

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

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October 15, 1987

Economic Development Zones

General

Chapter 686 of the Laws of 1986, approved July 30, 1986, authorizes the creation of economic development zones in various cities, counties, towns and villages within New York State. This chapter also provides for certain credits against taxes imposed pursuant to Articles 9, 9-A, 22, 28, 32 and 33 of the Tax Law.

Utility Rate Reduction - Article 9, Corporation Tax

Section 186-a was amended to provide that any utility subject to tax under this section and subject to the supervision of the Department of Public Service must provide, in addition to any other discount, a reduction of 3 percent in the rate charged for gas, electricity, steam or water sold, or gas, electric, steam or water service rendered, for ultimate consumption or use within an area designated as an economic development zone pursuant to Article 18-B of the General Municipal Law by a certified business, whether incorporated or unincorporated, which has been certified pursuant to Article 18-B of the General Municipal Law, and which has claimed the wages credit (Section 210.19, Section 606(k), Section 1456(e) or Section 1511(g)) during the previous 15 months, as evidenced by a certificate issued by the Tax Department to such business. Retail enterprises, as defined in Section 210.12(k) of Article 9-A of the Tax Law, are not entitled to this reduction.

Computation of Credit for Section 186-a Taxpayers

Ninety-seven percent of the aggregate of such reductions during the year may be applied as a credit against the tax imposed under Section 186-a for that year.

Recapture of Rate Reduction Credit - Corporation Tax and Personal Income Tax

Section 1085 of the Corporation Tax Law was amended by adding a new subsection(m), and Section 685 of the Personal Income Tax Law was amended by adding a new subsection (t). These additions provide that if during a taxable year a taxpayer has received a rate reduction in its charges for gas, electric, steam or water sold or gas, electric, steam or water service rendered pursuant to Section 186-a, subdivision 8, based on a certification as to the claiming of the wage credit under Section 210.19, Section 1456(e) or Section 1511(g) of the Corporation Tax Law or under Section 606(k) of the Personal Income Tax Law, and it is finally determined that the taxpayer is not entitled to the credit in any part, a penalty will be imposed. The penalty imposed will be equal to the amount of the reduction in cost, with interest from the last day of the taxable year in which such taxpayer received

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such reduction, at the rate applicable to underpayments of tax pursuant to Article 27 when involving corporation tax and Article 22 when involving personal income tax. The Tax Department may in its discretion waive, reduce or compromise this penalty.

Economic Development Zone Investment Tax Credit - Article 9-A (Corporation Tax) and Article 22 (Personal Income Tax)

Section 210 of Article 9-A of the Corporation Tax Law was amended by adding a new subdivision 12-B and Section 606 of Article 22 of the Personal Income Tax Law was amended by adding a new subsection (j). Old subsection (j) is relettered subsection (m). These amendments provide for credits as follows:

Corporation Tax Section 210.12-B and Personal Income Tax Section 606(j) - A credit is permitted against the tax imposed by Article 9-A for corporation tax and by Article 22 for personal income tax if the taxpayer has been certified pursuant to Article 18-B of the General Municipal Law. The amount of the credit is 10 percent for Article 9-A (Corporation Tax) and 8 percent for Article 22 (Personal Income Tax) of the cost or other basis for federal income tax purposes of tangible personal property or other tangible property, including buildings and structural components of buildings located within a designated economic development zone. However, the acquisition, construction, reconstruction or erection of such property must commence on or after the date of such designation and prior to the termination thereof.

In the case of an acquisition, construction, reconstruction or erection commenced during the designation period which is continued or completed subsequent to the designation period, the credit is 10 percent for Article 9-A (Corporation Tax) and 8 percent for Article 22 (Personal Income Tax) of the portion of the cost or other basis for federal income tax purposes attributable to such period. The attributable portion is ascertained by multiplying the cost or other basis by a fraction. The numerator of the fraction consists of expenditures paid or incurred during the period for such purposes. The denominator of the fraction consists of the total of all expenditures paid or incurred for such acquisition, construction, reconstruction or erection.

Property qualifying for the credit under Section 210.12-B or Section 606(j) must meet the same qualifications as property on which the regular investment tax credit may be claimed except that qualifying property must have a situs in a properly designated economic development zone. For purposes of this credit, the definition of the terms "manufacturing," "property used in the production of goods," "principally used," "cost" and "other basis" have the same meaning as contained in Regulations Section 5-2.4 for corporation tax or in Regulations Section 103.1(d) for personal income tax.

