

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

TSB-A-10(6)C
Corporation Tax
June 3, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C100427B

The petition asks whether Petitioner, [REDACTED] is ineligible to claim the Qualified Empire Zone Enterprise (QEZE) real property tax credit (RPTC) for the period of time during which it was decertified as an empire zone business in 2009, pursuant to Part S-1 of Chapter 57 of the Laws of 2009, despite the successful appeal of the decertification.

We conclude that Petitioner's decertification, which was overturned on appeal, will have no impact on its eligibility to claim the credit for taxable years beginning on or after January 1, 2008, so long as the program requirements are met.

Facts

Petitioner is a party to a payment in lieu of tax agreement ("PILOT") pursuant to which payments are annually made to the involved tax jurisdictions for the [REDACTED] located in [REDACTED] County, New York. PILOT payments are considered eligible real property tax payments under section 15(e) of the Tax Law.

In April 2009, Chapter 57 of the Laws of 2009 was enacted which, among other things, amended section 959(a) of the General Municipal Law (GML) by adding two additional criteria for decertifying a taxpayer from the Empire Zones Program.¹ Following legislative passage of the changes, the Commissioner of Economic Development revoked Petitioner's certification under the Empire Zones Program and notified Petitioner that such decertification would be retroactive to January 1, 2008 pursuant to the terms of the amended section of the GML. Petitioner appealed that decertification decision to the Empire Zones Designation Board.

On April 2, 2010, the Empire Zones Designation Board decided by resolution to restore the certification of Petitioner under the Empire Zones Program. Shortly thereafter, Petitioner received a "retention certificate" from the Department of Economic Development, indicating that Petitioner's certification under the Empire Zones Program was restored.

Analysis

An entity must be certified under Article 18-B of the GML to claim empire zones or QEZE tax credits. Part S-1 of Chapter 57 of the Laws of 2009 amended section 959(w) of the GML to require the Commissioner of Economic Development to reevaluate in 2009 all certified businesses in the program. Businesses that had filed at least three business annual reports and failed to meet the new certification criteria in sections 959(a)(v)(5) and (6) of the GML were required to be decertified for taxable years beginning on or after January 1, 2008. Businesses that were not in violation of the new certification criteria were issued a retention certificate to submit with their tax returns for taxable years beginning on or after January 1, 2008,

¹ Part S-1 of Chapter 57 of the Laws of 2009.

signaling to the Department of Taxation and Finance (DTF) that the business was certified and thus eligible to claim the empire zones credits if the other requirements of the statutes were met.

Upon review, Petitioner was found to be in violation of section 959(a)(v)(5) and subsequently decertified on June 29, 2009. The decision was overturned on appeal by the Empire Zones Designation Board and a retention certificate was issued to Petitioner. Because the decertification was nullified by the appeal, the decertification did not affect Petitioner's eligibility to claim the QEZE RPTC. However, in order to claim the credit, