

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-93 (9) C
Corporation Tax
March 17, 1993

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C921113A

On November 13, 1992, a Petition for Advisory Opinion was received from Richard W. Genetelli, c/o Genetelli & Associates, 400 Madison Avenue, Suite 907, New York, New York 10017.

The issue raised by Petitioner, Richard W. Genetelli, is how to compute the amount of eligible business facility credit allowable in a taxable year under section 210.11 of the Tax Law based on the facts herein.

A taxpayer owns a facility in New York City which qualifies as an eligible business facility. The facility is the taxpayer's headquarters. The taxpayer also has a branch in Albany, New York that is not a qualified eligible business facility. Because the headquarters are in New York City, Petitioner contends that the employees in the Albany branch are controlled by the New York City facility and that the wages of employees serving in jobs in the Albany branch should be included in eligible wages for purposes of computing the eligible business facility credit.

In the current taxable year, the taxpayer reported the following facts:

- 1) value of property as defined in section 210.11(d) of the Tax Law and included in the eligible business facility in New York City - \$1,000,000;
- 2) average value of real and tangible personal property (excluding inventory) located in New York State - \$5,000,000;
- 3) wages, salaries and other personal service compensation of employees (excluding general executive officers) serving in jobs created or retained in the eligible business facility in New York City - \$200,000;
- 4) wages, salaries and other personal service compensation of employees (excluding general executive officers) serving in jobs created or retained in the New York City eligible business facility and serving in jobs in the Albany branch - \$400,000;
- 5) wages, salaries and other personal service compensation of all employees (excluding general executive officers) within New York State - \$800,000; and
- 6) tax due before application of eligible business facility credit - \$100,000.

For purposes of this example, no limitations on the eligible business facility credit are to be considered.

Section 210.11(a) of the Tax Law provides that a credit against the tax imposed by Article 9-A of the Tax Law is allowed to a taxpayer owning or operating an eligible business facility where such taxpayer has received a certificate of eligibility for tax credits, or a renewal or extension thereof, for such facility from the New York State Job Incentive Board prior to April 1, 1983, or has received a certificate of eligibility for tax credits, or a renewal or extension thereof, for such facility from the Commissioner of Taxation and Finance subsequent to such date pursuant to section 210.ii(h) of the Tax Law, and only with respect to such facility.

Section 210.11(b) of the Tax Law provides that the amount of the eligible business facility credit allowable in any taxable year is determined by multiplying the tax otherwise due by a percentage determined by the following method:

- (1) ascertaining the percentage which the total of eligible property values during the period covered by its report as defined in paragraph (d) of this subdivision, bears to the average value of all the taxpayer's real and tangible personal property except for inventory within the state during such period
- (2) ascertaining the percentage which the total wages, salaries and other personal service compensation during such period, of employees, except general executive officers, serving in jobs created or retained in an eligible area (as the term "eligible area" was defined by section one hundred fifteen of the commerce law as it existed on March thirty-first, nineteen hundred eighty-three) by such business facility, bears to the total wages, salaries and other personal service compensation, during such period, of all the taxpayer's employees within the state, except general executive officers.
- (3) adding together the percentages so determined and dividing the result by two....

For purposes of section 115 of the Commerce Law, as it existed on March 31, 1983, the term "eligible area" included every county in New York State.

Section 5-1.1 of the Business Corporation Franchise Tax Regulations (hereinafter "Article 9-A Regulations") provides that the certificate of eligibility, or a renewal or extension thereof, that is issued to an eligible business facility for each taxable year, states the total amount of the eligible property values and eligible wages, salaries and other personal service compensation that are used in computing the tax credit.

Accordingly, the numerators of the property and payroll percentages for computing the eligible business facility credit are the amounts stated as eligible property value and eligible wages, respectively, on the Certificate of Eligibility for tax credits issued for that taxable year.

Section 210.11(h) of the Tax Law provides that the Commissioner of Taxation and Finance shall issue a certificate of eligibility for tax credits to a taxpayer for an eligible business facility with regard to which such taxpayer has prior to July 1, 1983 received from the New York State Job Incentive Board initial approval of an application for such certificate and to renew, extend, revoke or modify a certificate of eligibility for tax credits.

Appendix 1 of the Article 9-A Regulations provides the rules regarding the administration of the tax credit portion of the Job Incentive Program. Subdivision (a) of such Appendix 1 defines "eligible business facility" as a place of business which meets the requirements of section 118 of the Commerce Law as such section existed on March 31, 1983. It is the business facility at the identical location with regard to which a taxpayer has received initial approval and shall encompass one or more structures, or a substantial part or parts thereof, in which an identifiably separable business activity or activities are performed.

