

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-11(4)C
Corporation Tax
February 28, 2011

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C110106A

On January 6, 2011, the Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED]. Petitioner, an entity certified under Article 18-B of the General Municipal Law (GML) before the Empire Zones (EZ) Program expired, asks whether it will be eligible to apply for EZ tax benefits, derived from a new location, if the company expands to an additional site within the boundaries of the EZ in which it was certified.

We conclude that the company may continue to be eligible for the EZ tax benefits resulting from activity at both its current and its new location, so long as Petitioner meets the requirements of the statutes.

Facts

Petitioner was certified in the EZ Program, effective July 2, 1996 and received an EZ retention certificate from the Department of Economic Development (DED) in June 2009. Although the EZ Program has expired, Petitioner would like to expand its operations to another property that is located in the same EZ in which the Petitioner was certified prior to the sunset of the Program and claim tax benefits derived from both locations for the balance of its benefit periods.

Analysis

In order to expand its business, Petitioner would like to acquire a new building in the zone in which it was certified. Petitioner plans to continue operations in its current location as well. Once the EZ Program terminated, however, DED lost its legal authority to amend Petitioner's Certificate of Eligibility to include an additional building. Petitioner asked whether the operations in the prospective building will fail to be eligible for the EZ credits, because that building is not listed on its Certificate of Eligibility.

Although the EZ Program terminated on June 30, 2010, for purposes of the qualified EZ enterprise (QEZE) tax credits, the designation of each EZ was extended for businesses that were certified in a zone under Article 18-B of the General Municipal Law on or before the sunset date. Those businesses were also deemed to continue to be certified until the end of their benefit periods.¹ Subsequently, an extension of benefits was granted for purposes of the EZ investment tax credit (EZ ITC), the EZ employment incentive credit (EZ EIC), the EZ capital tax credit, and the QEZE sales and use tax refund or credit.²

For purposes of the qualified EZ enterprise (QEZE) real property tax credit (RPTC) and QEZE tax reduction credit (TRC), the benefit period for Petitioner is the 15 taxable years beginning on or after

¹ Tax Law §14(k).

² Chapter 57, Part R, of the Laws of 2010.

January 1, 2001.³ For purposes of the QEZE sales and use tax credit or refund, the benefit period is the 120 months beginning on the later of (a) March 1, 2001 or (b) for business enterprises certified prior to April 1, 2009, the first day of the month next following the date of issuance of the QEZE certification by the Commissioner of the Department of Taxation and Finance.⁴ For purposes of the EZ investment tax credit (EZ ITC), Petitioner will be deemed certified in the former zone until April 1, 2014.⁵ For purposes of the EZ employment incentive credit (EZ EIC), Petitioner will be deemed certified for the 3 years next succeeding the year in which EZ ITC is or was claimed.⁶ For purposes of the EZ capital tax credit, a taxpayer that has made a contribution to an approved community development project on or before the day immediately preceding the day the EZ expired shall be deemed eligible to claim the EZ capital tax credit for additional contributions to that project made prior to April 1, 2014.⁷

We conclude that Petitioner may claim the credits for operations in both locations for the balance of its benefit periods, so long as it is in compliance with the requirements of the statutes. Petitioner, operating in its current and new locations, would be the same taxpayer that was certified prior to sunset of the EZ Program. There would be no change in ownership of the business or Petitioner's business structure when the new location is acquired. Thus, Petitioner may include its acquisition of and expansion to a new location within the boundaries of a previously designated EZ in which Petitioner was certified in the calculation of its EZ tax benefits for the remainder of its benefit period for purposes of the QEZE tax benefits and for the period allowed by the law with respect to the other EZ tax credits.

The fact that DED will not amend the Petitioner's Certificate of Eligibility does not affect the Petitioner's eligibility under the law to claim EZ tax benefits. However, the Petitioner will be required to demonstrate that the new location is included within the boundaries of the Empire Zone in which it was certified.

DATED: February 28, 2011

/S/

DANIEL SMIRLOCK
Deputy Commissioner and Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.

³ Tax Law §14(a)(1) and §14(e).

⁴ Tax Law §14(a)(2).

⁵ Tax Law §210.12-B(h).

⁶ Tax Law §210.12-C(e).

⁷ Tax Law 210.20(f).