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As with the regular corporation investment tax credit, the credit allowed for any taxable year under Section 210.12-B may not reduce the tax due for any year to less than the higher of the tax on minimum taxable income base or the fixed dollar minimum. For corporation tax and personal income tax purposes, any amount of credit not used in any year may be carried forward to the following year or years and deducted from the taxpayer's tax for such year or years.

Also, the credit for both corporation tax and personal income tax purposes is not allowed with respect to tangible personal property or other tangible property, including buildings and structural components of buildings which the taxpayer leases to any other person or corporation. Generally, the recapture rules are the same as for the regular investment tax credit. Disposal or cessation of qualified use is not deemed to have occurred solely by reason of the termination or expiration of an economic development zone's designation as such.

For corporation tax purposes, at the option of the taxpayer, property which qualifies for an eligible business facility credit as allowed under Section 210.11 or property qualifying for a credit under Section 210.12 may be treated as property principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, etc., provided the property otherwise qualifies. Where the credit is elected pursuant to Section 210.12-B, a credit is not allowed under Sections 210.11 or 210.12. Industrial waste treatment facilities, air pollution control facilities and research and development property now qualify for a credit under Section 210.12.

For personal income tax purposes, at the option of the taxpayer, air or water pollution control facilities which qualify for elective modifications under Section 612(h), or research and development facilities which qualify for elective modifications under Section 612(g)(3) and (4), or property which qualifies for the credit provided under Section 606(a) or Section 606(h) may be treated as property principally used by the taxpayer in the production of goods by manufacturing, processing, assembly, etc., provided the property otherwise qualifies. Where the credit is elected pursuant to Section 606(j), a deduction is not allowed under Sections 612(h) or 612(g)(3) and (4) and a credit shall not be allowed under Sections 606(a) or 606(h).

Economic Development Zone Additional Investment Tax Credit - Corporation Tax

New Section 210.12-C, as added by Chapter 686, provides that where a credit is allowed under Section 210.12-B, an additional credit for each of the three subsequent taxable years is allowed, with respect to such property, whether or not deductible in such taxable year or subsequent taxable years. The credit is 30 percent of the credit allowable under Section 210.12-B, if the average number of employees, except general executive officers, of a certified taxpayer in the economic development

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zone is at least 101 percent of the average number of employees employed by the taxpayer in such zone or, where applicable in the geographic area subsequently constituting such zone, during the taxable year immediately preceding the taxable year for which the credit under Section 210.12-B is allowed. If the taxpayer was not subject to tax and did not have a taxable year immediately preceding the taxable year for which the credit under Section 210.12-B is allowed, the credit under Section 210.12-C shall be allowed if the average number of employees employed in the zone is at least 101 percent of the average number of such employees during the taxable year in which the credit under Section 210.12-B is allowed.

The credit allowed under Section 210.12-C may not reduce the tax payable to less than the higher of the tax on minimum taxable income base or the fixed dollar minimum. If the amount of the credit under this subdivision for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. The credit allowed under Section 210.12-C is subject to recapture in the same manner as the credit under Section 210.12-B.

Subdivision 19 of Section 210 of the Tax Law has been renumbered 21 and has been amended to provide that the credit allowed by Section 210.19 (as added by Chapter 686 of the Laws of 1986) must be deducted prior to any other credits that can be carried over and prior to carryovers of such credits.

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Section 210 of Article 9-A of the Tax Law was amended by adding a new subdivision 19 and Section 606 of Article 22 of the Tax Law was amended by adding a new subsection (k). The amount of the credit allowed equals the sum of (a) the portion of eligible wages attributable to wages paid to targeted employees listed in column 2 with respect to the appropriate period in column 1 and (b) the portion of eligible wages attributable to wages paid to employees other than targeted employees listed in column 3 with respect to the appropriate period in column 1, of the following chart.

| <u>Column 1</u> <u>Period</u> | <u>Column 2</u> <u>Eligible Wages</u> <u>Paid to</u> <u>Targeted</u> <u>Employees</u> | <u>Column 3</u> <u>Eligible Wages</u> <u>Paid to Other</u> <u>Than</u> <u>Targeted</u> <u>Employees</u> |
|--|---|--|
| First taxable year in which credit is claimed | 25% | 12.5% |
| Second taxable year in which credit is claimed | 20% | 10% |

| | | |
|--|-----|------|
| Third taxable year in which credit is claimed | 15% | 7.5% |
| Fourth taxable year in which credit is claimed | 10% | 5% |
| Fifth taxable year in which credit is claimed | 5% | 2.5% |

