27 should be provided to you by your partnership or New York S corporation. If you belong to more than one partnership or New York S corporation, complete a separate Schedule F for each entity. Transfer the total of all schedules as instructed below line 31.

Line 30 Beneficiaries of estates or trusts — Enter your share of the tax reduction credit from the estate or trust. This amount should be provided to you by the fiduciary of the estate or trust. If you belong to more than one estate or trust, enter the total of all your shares on line 30.

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

An estate or trust must complete Schedule G. 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. Transfer the amount from the *Fiduciary* line of Schedule G, column C, to Form IT-205, line 10.

Schedule H — Related entities

Enter the name and employer identification numbers of all entities related to the QEZE. Attach additional sheets if necessary. See *Related persons* on page 1 to determine entities that are related to the QEZE.

Schedule I — Valid business purpose for QEZEs first certified prior to August 1, 2002

If the QEZE was first certified prior to August 1, 2002, and the base period is zero years or the employment for your base period is zero, and the QEZE is similar in operation and ownership to a business entity (or entities) taxable or previously taxable under Tax Law Article 9, section 183, 184, 185, or 186; Article 9-A; Article 32; Article 33; or a business that would have been subject to tax under Article 23 as it was in effect on January 1, 1980; or a business entity the income or losses of which is (or was) includable under Article 22, then you must attach a notarized statement describing in detail how the QEZE meets the valid business purpose test. For more information see TSB-M-06(2)I.

General information for Section 2 — For QEZEs first certified on or after April 1, 2005

Complete Section 2 **only** if (1) the QEZE was first certified **on or after April 1, 2005** or (2) the QEZE was first certified between August 1, 2002, and March 31, 2005, and its operations are conducted on real property subject to a brownfield site cleanup agreement executed prior to January 1, 2006. Do not complete Section 1.

Eligibility for QEZEs first certified on or after April 1, 2005

A business enterprise that is first certified as eligible to receive benefits under GML Article 18-B **on or after** April 1, 2005, and prior to July 1, 2010, is a QEZE for each of the 10 tax years during its business tax benefit period if in those tax years the business enterprise meets the annual employment test. Owners of qualified investment projects, and significant capital investment projects, may qualify for an extended business tax benefit period. See definitions below. 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, must exceed the employment number determined for the base period.

CEEs (as defined in GML section 959-b) will determine whether the employment test is met by comparing their employment number in NYS for the current tax year to their employment number in NYS for their base period.

There are additional employment requirements for businesses with a base period of zero years or zero employment in the base period. See additional instructions below.

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 EZ, 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.

Base period is the four tax years immediately preceding the tax year in which the QEZE was first certified under GML Article 18-B for QEZEs first certified on or after April 1, 2005. If the business enterprise has fewer than four such years, then the base period is the smaller set of years. If the business enterprise is in its first tax year of doing business in New York State, its base period is zero years.

Business tax benefit period is the 10 tax years beginning with the tax year the QEZE is first certified (see new business definition below for exception for QEZEs that are identical in ownership and operation).

However, owners of qualified investment projects (as defined under GML section 957(s)) that have been approved by the Commissioner of Economic Development, will be allowed an additional business tax benefit period of ten years for purposes of the QEZE tax reduction credit. For these owners, the business tax benefit period is extended to include an additional ten tax years starting when the business enterprise's benefit period commencement date occurs (but only for those years for which the employment test is met).

The benefit period commencement date is determined by an election made by the business enterprise on its report for the tax year that includes the date of certification of the business enterprise at the location of the qualified investment project. The business enterprise can elect either (A) the business enterprise's date of certification under GML Article 18-B at the location of the qualified investment project, or (B) the date when property constituting a qualified investment project is first placed in service. If you choose to make the election under (B), attach a statement to the form. If no election is made, the benefit period commencement date will be (A) as described above.

If a QEZE that is an owner of a qualified investment project is also approved by the Commissioner of Economic Development as the owner of a significant capital investment project (as defined under GML section 957(t)), the business tax benefit period is increased to include an additional ten tax years beginning with the tax year in which the significant capital investment project is placed in service. The property must be placed in service during the business enterprise's business tax benefit period as described above.

If a QEZE is an owner of a qualified investment project, or a significant capital investment project, or both, the business tax benefit period may extend beyond ten years.

Benefit period factor is 1.0.

