

Legislative Changes to the Empire Zones Program

Chapter 57 of the Laws of 2010 made several amendments to the Empire Zones Program. These amendments clarify the effective date of a revoked certification, amend the definition of taxes for purposes of the Qualified Empire Zone Enterprise (QEZE) credit for real property taxes, and provide transitional rules due to the expiration of the Empire Zones Program on June 30, 2010. This memo describes these legislative changes under the General Municipal Law and Articles 9-A, 22, 28, 29, 32, and 33 of the Tax Law and their effective dates.

Effective date of a revoked certification

The amendments clarify the effective date of the revocation for a business whose certification was revoked under the amendments made to the General Municipal Law by Chapter 57 of the Laws of 2009. The revocation is effective for a taxable year beginning on or after January 1, 2008, and before January 1, 2009, and for subsequent taxable years unless the business is subsequently re-certified.

Empire Zone (EZ) investment tax credit (Articles 9-A and 22)

The Tax Law has been amended to extend the period of eligibility to claim the EZ investment tax credit for certain taxpayers that are certified as EZ businesses or as qualified investment projects under Article 18-B of the General Municipal Law (GML).

A taxpayer that is certified as an EZ business under Article 18-B of the GML on the day immediately preceding the day the Empire Zones Program expired will continue to be deemed certified under Article 18-B until April 1, 2014. In addition, the areas designated as Empire Zones in which the taxpayer is certified as an EZ business on the day immediately preceding the day the Empire Zones Program expired will continue to be deemed Empire Zones until April 1, 2014.

For purposes of Article 9-A only, a taxpayer that is certified as a qualified investment project under Article 18-B of the GML on the day immediately preceding the day the Empire Zones Program expired will be deemed certified under Article 18-B for the remainder of the tax year in which the expiration occurred and for the next succeeding nine taxable years. In addition, the areas designated as Empire Zones in which the taxpayer is certified as a qualified investment project on the day immediately preceding the day the Empire Zones Program expired will continue to be deemed Empire Zones for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years.

(Tax Law sections 210.12-B and 606(j))

Empire Zone (EZ) employment incentive credit (Articles 9-A and 22)

The Tax Law has been amended to extend the period of eligibility to claim the EZ employment incentive credit for certain taxpayers that are certified as EZ businesses or as qualified investment projects under Article 18-B of the GML.

A taxpayer that is certified as an EZ business under Article 18-B of the GML on the day immediately preceding the day the Empire Zones Program expired will continue to be deemed in the Empire Zone in which the taxpayer was certified as an EZ business on the day immediately preceding the day the Empire Zones Program expired. The taxpayer will continue to be deemed in that zone for each of the three years next succeeding the taxable year for which the EZ investment tax credit is allowed.

For purposes of Article 9-A only, a taxpayer that is certified as a qualified investment project under Article 18-B of the GML on the day immediately preceding the day the Empire Zones Program expired will continue to be deemed certified for the remainder of the taxable year in which the expiration occurred and for the next succeeding nine taxable years. In addition, the areas designated as Empire Zones in which the taxpayer is certified as a qualified investment project on the day immediately preceding the day the Empire Zones Program expired will continue to be deemed Empire Zones for the remainder of the taxable year in which the expiration occurred and for the next nine succeeding taxable years.

(Tax Law sections 210.12-C and 606(j-1))

Empire Zone (EZ) capital tax credit (Articles 9-A, 22, 32, and 33)

Under the amendments made by Chapter 57 of the Laws of 2010, a taxpayer may qualify to claim the EZ capital tax credit after the designation of an area as an Empire Zone has expired under Article 18-B of the GML. A taxpayer that has made a contribution of money, on or before the day immediately preceding the day an Empire Zone expired, to a community development project approved by Empire State Development (ESD) will be eligible to claim the EZ capital credit for additional contributions made prior to April 1, 2014. The contributions must be certified by ESD to that community development project as payment of a commitment made by the taxpayer to that community development project before the Empire Zones Program expired.

(Tax Law sections 210.20(f), 606(l)(5), 1456(d)(5), 1511(h)(5))

QEZE credit for real property taxes (Articles 9, 9-A, 22, 32, and 33)

The Tax Law was amended to include a definition of *tax* for purposes of the QEZE credit for real property taxes under section 15(e).

The term *tax* means a charge imposed upon real property by or on behalf of a county, city, town, village, or school district for municipal or school district purposes. The charge must be levied for the general public welfare by the proper taxing authorities at a like rate against all property in the territory over which such authorities have jurisdiction. The property must have been taxed at the rate determined for the class in which it is contained as provided for under Article 18 or Article 19 of the Real Property Tax Law. The term “tax” does not include a charge for local benefits, including any portion of that charge that is properly allocated to the costs attributable to maintenance or interest, when:

- the property subject to the charge is limited to the property that benefits from the charge,
- the amount of the charge is determined by the benefit to the property assessed, or
- the improvement for which the charge is assessed tends to increase the property value.

This amendment applies to all taxable years beginning on or after January 1, 2010, and, except with respect to maintenance or interest charges, to all taxable years for which the statute of limitations for seeking a refund or assessing additional tax are still open.

(Tax Law section 15(e))

Empire Zone (EZ) wage tax credit (Articles 9, 9-A, 22, 32, and 33)

Although Chapter 57 of the Laws of 2010 did not make any amendments to the EZ wage tax credit, the current law allows a business that was certified under Article 18-B of the GML as of June 30, 2010, to continue to claim the EZ wage tax credit for up to five consecutive tax years so long as it meets the eligibility requirements. However, no credit will be allowed for any tax year beginning more than four years after the tax year in which designation as an EZ expired. Therefore, the EZ wage tax credit may not be claimed for tax years beginning on or after July 1, 2014.

A business may continue to use any credit carryovers from previous years against their tax liability. However, any business that was required to obtain an EZ retention certificate but was denied one will not be eligible for the EZ wage tax credit or carryovers of the credit.

(Tax Law sections 187-m, 210.19, 1456(e), and 1511(g))

QEZE sales and use tax certifications (Articles 28 and 29)

EZ businesses that were certified by Empire State Development (ESD) with an effective date prior to April 1, 2009, are required to be certified by both the Department of Taxation and Finance (DTF) and ESD in order to claim the QEZE sales and use tax benefits.

TSB-M-10(6)C, (12)I, (19)S
Corporation Tax
Income Tax
Sales Tax
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Section 14(h) was added to the Tax Law to clarify that DTF was authorized to continue QEZE sales and use tax certifications until the Empire Zones Program expired on June 30, 2010, for EZ businesses that were certified by ESD with effective dates prior to April 1, 2009. For more information on QEZE sales and use tax benefits, see TSB-M-09(12)S, *Changes to Qualified Empire Zone Enterprise (QEZE) Program (Articles 28 and 29) - Effective September 1, 2009*.

(Tax Law section 14(h))

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