A taxpayer may first claim this credit for a taxable year during which payments of economic development zone wages are made and (1) at least 20 percent of the taxpayer's full-time employees (excluding general executive officers for corporation tax purposes) in such zone during the taxable year who are employed in jobs created in such zone during the period of its designation as such are residents of such zone or residents of census tracts or block numbering areas contiguous to such zone and (2) the average number of individuals (excluding general executive officers for corporation tax purposes) employed full time in the state and the economic development zone during the taxable year exceeds the average number of such individuals employed full time by the taxpayer in the state and such zone or area subsequently constituting such zone, respectively, during the four years immediately preceding the first taxable year in which the credit is claimed with respect to such zone. Where the taxpayer provided full time employment within the state or such zone or area during only a portion of such four-year period, the term "four years" is deemed instead to refer to such portion, if any.

Definition of Terms

For purposes of this credit, the following terms mean:

1. "Economic development zone wages" - wages paid by the taxpayer for full-time employment (other than to general executive officers for corporation tax purposes) during the taxable year in an area designated as an economic development zone pursuant to Article 18-B of the General Municipal Law, where such employment is in a job created in the area during the period of its designation as an economic development zone.
2. "Targeted employee" - a New York resident who receives economic development zone wages and who is (A) an eligible individual under the provisions of the targeted jobs tax credit act, (B) eligible for benefits under the provisions of the job training partnership act (P.L. 97-300), (C) a recipient of public assistance benefits at any time during the previous two years or (D) an individual whose income is below the most recently established poverty rate promulgated by the United States Department of Commerce, or a member of a family whose family income is below the most recently established poverty rate promulgated by the appropriate federal agency.

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3. "Eligible wages" - the product of the aggregate of all economic development zone wages (but not including more than \$10,000 in such wages paid with respect to any single job during any taxable year) and a fraction the numerator of which is the difference between the net employment gain in economic development zones and the net employment loss in the state but outside any economic development zone, and the denominator of which is the net employment gain in economic development zones.
4. "Net employment gain in economic development zones" - the difference between the average number of individuals (excluding general executive officers for corporation tax purposes) employed full time by the taxpayer in economic development zones during the taxable year and the average number of such individuals employed full time by the taxpayer in the areas comprising such zones during the four years immediately preceding the first taxable year in which the credit is claimed with respect to such zone.
5. "Net employment loss in the state but outside any economic development zone" - the difference between the average number of individuals (excluding general executive officers for corporation tax purposes) employed full time by the taxpayer inside the state but outside any economic development zone during the taxable year and the average number of such individuals employed full time by the taxpayer in such area during the four years immediately preceding the first taxable year in which the credit is claimed with respect to any such zone.

If the taxpayer provided full time employment within an economic development zone during only a portion of the four-year period, the term "four years" means such portion, if any.

This new credit, with respect to any taxable year, and carryovers of the credit to the taxable year may not, in the aggregate, exceed 50 percent of the tax imposed (under Section 209 for corporation tax and under Section 601 for personal income tax) computed without regard to any credit provided for by Article 9-A (for corporation tax) and by Article 22 (for personal income tax). For corporation tax purposes, the credit and carryovers of the credit may not, in the aggregate, reduce the tax due for any given year to less than the higher of the tax on minimum taxable income base or the fixed dollar minimum. Also for corporation tax purposes, if the 50 percent limitation alone applies or if the tax is reduced to the higher of the tax on minimum taxable income base or the fixed dollar minimum, any unused credit may be carried over to the following year or years and deducted from the tax for such year or years. For personal income tax purposes; in the case of a husband and wife who are required to file separate returns, the credit is limited to 25 percent of the tax imposed under Section 601 unless the taxpayer's spouse has no carryforward of the credit allowable and has no current year credit allowable for the taxable year which ends within or with the taxpayers taxable year. In the case of an estate or trust (under Article 22), the credit is limited to an amount which bears the same ratio

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to 50 percent as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust. Also, for personal income tax purposes, if the credit and carryovers of such credit allowable for any taxable year exceeds the taxpayer's tax for such year, the excess and the amount disallowed because of the 25 percent or 50 percent limitation may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years. For the purposes of either the corporation tax or the personal income tax, where a credit is claimed for both targeted and nontargeted wages, the nontargeted wages may not exceed 40 percent of the targeted wages in any given taxable period.

