



# Department of Taxation and Finance

Technical Memorandum  
**TSB-M-10(9.1)C, (15.1)I**  
Corporation Tax  
Income Tax  
April 7, 2016

## New York State Tax Treatment of Refunds of Certain New York Business Tax Credits

This memorandum provides guidance on the New York State tax treatment of certain refunds or credits to estimated tax when the refund or credit must be included in income on a taxpayer's federal tax return.

### Background

For federal income tax purposes, the Internal Revenue Service (IRS) previously determined that all or a portion of the qualified empire zone enterprise (QEZE) credit for real property taxes that is refunded, or credited as an overpayment to estimated tax, is considered income to the taxpayer. Accordingly, all or a portion of any refund or the amount credited to estimated tax from this credit may have to be included in the taxpayer's federal taxable income (FTI) or federal adjusted gross income (FAGI). (See [TSB-M-10\(9\)C, \(15\)I](#), *New York State Tax Treatment of Refunds of the Qualified Empire Zone Enterprise (QEZE) Credit for Real Property Taxes.*)

Recently, the IRS determined that all or a portion of the empire zone (EZ) investment tax credit and the EZ wage tax credit that are refunded or credited as an overpayment to estimated tax are considered income to the taxpayer and must be included in the taxpayer's FTI or FAGI.

**Note:** The portion of these credits that is applied to reduce a taxpayer's New York State tax and not refunded or credited as an overpayment to estimated tax is not considered income for federal tax purposes and is not included when computing a taxpayer's FTI or FAGI.

### Tax treatment for New York State purposes

For New York State corporate franchise tax and personal income tax purposes, refunds of New York State business tax credits are considered refunds of franchise tax or income tax. Accordingly, under existing New York State law, the amount of the refund of these credits included in a taxpayer's FTI or FAGI is not taxable to New York State. Therefore, New York State taxpayers are allowed a subtraction modification for that refund amount in computing their New York taxable income.

For information on how to apply the subtraction modification for tax years 2015 and after, see:

- [Form CT-225](#), *New York State Modifications* and [its instructions](#) for corporate franchise tax,

- [Form CT-225-A](#), *New York State Modifications*, [Form CT-225-A/B](#), *Subsidiary Detail Spreadsheet*, and the [instructions](#) for these forms for combined filers of corporate franchise tax, and
- [Form IT-225](#), *New York State Modifications* and [its instructions](#) for personal income tax.

For tax years prior to 2015, see the instructions for reporting subtraction modifications on the corporate franchise tax return or personal income tax return being filed. The subtraction modification code provided for the QEZE credit for real property taxes should also be used for reporting a subtraction modification for the EZ investment tax credit and the EZ wage tax credit for years prior to 2015.

#### **Amended return requirements for corporate franchise taxes**

- In general, a corporation that is filing an amended federal return to include a refund of New York State business tax credits in the corporation's FTI must also file an amended New York State return within 90 days to report the change. The corporation must file an amended New York State return even if there is no change in its New York State tax liability for that year.

**Note:** For tax years prior to January 1, 2015, Article 33 and former Article 32 taxpayers included on a combined return must file an amended New York State return within 120 days. For tax years beginning on or after January 1, 2015, Article 9-A and Article 33 taxpayers included on a combined return have 120 days to file an amended New York State return.

- A corporation that receives a notice of federal audit changes due to a refund of New York State business tax credits not being properly included in the corporation's FTI must report the change to the Tax Department within 90 days (120 days for taxpayers filing a combined return) of the final federal determination. The corporation must file an amended New York State return even if there is no change in its New York State tax liability for that year.
- A corporation that filed an original or an amended New York State corporate franchise tax return and properly included a refund of New York State business tax credits in the corporation's FTI, but did not subtract that refund amount when computing its income, should file an amended New York State return to claim a refund for any tax year within the statute of limitations.

When completing an amended corporate franchise tax return, the subtraction modification code provided for the QEZE credit for real property taxes should be used for reporting a subtraction modification for the EZ investment tax credit and the EZ wage tax credit for tax years prior to 2015.

#### **Amended return requirements for personal income tax**

- A taxpayer who must file an amended federal return to include a refund of New York State business tax credits in the taxpayer's FAGI or FTI must also file an amended New York State return within 90 days to report the change.

- A taxpayer who receives a notice of federal audit changes due to a refund of New York State business tax credits not being properly included in the taxpayer's FAGI or FTI is required to report the changes to the Tax Department within 90 days of the final federal determination. An amended New York State return must be filed even if there is no change in the taxpayer's New York State tax liability for that year.
- A taxpayer who filed an original or an amended New York State income tax return and properly included a refund of New York State business tax credits in the taxpayer's FAGI or FTI, but did not subtract that refund amount when computing the taxpayer's New York adjusted gross income or New York taxable income, should file an amended New York State return to claim a refund for any tax year within the statute of limitations.

When completing an amended personal income tax return, the subtraction modification code provided for the QEZE credit for real property taxes should also be used for reporting a subtraction modification for the EZ investment tax credit and the EZ wage tax credit for tax years prior to 2015.

### **Future IRS determinations**

If the IRS determines that other New York business tax credits that are refunded or credited as an overpayment to estimated tax are considered income to the taxpayer, these additional credits will also be allowed a subtraction modification on a New York State return.

See [New York State tax treatment of refunds of certain New York business tax credits](#) on the Tax Department website for the most up-to-date list of credits for which a subtraction modification is allowed.

**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.