

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

TSB-A-12(7)C
Corporation Tax
TSB-A-12(32)S
Sales Tax
December 6, 2012

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z120504A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner). Petitioner asks whether liquidation of its subsidiary into the parent, Petitioner, would result in the loss of Empire Zone (EZ) tax benefits, when the subsidiary was the entity that was certified under Article 18-B of the General Municipal Law (GML).

We conclude that Petitioner will continue to be eligible for EZ tax benefits after the liquidation of its subsidiary for the duration of the subsidiary's benefit period, provided that Petitioner meets the requirements in the Tax Law and obtains a certificate of eligibility and an EZ Retention Certificate (EZRC) from the Department of Economic Development (DED).

Facts

Petitioner owned 100% of a New York C corporation (Subsidiary) that was certified under Article 18-B of the GML, effective June 19, 2003. On June 1, 2010, Subsidiary underwent an Internal Revenue Code (IRC) section 332 liquidation and merged into Petitioner, its parent corporation. After the merger, Subsidiary's business operations continued as a division of Petitioner. Petitioner maintains the same facility and employees in the former EZ.

Analysis

You have asked whether the EZ certification and tax benefits maintained by Subsidiary prior to the merger will be available to Petitioner after the merger. In order to be eligible to claim the EZ tax benefits, a business enterprise must be certified under Article 18-B of the GML and meet the specific requirements in the Tax Law. The DED Commissioner is authorized to certify a business enterprise under Article 18-B which qualifies the business enterprise to participate in the EZ program.¹ The Department of Taxation and Finance (DTF) is charged with ensuring that the business enterprise is in compliance with the Tax Law. If Petitioner continues to be certified by DED after the merger, DTF will accept a copy of Petitioner's Certificate of Eligibility and EZRC, issued by DED, as evidence that Petitioner is certified. Petitioner must also meet the requirements of the Tax Law in order to claim the EZ tax benefits. If Petitioner is certified by DED and annually meets the employment test under Tax Law §14(b)(4), it will be eligible to

¹ §959(a) of the GML.

claim the tax credits for the remainder of its benefit period, provided that it meets the other requirements for the credit(s) in the Tax Law.

DATED: December 6, 2012

/S/

DEBORAH R. LIEBMAN
Deputy 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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.