Economic Development Zone Venture Capital Tax Credit - Corporation Tax and Personal Income Tax

A new subdivision 20 was added to Section 210 of the Corporation Tax Law and a new subsection (1) was added to Section 606 of the Personal Income Tax Law. These new additions to the Tax Law allow a credit of 25 percent of the consideration paid for original issue stock purchased during the year from one or more economic development zone capital corporations (established pursuant to Section 964 of the General Municipal Law). For corporation tax purposes, this credit may not reduce the tax in such year to less than the higher of the tax on minimum taxable income base or the fixed dollar minimum. For personal income tax purposes, this credit shall not exceed the taxpayer's tax due under Article 22 for the year. In addition, no taxpayer will be allowed a total credit or credits, over any number of years, of more than \$100,000. Further, such credit in any one taxable year may not exceed 50 percent of the tax imposed under Section 209 of the Corporation Tax Law or under Section 601 of the Personal Income Tax Law, computed without regard to any credit provided for in Section 210 of Article 9-A for corporation tax purposes and in Section 606 of Article 22 for personal income tax purposes. For personal income tax purposes, the total limitation is reduced to \$50,000 and the credit is limited to 25 percent of the tax imposed under Section 601 where a husband and wife are required to file separate returns unless the taxpayer's spouse has no credit allowable for the taxable year which ends within or with the taxpayer's taxable year. In the case of an estate or trust the \$100,000 limitation and the 50 percent limitation shall be reduced to an amount which bears the same ratio as the portion of the income of the estate or trust which is not allocated to the beneficiaries bears to the total income of the estate or trust. There is no carryover of any unused portion of this credit for either tax.

Where stock, the purchase of which is the basis for allowing this credit is disposed of, the taxpayer's entire net income, or the portion thereof allocated within the state for corporation tax or the taxpayer's New York taxable income for personal income tax (whichever is applicable), is recomputed so as to properly reflect the reduced cost of such stock arising from the application of this new credit. The Tax Department will promulgate regulations regarding the necessary adjustment

to entire net income for corporation tax and regarding the necessary modification to New York taxable income for personal income tax.

Credits Pertaining to Article 32 and Article 33

Articles 32 and 33 of the Tax Law, as these articles relate to the taxation of banking and insurance corporations, respectively, have been amended to provide for an economic development zone capital corporation credit and an economic development zone credit for wages as previously described. However, they are subject to individual limitations set forth in those articles and as hereafter described.

Ordering of Article 32 Credits

For purposes of Article 32 of the Tax Law, credits that cannot be carried over are deducted first. Those credits which have carryover provisions are deducted next in the following order:

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|-----------------|--|
| Section 1456(b) | Eligible business facility credit |
| Section 1456(d) | Economic development zone capital stock corporation credit |
| Section 1456(a) | Mortgage servicing credit |
| Section 1456(e) | Economic development zone wage tax credit |
| Section 1456(c) | Mortgage recording tax credit |

Limitations of credits under Article 32, Section 1456(d) and (e) are as follows:

Section 1456(d) - economic development zone capital corporation credit allowable is limited to a lifetime maximum of \$100,000.

In addition, this credit may not exceed 50 percent of the tax imposed under Section 1455 before any credits are applied and may not reduce the tax below the minimum.

Section 1456(e) - economic development zone wages credit allowable is limited in that the portion of the credit attributable to the eligible portion of wages paid to employees, other than targeted employees, including any portion of such credit carried forward to the taxable year may not exceed 40 percent of the portion of the credit attributable to targeted employees' wages.

Ordering of Article 33 Credits

For the purposes of Article 33 of the Tax Law, the application of credits is ordered in the following manner:

| | |
|-----------------|--|
| Section 1511(h) | Economic development zone capital stock corporation credit |
| Section 1511(g) | Economic development zone wage tax credit |
| Section 1511(d) | Eligible business facility credit |
| Section 1511(a) | Credit for certain other premium taxes |
| Section 1511(c) | Credit against reciprocal taxes imposed by New York State |
| Section 1511(e) | Mortgage recording tax credit |
| Section 1511(f) | Credit relating to life insurance guaranty corporation assessments |

The amount of taxes imposed under Section 1501 and Section 1510 are subject to a limitation (cap), computed pursuant to Section 1505, at the rate of 2.6 percent of certain premiums. The taxes under Section 1501 and Section 1510 are computed without regard to any allowable credits. However, the Section 1511(h) economic development zone capital corporation credit (limited to a lifetime maximum of \$100,000) and the Section 1511(g) economic development zone wages credit (with the nontargeted wages credit not exceeding 40% of the targeted wages credit) are deducted before application of the cap. Thus, an Article 33 taxpayer will derive tax benefits from these two credits where the tax is already below the cap or if the two credits serve to lower the Section 1501 and Section 1510 taxes to an amount below the cap.

