

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

TSB-A-13(1)C
Corporation Tax
TSB-A-13(2)I
Income Tax
January 8, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. Z120403A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its Empire Zone (EZ) certification under Article 18-B of the General Municipal Law (GML) and its accompanying eligibility for EZ tax benefits will survive and remain in full force and effect if it changes its ownership structure as outlined below.

We conclude that Petitioner will be eligible to claim the EZ tax benefits after the proposed change in its ownership structure for the remainder of its benefit period, provided that the Department of Economic Development (DED) continues its certification under Article 18-B of the GML and it meets the requirements in the Tax Law.

Facts

Petitioner is a multi-member New York State (NYS) Limited Liability Company (LLC) which is treated as a partnership for Federal income tax purposes. Petitioner is currently owned 50% by a NYS resident (Individual) and 50% by a foreign corporation (Corporation) that files Federal Form 1120-F and NYS Form CT-3 reporting its member interest activity in Petitioner. The Individual is the manager of the LLC and files Federal Form 1040 and NYS Form IT-201. Petitioner is a qualified Empire Zone enterprise (QEZE) that was certified under Article 18-B of the General Municipal Law (GML), effective October 8, 2008, and subsequently, Petitioner was issued an EZ Retention Certificate (EZRC).

The Corporation proposes to transfer its 50% LLC member interest to the Individual, who would then own and control 100% of Petitioner. The Corporation will recapture and remit the required amount of EZ tax credits upon the transfer of its 50% LLC member interest. Immediately after the transfer of the Corporation's member interest to the Individual, the Individual will give a 51% member interest in Petitioner to the Individual's spouse. After the conveyance, the Individual will own directly a 49% member interest in Petitioner and his spouse will own directly a 51% interest in Petitioner. The Petitioner's business will continue to operate after the proposed transfer in the same manner as it did prior to the proposed transfer.

Analysis

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 Commissioner of the Department of Economic Development is authorized to certify a business enterprise under Article 18-B which qualifies the business enterprise to participate in the EZ program,¹ and Petitioner should contact DED to confirm that its certification will be retained after a change in ownership. The Department of Taxation and Finance (DTF) is charged with insuring that the business enterprise is in compliance with the Tax Law. If Petitioner continues to be certified by DED after the proposed transfers of the member interests outlined above, 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 remains certified by DED and annually meets the employment test under Tax Law §14(b)(4), it will be eligible to claim the qualified EZ enterprise (QEZE) tax credits for the remainder of its benefit period, provided that it meets the other requirements of the credits in the Tax Law.

DATED: January 8, 2013

/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.

¹ §959(a) of the GML.