

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

TSB-A-03(9)C
Corporation Tax
October 9, 2003

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C030709A

On July 9, 2003, a Petition for Advisory Opinion was received from Utica Mutual Insurance Company, 180 Genesee Street, New Hartford, New York 13413.

The issue raised by Petitioner, Utica Mutual Insurance Company, is whether non-life insurance corporations are eligible for the qualified empire zone enterprise (QEZE) tax reduction credit pursuant to sections 16 and 1511(s) of the Tax Law after the enactment of Chapter 62 of the Laws of 2003.

Petitioner submits the following facts as the basis for this Advisory Opinion.

Petitioner is a non-life insurance corporation taxable under Article 33 of the Tax Law. For taxable years beginning on or after January 1, 2003, Petitioner is subject to the tax imposed under section 1502-a of the Tax Law based on its gross direct premiums, less returns, in lieu of the tax imposed under section 1501 of the Tax Law which is based on income or capital plus subsidiary capital.

Applicable law

Section 14 of the Tax Law contains the empire zones program, and provides, in part:

(a) Qualified empire zone enterprise. A business enterprise which is certified under article eighteen-B of the general municipal law prior to July first, two thousand five shall be a "qualified empire zone enterprise":

(1) for purposes of articles ... thirty-three of this chapter, for each of the taxable years within the "business tax benefit period," which period shall consist of (A) in the case of a business enterprise with a test date occurring on or before December thirty-first, two thousand one, the first fifteen taxable years beginning on or after January first, two thousand one, and (B) in the case of a business enterprise with a test date occurring on or after January first, two thousand two, the fifteen taxable years next following the business enterprise's test year, but only with respect to each of such fifteen years for which the employment test is met, and

* * *

(b) Employment test. (1) General. The employment test shall be met with respect to a taxable year if the business enterprise's employment number in empire

zones for such taxable year equals or exceeds its employment number in such zones for the base period, and its employment number in the state outside of such zones for such taxable year equals or exceeds its employment number in the state outside of such zones for the base period...

Section 16 of the Tax Law provides for a QEZE tax reduction credit, in part, as follows:

(a) Allowance of credit. A taxpayer which is a ... QEZE ... and which is subject to tax under article ... thirty-three of this chapter, shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section, to be computed as hereinafter provided.

(b) Amount of credit. The amount of the credit shall be the product of (i) the benefit period factor, (ii) the employment increase factor, (iii) the zone allocation factor and (iv) the tax factor.

* * *

(f) Tax factor. (1) General ... The tax factor shall be, in the case of article thirty-three of this chapter, the larger of the amounts of tax determined for the taxable year under paragraphs one and three of subdivision (a) of section fifteen hundred two of such article.

* * *

(g) Definitions and cross-references. For definitions of terms used in this section see sections fourteen and fifteen of this article. For application of the credit provided for in this section, see the following provisions of this chapter:

* * *

(4) Article 33: Section 1511: subdivision (s).

Section 1502(a) of the Tax Law provides, in part:

The tax imposed under section fifteen hundred one shall be the greatest of:

(1) ... for taxable years beginning after June thirtieth, two thousand two, seven and one-half percent of the taxpayer's entire net income, or portion thereof allocated within this state, for the taxable year, or part thereof; or

* * *

(3) nine percent on thirty percent of the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five percent of its issued capital stock minus fifteen thousand dollars and any net loss for the reported year, or the portion of such sum allocated within the state as hereinafter provided... or

(4) two hundred fifty dollars;...

For taxable years beginning on or after January 1, 2003, section 1502-a of the Tax Law, enacted in Chapter 62 of the Laws of 2003, contains the imposition of tax on non-life insurance corporations, and provides, in part:

In lieu of the tax imposed by section fifteen hundred one of this article, every domestic insurance corporation, every foreign insurance corporation and every alien insurance corporation, other than such corporations transacting the business of life insurance, (1) authorized to transact business in this state under a certificate of authority from the superintendent of insurance or (2) which is a risk retention group as defined in subsection (n) of section five thousand nine hundred two of the insurance law, shall, for the privilege of exercising corporate franchises or for carrying on business in a corporate or organized capacity within this state, and in addition to any other taxes imposed for such privilege, pay a tax on all gross direct premiums, less return premiums thereon, written on risks located or resident in this state. The tax imposed by this section shall be computed in the manner set forth in subdivision (a) of section fifteen hundred ten of this article as such subdivision applied to taxable years beginning before January first, two thousand three, except that the rate of tax imposed by this section shall be one and seventy-five hundredths percent on all gross direct premiums, less return premiums thereon, for accident and health insurance contracts, and two percent on all other such premiums. All the other provisions in section fifteen hundred ten of this article, other than subdivision (b) of such section, shall apply to the tax imposed by this section. In no event shall the tax imposed under this section be less than two hundred fifty dollars.