Additional Information Pertaining to Personal Income Tax Credits

The 8% credit on certain property allowed under Section 606(j) will be allowed against the personal income tax after the allowance of any other credit except the credit allowed under Section 606(e), where the taxpayer has been certified pursuant to Article 18-B of the General Municipal Law. The Section 606(e) is the last credit to be taken since it is refundable.

The credit for certain wages allowed under Section 606(k) will be allowed against the personal income tax after the allowance of the household credit, the child care and dependent credit, the resident credit, the accumulation distribution credit and the economic development zone capital corporation credit but before the allowance for any other personal income tax credit, if the taxpayer has been certified pursuant to Article 18-B of the General Municipal Law.

In addition, the credits allowed under Section 606(j), Section 606(k) and Section 606(1) will not be allowed as a credit against the "separate tax on the ordinary income portion of lump sum distributions", the "separate tax relating to qualified higher education funds" or the "minimum income tax."

Also, the credits under Section 606(j), Section 606(k) and Section 606(1) must be subtracted from the "tax" on New York taxable income prior to "that tax" being used as a subtraction in arriving at

"Minimum taxable income" for purposes of the minimum income tax computation.

Section 606(i) has been amended to allow the pass through of a New York State electing "S" corporation's tax credits, under Section 210.12-B, Section 210.19 and Section 210.20 of the Corporation Tax Law, to a shareholder of such "S" corporation, if the election was in effect in the year the credit arose for corporation tax purposes.

Article 28-Sales and Use Taxes

Chapter 686 of the Laws of 1986 also amends Section 1119 (a) of the sales and use tax law to provide that:

Effective September 1, 1986, a refund or credit of sales and use tax shall be allowed to a person who paid the tax pursuant to Section 1105 (a) or Section 1110 on tangible personal property purchased on or after September 1, 1986, for use in constructing, expanding or rehabilitating industrial or commercial real property (other than property used or to be used exclusively by one or more registered vendors primarily engaged in the retail sale of tangible personal property) located in an area designated as an economic development zone pursuant to Article 18-B of the General Municipal Law, but only to the extent that such property becomes an integral component part of the real property.

No refund or credit will be allowed for local taxes paid unless the local law has been amended to provide a similar refund provision. If a locality enacts such a provision, the Department will issue a notice to that effect.

Example 1

A contractor has been engaged to repair and enlarge a building in a designated economic development zone in Troy, New York. His purchases, made on or after September 1, 1986, include lumber, brick, cement, lighting fixtures, electric drills, saws, ladders and a new heating system to be installed in the building. Some of the lumber will be used for scaffolding.

When the building is rehabilitated, the three upper floors will be occupied by a company which manufactures dresses. A retail outlet for the dresses will utilize the first floor.

According to the provisions of Chapter 686, the contractor can obtain a credit or refund of the tax paid on his purchases made on or after September 1, 1986 of brick, cement, lighting fixtures, the new heating system and that portion of lumber which becomes an integral component part of the real property, but not the portion which is used in the scaffolding.

Likewise, no tax refund will be allowed on the cost of the tools and ladders.

Chapter 686 amendments to Sections 1107 and 1109 provide that the new amendment to Section 1119(a), as cited above, does not apply to: (1) the imposition of sales and use taxes for the benefit of the Municipal Assistance Corporation for the City of New York or (2) the sales and use tax imposition for the benefit of the Metropolitan Commuter Transportation District.

Example 2

The facts are the same as in Example 1 except that the building is located in an area designated as an economic development zone located in New York City. The contractor may be able to obtain a refund of the state rate of 4% but not the 4% tax imposed for the benefit of the Municipal Assistance Corporation nor the ¼% imposed for the Metropolitan Commuter Transportation District.

Additionally, the new provision in Section 1119(a) shall not apply to taxes imposed pursuant to the authorization in Section 1210 of the Tax Law by (1) a city of one million or more unless such city elects otherwise, and (2) any city of less than one million or any county or school district, unless such city, county or school district elects otherwise.