



# Instructions for Form AU-12

## Application for Credit or Refund of Sales or Use Tax – Qualified Empire Zone Enterprise (QEZE)

Read these instructions carefully and complete all applicable sections on the form. We cannot process an incomplete application.

Use Form AU-12 to apply for the new QEZE credit or refund provided by Tax Law section 1119(d), effective for purchases made on or after September 1, 2009. You may still use Form AU-11, *Application for Credit or Refund of Sales or Use Tax*, to claim a credit or refund for qualifying QEZE purchases made before September 1, 2009, and to claim a credit or refund under Tax Law section 1119(a)(6) for tax paid on building materials used in construction, expansion, or rehabilitation of real property located in an empire zone (EZ). For more information, see TSB-M-09(12)S, *Changes to Qualified Empire Zone Enterprise (QEZE) Program (Articles 28 and 29) - Effective September 1, 2009*.

**Note:** You may only file this form once each sales tax quarter.

You must attach all required substantiation and documentation or your claim will not be processed. This includes:

- copy of the *Certificate of Eligibility* issued by Empire State Development (ESD);
- copy of the *Empire Zone Retention Certificate* (EZRC) issued by ESD;
- employment test worksheet (Form AU-12.1, *Employment Test for Businesses Certified by Empire State Development (ESD) Before April 1, 2005*; AU-12.2, *Employment Test for Businesses Certified by Empire State Development (ESD) On or After April 1, 2005, and Before April 1, 2009*; or AU-12.3, *Employment Test for Businesses Certified by Empire State Development (ESD) On or After April 1, 2009*);
- documentation regarding your claim as described in *Basis for claim*; and,
- substantiation of your claim (invoices, receipts, proof of payment of tax).

**Note:** Use Form FT-500, *Application for Refund of Sales Tax Paid on Automotive Fuels*, to apply for a refund of tax paid on qualifying purchases of motor fuel or diesel motor fuel.

### Who may file

You may apply for a credit or refund of sales tax paid on qualifying purchases if you are a QEZE for sales and use tax purposes and you meet the criteria below.

If you were certified by ESD **before** April 1, 2009, you must have:

- applied for and received Form DTF-81, *Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification*;
- received your EZRC from ESD; and
- passed the employment test for the tax year ending before the period covered by this claim.

If you meet these qualifications, you may use this form to claim a credit or refund for tax paid on qualifying purchases.

If you were certified by ESD **on or after** April 1, 2009, you must have:

- received your EZRC from ESD; and
- passed the employment test for the tax year ending before the period covered by this claim.

If you meet these qualifications, you may use this form to claim a credit or refund for tax paid on qualifying purchases, but **only** if the qualifying purchase is made in a locality that has elected to provide the credit. For more information, see Publication 718-QZ, *Qualified Empire Zone Enterprise (QEZE) Sales and Use Tax Refund Rates*.

### Applicant information

Enter the address for the EZ location where the items or services are being used. This may or may not be the main, or primary, address of the business. If you are requesting a refund for qualifying purchases made for more than one EZ location, attach a list containing the addresses of all EZ locations included in this claim.

If you are registered for New York State sales tax and a portion of the claim is to be applied as a credit on your sales tax return and the balance is requested as a refund, state these amounts separately in the applicable boxes.

### Basis for claim

Mark an **X** in each appropriate box.

**A** – The property or service must be directly and predominantly (at least 50%) used or consumed by the QEZE in an EZ in which the QEZE has qualified for benefits. The credit or refund does not apply to purchases of taxable food and drink (items such as sandwiches, heated food, heated drink, or restaurant meals). The credit or refund also does not apply to rent for hotel occupancy or charges for admission to a place of amusement.

**B** – The utility services must be directly and exclusively (100%) used or consumed by the QEZE in an EZ in which the QEZE has qualified for benefits. This includes gas, electricity, refrigeration, and steam, and gas, electric, refrigeration, and steam services of whatever nature.

**C** – The telephony and telegraphy, telephone and telegraph services, or telephone answering services must be delivered and billed to the QEZE at an address in an EZ in which the QEZE has qualified for benefits.

**D** – The vehicle must be predominantly (at least 50%) used by the QEZE in an EZ in which the QEZE has qualified for benefits. Predominant use in EZs will occur if any one of the following conditions is met:

- At least 50% of the vehicle's use is exclusively in such zones.
- At least 50% of the vehicle's use is in activities originating or terminating in such zones.
- At least 50% of the vehicle's use is a combination of use exclusively in such zones and in activities originating or terminating in such zones.

The QEZE may choose to compute the usage of the vehicle based on either hours of use or miles traveled. This QEZE credit or refund pertaining to motor vehicles also applies to the special taxes imposed under Tax Law Article 28-A on passenger car rentals.

**E** – Certain tangible personal property related to a motor vehicle; the motor vehicle must be used predominantly (at least 50%) by a QEZE in an EZ in which the QEZE has qualified for benefits, as described in box D. Examples of tangible personal property related to a motor vehicle include a battery, an engine, engine components, a muffler, tires and similar tangible personal property used in or on a motor vehicle.