Schedule J — Employment test for QEZEs first certified on or after April 1, 2005

The *employment test* will be met for a tax year if the business enterprise's employment number in all EZs, whether the business enterprise is certified there or not, exceeds its employment number in all EZs for the base period; and the business enterprise's employment number in New York State for the tax year exceeds its employment number in New York State 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 ESD.

Additional employment test requirements for businesses with a base period of zero years or zero employment in the base period

For a business enterprise first **certified on or after April 1, 2005**, if the base period is zero years or the base period employment is zero and the employment number in the zone is greater than zero in a tax year, the enterprise meets the employment test **only** if the enterprise qualifies as a new business.

New business means any business entity, except one that is substantially similar in operation and in ownership to a business entity taxable, or previously taxable, under Tax Law, Article 9, section 183, 184, 185, or 186; Article 9-A, 32, or 33; Article 23 (or that would have been subject to Article 23 as this article was in effect January 1, 1980); or the income (or losses) of which is (or was) included under Article 22.

A business enterprise that is approved by the Commissioner of Economic Development as the owner of a qualified investment project or a significant capital investment project will be considered a new business for purposes of the QEZE tax reduction credit if

- it has a base period of zero years;
- it has placed property (or a project that includes such property) in service which comprises the qualified investment project or significant investment project; and
- it is certified by December 31, 2007.

For tax years beginning on or after January 1, 2005, a business that is identical in ownership and operation to an existing taxpayer will meet the new business test if the businesses are operating in different counties in the state. The new business **must use the remaining business tax benefit period** of the existing identical taxpayer.

Part 1 — Empire zone (EZ) employment

Compute your employment number within all EZs, whether certified in all zones or not, for the current tax year and the four-year base period. When computing this number, first exclude all employees who were not employed by the QEZE for at least one-half of the tax year. CEEs, do not complete Part 1; complete Part 2 only.

For purposes of these instructions, all references to *current tax year* mean the tax year covered by this claim.

Line 32 — For each date specified of the current tax year, enter the number of full-time employees who are located within all EZs 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 tax year (even if you had no employees on those dates) to obtain the current tax year employment number. Make no entries for any dates that did not occur during your tax year. Do not include those dates in the calculation.

Line 33 — For each date specified of the base period, enter the number of full-time employees who are located within all EZs 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 four-year base period by the number of dates occurring during the four-year base period (even if you had no employees on those dates) to obtain the base period employment number. 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.

Example: *A QEZE, a calendar-year filer, begins business in New York on April 1, 2004, and is first certified on April 1, 2005. The base period is April 1, 2004 - December 31, 2004, a short tax year. Since March 31, 2004, does not occur during this enterprise's tax year, no entry is made for this date. The QEZE has no employees on June 30, 2004. It hires three employees on July 1, 2004. The QEZE will compute its total number of full-time employees within all EZs in the base period as follows:*

Base period employment number	Tax year ending *(mm-yyyy)*	Mar 31	June 30	Sept 30	Dec 31	Total
Number in base year one	*12-2004*		*0*	*3*	*3*	*6*
Number in base year two						
Number in base year three						
Number in base year four						
Number in base year five						
Total number of full-time employees within all EZs in the base period						*6*

In this example, the employment number within all EZs in the base period would be 2 (six divided by three). The QEZE will divide the total number of full-time EZ employees by the number of dates that occurred in the QEZE's base period. The base period in this instance was only one short tax year.

For QEZEs that are first certified on or after April 1, 2005, if the base period is zero years (there are no dates occurring during your base period) or the base period employment is zero 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 defined on page 6.

Line 34 — The EZ employment number for the current tax year (line 32) must exceed the EZ employment number in the base period (line 33) to qualify for the QEZE tax reduction credit. If you marked *No,* you do **not** qualify for the credit. **Do not** complete the rest of this form.

Part 2 — New York State employment

Complete Part 2 in the same manner as Part 1; however, include all employees who are located within New York State (including those located in an EZ). When computing this number, first exclude all employees who were not employed by the QEZE for at least one-half of the tax year.

Line 37 — The employment number in New York State for the current tax year (line 35) must exceed the employment number in New York State for the base period (line 36) to qualify for the QEZE tax reduction credit. If you marked *No,* you do **not** qualify for this credit. **Do not** complete the rest of this form.