Section 1503 of the Tax Law contains the computation of entire net income and provides, in part:

(a) The entire net income of a taxpayer shall be its total net income from all sources which shall be presumably the same as the ... taxable income, but not alternative minimum taxable income, as the case may be, which the taxpayer is required to report to the United States treasury department, for the taxable year ... except as hereinafter provided.

Section 1511(s) of the Tax Law, as amended by Chapter 62 of the Laws of 2003, provides for the QEZE tax reduction credit as follows:

(1) Allowance of credit. A taxpayer which is a qualified empire zone enterprise shall be allowed a QEZE tax reduction credit, to be computed as provided in section sixteen of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph four of subdivision (a) of section fifteen hundred two of this article or by section fifteen hundred two-a of this article, whichever is applicable.

Opinion

Section 16(a) of the Tax Law provides that a taxpayer which is a QEZE and is subject to tax under Article 33 of the Tax Law is allowed a QEZE tax reduction credit against the tax imposed, pursuant to the provisions of section 1511(s) of the Tax Law. Pursuant to section 16(b) of the Tax Law, the amount of the QEZE tax reduction credit is the product of (i) the benefit period factor, (ii) the employment increase factor, (iii) the zone allocation factor, and (iv) the tax factor.

Under section 16(f) of the Tax Law, the tax factor for an Article 33 taxpayer is the larger of the amounts determined for the taxable year under (i) section 1502(a)(1) with respect to the tax based on the taxpayer's entire net income allocated within New York State, and (ii) section 1502(a)(3) with respect to the tax based on the taxpayer's entire net income plus salaries and other compensation paid to the taxpayer's elected or appointed officers and to every stockholder owning in excess of five percent of its issued capital stock minus fifteen thousand dollars and any net loss for the reported year, allocated within New York State.

For taxable years beginning on or after January 1, 2003, a non-life insurance corporation is subject to the tax imposed under section 1502-a of the Tax Law based on its gross direct premiums, less returns, and is not subject to the tax imposed under section 1501 of the Tax Law. Also, for taxable years beginning on or after January 1, 2003, section 1511(s)(2) of the Tax Law was amended to provide that the QEZE tax reduction credit allowed for any taxable year shall not reduce the tax due to less than the minimum tax fixed by section 1502(a)(4) or 1502-a of the Tax Law, whichever is applicable. Accordingly, the application of these two provisions together, as enacted in Chapter 62 of the Laws of 2003, supports the interpretation that for taxable years beginning on or after January 1, 2003, the QEZE tax reduction credit will continue to be available to non-life insurance corporations that are no longer subject to the tax imposed under section 1501 of the Tax Law, and that in applying the credit, the amount of credit allowed may not reduce the tax imposed under section 1502-a of the Tax Law below the fixed minimum amount.

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Assuming that Petitioner is a QEZE pursuant to section 14 of the Tax Law, Petitioner may be allowed a QEZE tax reduction credit pursuant to sections 16 and 1511(s) of the Tax Law. The amount of the QEZE tax reduction credit that Petitioner may be allowed pursuant to section 1511(s)(1) of the Tax Law is computed pursuant to section 16(b) of the Tax Law, and is the product of (i) the benefit period factor, (ii) the employment increase factor, (iii) the zone allocation factor and (iv) the tax factor. Petitioner's tax factor pursuant to section 16(f) of the Tax Law is the larger of the amounts of tax determined for the taxable year under paragraphs (1) and (3) section 1502(a) of the Tax Law.

Therefore, for purposes of computing the tax factor of the QEZE tax reduction credit under section 16(f) of the Tax Law for taxable years beginning on or after January 1, 2003, Petitioner must compute a pro forma amount of tax pursuant to paragraphs (1) and (3) of section 1502(a) of the Tax Law, determined as if Petitioner were subject to such section 1502(a). The amount of the tax factor will be the larger of the two pro forma amounts of tax. However, the amount of the QEZE tax reduction credit allowed may not reduce Petitioner's tax computed pursuant to section 1502-a of the Tax Law below the \$250 fixed minimum tax.

DATED: October 9, 2003

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