

## **Legislative Changes to the Empire Zones Program**

Chapter 57 of the Laws of 2009 amended certain provisions of the Tax Law and the General Municipal Law affecting the Empire Zones Program. These changes affect taxpayers claiming Empire Zone (EZ) credits, including Qualified Empire Zone Enterprise (QEZE) credits under Tax Law Articles 9, 9-A, 22, 32, and 33 for tax years beginning on or after January 1, 2008. For purposes of this TSB-M, all references to *Empire Zone credits* or *EZ credits* will mean all Empire Zone (EZ) and Qualified Empire Zone Enterprise (QEZE) tax credits.

Zone Equivalent Area (ZEA) tax credit carryovers are not affected by this legislation.

This TSB-M summarizes the changes to the tax credit provisions. This TSB-M does not address changes to the Qualified Empire Zone Enterprise (QEZE) sales tax exemption or other Empire Zone (EZ) sales tax benefits.

### **General information**

The Empire Zones Program was enacted to provide benefits to taxpayers who conduct business in an Empire Zone. The program provides for several tax credits to businesses that become certified under Article 18-B of the General Municipal Law and meet the eligibility requirements of each credit.

The certification process is administered by Empire State Development. A taxpayer must apply to Empire State Development and receive a *Certificate of Eligibility* before claiming any Empire Zone tax credits.

### **Changes to the General Municipal Law affecting Empire Zone certifications**

Article 18-B of the General Municipal Law was amended to require Empire State Development to review all certified Empire Zone business enterprises and apply new criteria for continued certification of businesses wishing to retain Empire Zone benefits. Empire State Development will issue an EZ retention certificate to businesses meeting the criteria for continued certification. Receipt of the retention certificate does not imply that a business is automatically eligible for all Empire Zone benefits; the Empire Zone business must still meet the eligibility requirements of the credits to continue to receive new credits. For information regarding certification, the review process, and EZ retention certificates, contact Empire State Development. Contact information can be found at [www.empire.state.ny.us](http://www.empire.state.ny.us).

Businesses must obtain the EZ retention certificate to receive any Empire Zone benefits for tax years beginning on or after January 1, 2008. This includes receiving benefits from claims for new credits and claims utilizing carryovers of EZ credits from prior tax years. **Accordingly, when filing a tax return claiming any EZ credits (including carryovers) for a tax year that**

**begins on or after January 1, 2008, you must attach an Empire Zone retention certificate to your tax return.**

Pass-through entities such as partnerships, S corporations, and LLCs should distribute copies of the EZ retention certificate to their partners, shareholders, and members for use in filing their tax returns claiming the EZ credits.

Any business enterprise that does not meet the criteria for continued certification will receive written notification of revocation of its *Certificate of Eligibility*, the reasons for the revocation, and the process for appeals, from Empire State Development.

### **Tax forms that require the EZ retention certificate**

If you are claiming EZ credits and file the following corporation tax or income tax credit forms with your corporate franchise, flow-through entity, or personal income tax return, **you must attach the EZ retention certificate when filing.** The retention certificate is required for all corporations, S corporations, partnerships, LLCs, sole proprietorships, partners, individuals, fiduciaries, estates, trusts, beneficiaries, LLC members and S corporation shareholders that file any of the following forms with their tax returns.

<b>Credit:</b>	<b>Form:</b>
Empire Zone Wage Tax Credit	CT-601 or IT-601
Empire Zone Capital Tax Credit	CT-602 or IT-602
EZ Investment Tax Credit and EZ Employment Incentive Credit	CT-603 or IT-603
QEZE Tax Reduction Credit	CT-604 or IT-604
QEZE Tax Reduction Credit for Corporate Partners	CT-604-CP
EZ Investment Tax Credit and EZ Employment Incentive Credit for the Financial Services Industry	CT-605 or IT-605
QEZE Real Property Tax Credit	CT-606 or IT-606

If any of the above credit claim forms are filed without the EZ retention certificate attached, the credit will be denied, and the return will be processed without the benefit of the credits. Interest will be charged on any resulting underpayment of tax. This applies to all credit claims for tax years beginning on or after January 1, 2008, regardless of when those claims are filed.

Taxpayers who have already filed a tax return for a tax year that began on or after January 1, 2008, claiming new or carryover EZ credits without an EZ retention certificate, must file an amended return with an EZ retention certificate attached to receive their EZ tax credits.

An EZ retention certificate sent to the Tax Department without a tax return, either original or amended, cannot be processed and no credits will be allowed.

Agricultural cooperatives taxable under Article 9 may continue to utilize carryforwards of EZ tax credits without an EZ retention certificate. However, any claims for new EZ credits for agricultural cooperatives for tax years beginning on or after January 1, 2008, must have an EZ retention certificate attached.

### **Penalty, interest, and right to petition provisions for Empire Zone credits added**

For returns filed for a tax year that begins on or after January 1, 2008, through December 31, 2008, the following penalty, interest, and petition provisions apply:

- No penalties will be imposed for failure to pay estimated tax or for substantial understatement of tax liability if an EZ credit is denied because an EZ retention certificate was not issued.
- Interest will be allowed on overpayments of tax on any return in which an EZ credit is claimed beginning with the 180th day after the date that the EZ retention certificate is filed with the Tax Department. However, no interest is payable on any refundable credits.
- Petitions for refund based on EZ tax credits may be filed with the Tax Department beginning six months from the date that an EZ retention certificate was issued to the Empire Zone business enterprise.

### **Empire Zones designation dates changed**

The expiration of the designation of the Empire Zones has changed. The Empire Zone designations are now set to expire on June 30, 2010. Previously, the Empire Zone designations were set to end on June 30, 2011.

### **Clean Energy Enterprise (CEE) certification deadline has changed**

Businesses seeking to become certified in an Empire Zone as a CEE must become certified by June 30, 2010. Previously, businesses seeking certification as a CEE had until December 31, 2011, to become certified.

### **Changes to the Qualified Empire Zone Enterprise (QEZE) real property tax credit**

Effective for taxpayers who are first certified under Article 18-B of the General Municipal Law on or after April 1, 2009, the QEZE real property tax credit calculation is

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changed. These QEZE's will compute the QEZE real property tax credit in the same manner as an entity first certified on or after April 1, 2005. However, the total amount of credit allowed, after applying all limitations, will be multiplied by 75% (.75).

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.