### Employment test

You must pass an employment test at the end of every tax year (calendar or fiscal) to determine if you qualify for QEZE sales tax benefits for the next tax year. The effective date from your *Certificate of Eligibility* (issued by ESD) determines which worksheet you need to include:

- Form AU-12.1 if you were certified by ESD before April 1, 2005
- Form AU-12.2 if you were certified by ESD between April 1, 2005, and April 1, 2009

- Form AU-12.3 if you were certified by ESD on or after April 1, 2009

If you were certified before April 1, 2009, complete the employment test using your base period information from your application for QEZE sales tax certification filed with the Tax Department (Form DTF-80, *Application for a Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification*; DTF-82, *Application for a Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification — For businesses certified by Empire State Development before August 1, 2002*; DTF-83, *Application for a Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification — For businesses certified by Empire State Development on or after August 1, 2002, and before April 1, 2005*; or DTF-84, *Application for a Qualified Empire Zone Enterprise (QEZE) Sales Tax Certification — For businesses certified by Empire State Development on or after April 1, 2005, and before April 1, 2009*). If you have not yet filed an application with the Tax Department for QEZE sales tax certification, you **must** do so before filing a claim for credit or refund.

If you were certified on or after April 1, 2009, you are not required to file an application for QEZE sales tax certification with the Tax Department. Form AU-12.3 contains all of the entry fields you need to complete the test.

If you have more than one EZ location, use the effective date from your first (earliest) *Certificate of Eligibility* to determine which worksheet you need to file.

You must complete and pass the employment test using your employment numbers for the tax year ending **before** the period covered by this application to qualify for the credit or refund being claimed. Once you have completed the employment test worksheet for a tax year, attach a copy of that worksheet to any subsequent claim for credit or refund to which that employment test applies.

If your credit or refund claim covers periods from more than one tax year, you must complete and attach employment test worksheets for each tax year required.

**Example:** A business was certified by ESD with an effective date of February 15, 2008, on its Certificate of Eligibility. The business applied for and received QEZE sales tax certification from the Tax Department effective October 1, 2008. The business files taxes on a calendar year basis.

*At the end of December 2008, the business completed the employment test for the 2008 tax year (January through December 2008) and determined that it qualifies for QEZE sales tax benefits for 2009.*

*At the end of December 2009, the business completed the employment test for the 2009 tax year (January through December 2009) and determined that it qualifies for QEZE sales tax benefits for 2010.*

*In March 2010, the business files Form AU-12 to claim a refund of tax paid on qualifying purchases made during September through December 2009 and for January through February 2010. When filing Form AU-12 to claim the refund, it must complete and attach Form AU-12.2 for the 2008 tax year to support its claim for a refund for the September through December 2009 period, and Form AU-12.2 for the 2009 tax year to support its claim for a refund for the January through February 2010 period.*

*In June 2010, the business files Form AU-12 to claim a refund of tax paid on qualifying purchases made during March through May 2010. When filing Form AU-12 to claim the refund, it must attach a copy of its Form AU-12.2 for the 2009 tax year to support the refund claimed.*

## Documentation

If the supporting documents do not show the vendor's name and address, or if the location of the transaction was different from the vendor's place of business, you must include the vendor's name and the location where the transaction occurred (generally,

where you took title or possession) with the invoices or receipts substantiating tax paid.

Send all documents necessary to substantiate this claim (e.g., invoices, receipts, proof of payment of tax, etc.). Photocopies are acceptable. Failure to send any required documents will result in the return of the application. Submit documents in a format suitable to determine the correct amount of credit or refund.

All documentation must clearly identify the purchaser. Cash receipts, register tapes, or other forms of receipts or invoices that do not identify the purchaser may not be accepted.

If the invoices and credit memoranda to be submitted are extensive, you may submit a summary in table form or schedule. The summary or schedule should contain all pertinent information concerning these documents, such as invoice number, date of invoice, name of purchaser or supplier, item sold or purchased, amount of invoice excluding tax, amount of tax billed, taxing jurisdiction where sale or purchase was made, and the reason the claimant is entitled to a credit or refund.

A sampling of documents may be requested to verify any summary submitted.

## Representative

When the representative listed is not the claimant (or the owner, partner or an officer of the business listed as the claimant), he/she must file a properly completed Form POA-1, *Power of Attorney*, authorizing him/her to act on the claimant's behalf and to receive information pertaining to the application for credit or refund.

## When to file





File the application for credit or refund within three years after the date the tax was payable to the Commissioner of Taxation and Finance. You cannot file for a credit or refund more than once every sales tax quarter.

## Where to file

Mail your completed application and all required substantiation and documentation to:

**NYS TAX DEPARTMENT  
TDAB – SALES TAX REFUNDS  
W A HARRIMAN CAMPUS  
ALBANY NY 12227**

### Need help?

	<b>Internet access:</b> <a href="http://www.nystax.gov">www.nystax.gov</a> (for information, forms, and publications)	
	<b>Fax-on-demand forms:</b>	1 800 748-3676
	<b>Sales Tax Information Center:</b>	(518) 485-2889
	In-state callers without free long distance:	1 800 698-2909
	To order forms and publications:	(518) 457-5431
	In-state callers without free long distance:	1 800 462-8100
	<b>Text Telephone (TTY) Hotline</b> (for persons with hearing and speech disabilities using a TTY):	1 800 634-2110

**Privacy notification** — The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.