Before the Commissioner of Taxation and Finance can issue a certificate of eligibility for tax credits, a taxpayer must submit an affidavit of compliance (form CT-45.2 - Affidavit of Compliance for a Certificate of Eligibility). Pursuant to subdivision (a) of Appendix 1 of the Article 9-A Regulations, such affidavit includes the information necessary for the determination of original or continuing eligibility.

Subdivision (d)(2) of Appendix 1 of the Regulations provides that:

For purposes of the computation of the wage factor of the eligible business facility credit in which total wages, salaries or other personal service compensation of employees serving in jobs created or retained by the business facility are included (see sections 5-1.2[a][2] ... of this Title):

(i) The number of jobs created shall be the amount by which the number of jobs for the applicable taxable year exceeds the number of jobs at the time of the commencement of the project as stated on its application for initial approval.

(ii) The number of jobs retained shall be an amount equal to the number of jobs for which approval for job retention was given by the Job Incentive Board for purposes of the computation of the credit when:

(a) subparagraph (1)(i) of this subdivision is met, where initial approval was based on the creation of five or more jobs and approval for job retention was given by the Job Incentive Board for purposes of the computation of the credit; or

(b) clause (1) (ii) (a) or (1) (ii) (b) of this subdivision is met, where initial approval was based on the retention of five or more jobs and approval for job retention was

given by the Job Incentive Board for purposes of the computation of the credit.

Subdivision (a) of Appendix 1 of the Article 9-A Regulations also provides that:

(4) Initial approval means the preliminary approval by the Job Incentive Board of an application for a certificate of eligibility, as evidenced by the minutes of the Job Incentive Board meeting at which such initial approval was granted or by a letter of intent issued by the Job Incentive Board to the applicant pursuant to 5 NYCRR 102.4.

(5) Initial approval was based on the creation of five or more jobs means such initial approval was given by the Job Incentive Board to an applicant that had stated in its application for initial approval that it would increase the number of jobs at its facility by at least five.

(6) Initial approval was based on the retention of five or more jobs means such initial approval was given by the Job Incentive Board to an applicant that had not stated in its application for initial approval that it would increase the number of jobs at its facility by at least five (emphasis added)

When a taxpayer completes its affidavit of compliance (form CT-45.2) for the purpose of receiving a certificate of eligibility for tax credits, pursuant to Appendix 1 of the Article 9-A Regulations, the taxpayer submits the required information with respect to the wages, salaries or other personal service compensation of employees (other than general executive officers) serving in jobs created or retained at the business facility. This does not include jobs located in an eligible area that did not receive initial approval by the Job Incentive Board. That is, jobs that are located in New York State that are assigned outside the eligible business facility are not jobs created or retained by the eligible business facility.

Herein, based on the facts presented, the taxpayer's affidavit of compliance would state that the total eligible property value is \$1,000,000 (fact 1) and the total qualified wages, salaries and other compensation is the \$200,000 representing the wages, salaries and other personal service compensation of employees serving in jobs created or retained in the eligible business facility in New York City (fact 3). If the Commissioner of Taxation and Finance, determines that the business facility satisfies the requirements of section 118 of the Commerce Law as it existed on March 31, 1983, he would issue a certificate of eligibility for tax credits stating that the amount of eligible property value is \$1,000,000 and the amount of eligible wages is \$200,000 which is the wages, salaries and other personal service compensation of employees serving in jobs created or retained in the eligible business facility in New York City.

Accordingly, the taxpayer's eligible business facility credit for the taxable year is computed as follows:

(1) Property percentage: $\$1,000,000 \text{ (fact 1)} + \$5,000,000 \text{ (fact 2)} = 20\%$

- (2) Payroll percentage: $\$200,000$ (fact 3) + $\$800,000$ (fact 5) - 25%
- (3) Sum of the percentages: $\text{line}(1) + \text{line}(2) = 45\%$
- (4) Average of the percentages: $45\% + 2 = 22\ 1/2\%$
- (5) Tax Due before application
of the eligible business
facility credit (fact 6) = $\$100,000$
- (6) Eligible business facility credit = $\text{line}(5) \times \text{line}(4) = \$22,500$
- (7) Tax due: $\text{line}(5) - \text{line}(6) = \$77,500$

DATED: March 17, 1993

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.