Schedule K — Computation of test year employment number within the EZs in which you are certified

Line 38 — Divide the total number of full-time employees within the EZs 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 your test year employment number. 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 within EZs in which you are certified.

Note: CEEs enter the New York State employment number for the test year.

Schedule L — Employment increase factor

The employment increase factor (see *Definitions for all QEZEs* on page 1) cannot exceed 1.0. If your test year employment number is zero, and your current tax year employment number is greater than zero, your employment increase factor is 1.0.

Line 39 — Include on this line the current tax year employment number in the EZs in which you are certified.

Note: If you have employment in an EZ in which you are not certified, your current tax year employment number will not be the same as the number computed on line 32. For purposes of this calculation, you will include only those employees working in EZs in which you are certified that were employed by the QEZE for at least half of the tax year.

Note: CEEs, enter the NYS employment number for the current tax year (line 35) on line 39.

Schedule M — 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 46 and 48 and then dividing the result by two. CEEs, skip lines 45 through 49 and enter 1.0 on line 50.

Line 45, column A — Enter the QEZE's average value of real and tangible personal property (see *Definitions for all QEZEs* on page 1), whether owned or rented, that is located within the EZs in which you are certified under GML Article 18-B in your current tax year.

Line 45, column B — Enter the QEZE's average value of real and tangible personal property (see *Definitions for all QEZEs* on page 1) located within New York State in your current tax year.

Line 47, column A — Enter the wages paid or accrued by the QEZE to its employees in EZs in which you are certified under GML Article 18-B in the current tax year. Exclude wages paid to general executive officers.

Line 47, column B — Enter the wages paid or accrued by the QEZE to its employees located within New York State for the current tax year. Exclude wages paid to general executive officers.

Schedule N — Tax factor

Line 52

Sole proprietors of QEZEs — This is the income from the QEZE (net profit from federal Schedule C and any modifications required under the New York State Tax Law, section 612) that is allocable to New York State and included in your New York adjusted gross income. If the QEZE's income is zero or a loss, the tax factor is zero. The income allocable to New York State is the QEZE's income from New York State sources. For

a nonresident of New York State, this is the income from the QEZE included in the New York State amount column of your Form IT-203, *Nonresident and Part-Year Resident Income Tax Return.*

Partners of QEZE partnerships — This is the income from the QEZE partnership allocable to New York State and included in New York adjusted gross income. The income from the partnership means partnership items of income, gain, loss, deduction, and modifications entering into New York adjusted gross income. If the income from the partnership is zero or a loss, enter ***0*** on line 52. Your tax factor is zero. The income allocable to New York State is the partnership income from New York State sources. This amount should be provided to you by your partnership. For a nonresident of New York State, this is the partnership income from the QEZE included in the New York State amount column of your Form IT-203.

Shareholders of New York S corporations that are QEZEs

This is the income from the New York S corporation that is a QEZE, allocable to New York State and included in New York adjusted gross income. Do not include any wages paid to you by the New York S corporation. The income allocable to New York State is the QEZE S corporation's income from New York State sources. This amount should be provided to you by the New York S corporation. For a nonresident of New York State, this is the New York S corporation's income from the QEZE included in the New York State amount column of your Form IT-203.

Line 53 — Enter your New York adjusted gross income from Form IT-201, line 33; Form IT-203, line 32, or Form IT-205, item B. However, do not include any losses that were included in the computation of your New York adjusted gross income.

Schedule O — QEZE tax reduction credit

Partners and shareholders — Complete all of Schedule O. The amounts to be entered on lines 57 and 58 should be provided to you by your partnership or New York S corporation. If you belong to more than one partnership or New York S corporation, complete a separate Schedule O for each entity. Transfer the total of all schedules as instructed below line 62.

Line 61 Beneficiaries of estates or trusts — Enter your share of the tax reduction credit from the estate or trust. This amount should be provided to you by the fiduciary of the estate or trust. If you belong to more than one estate or trust, enter the total of all your shares on line 61.

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

An estate or trust must complete Schedule P. 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. Include the amount from the *Fiduciary* line of Schedule P, column C, on Form IT-205, line 10.

Schedule Q — Related entities

Enter the name and employer identification numbers of all entities related to the QEZE. Attach additional sheets if necessary. See *Related persons* on page 1 to determine entities that are related to the QEZE.