



ECONOMIC  
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DEVELOPMENT

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## Update on QEZE Sales Tax Benefits

The New York State Department of Taxation and Finance issued an informational statement regarding the recent changes made which affect sales tax benefits currently available to eligible Qualified Empire Zone Enterprises (QEZE). The changes are summarized below.

Elimination of Upfront Exemption. Effective September 1, 2009, a QEZE must begin paying full New York State and local sales taxes on its purchases. Regardless of when certified, a QEZE can no longer claim a point-of-purchase exemption from tax for purchases made on or after this date, and *Form ST-121.6, Qualified Empire Zone Enterprise (QEZE) Exempt Purchase Certificate*, is invalid. A QEZE currently holding a *DTF-81, QEZE Sales Tax Certificate*, can continue to claim an exemption from tax using *Form ST-121.6* only through August 31, 2009.

Notification to Vendors. QEZEs who have issued *Form ST-121.6* to vendors to be used as a blanket certificate must notify vendors that the certificate is no longer valid as of September 1, 2009.

Applying for Refund or Credit. A QEZE that has been issued an Empire Zone Retention Certificate and meets all eligibility requirements under the Tax Law can apply for a refund or credit of tax paid on qualifying purchases. Eligibility for a refund or credit for purchases made on or after September 1, 2009, is dependent upon the following circumstances:

- A QEZE with a certification date before April 1, 2009, which has been issued a *DTF-81* is eligible once it has received its Empire Zone Retention Certificate. The sales tax benefit period continues to run for 120 consecutive months from the effective date on the *DTF-81*. The QEZE is required to pass the employment test for the tax year in which a refund or credit is claimed.
- A QEZE with a certification date before April 1, 2009, which has received an Empire Zone Retention Certificate but has not applied for a *DTF-81* is eligible once it applies for and receives a *DTF-81*. The sales tax benefit period will run for 120 consecutive months from the effective date on the *DTF-81*. The QEZE is required to pass the employment test for the tax year in which a refund or credit is claimed.

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- A QEZE with a certification date on or after April 1, 2009, is eligible for a refund or credit on tax paid on qualifying purchases beginning the first month **after** its certification date (based on the date on the Certificate of Eligibility and the Empire Zone Retention Certificate) **only if the locality in which the purchase is made has elected to provide this refund/credit**. Currently this is limited to the following cities/counties: Alleghany, Auburn, Buffalo, Erie, Herkimer, and Niagara. The QEZE is required to pass the employment test for the tax year in which a refund or credit is claimed.

#### Further Information.

- A new form is being created by the Tax Department which must be used for all refund claims with the exception of refunds allowed for tax paid on building materials used in the construction, expansion, or rehabilitation of real property located in an Empire Zone. We will forward the new form to you as soon as it is available. *Form AU-11, Application for Credit or Refund of Sales or Use Tax*, should continue to be used only for refunds allowed for tax paid on building materials used in the construction, expansion, or rehabilitation of real property located in an Empire Zone.
- Only one claim for refund can be filed for each sales tax quarter, and **no refund applications will be approved or paid prior to January 2, 2010**. QEZE's that are also registered for sales and use tax purposes (ie: QEZE's that are required to collect sales tax on certain sales) may (i) begin claiming the credits for qualifying purchases beginning with the December 1, 2009, through February 28, 2010, reporting period, and (ii) claim the credit on their periodic sales and use tax returns as long as they are not filed more often than quarterly. The Tax Department is developing a schedule to be used to claim the credit. Again, we will forward this schedule and any further information to you as soon as it becomes available.
- No interest is payable on any claim for refund. ■

*If you require further information regarding the information presented in this Legal Alert and its impact on your organization, please contact any of the members of the Practice Area listed on the front of this Alert.*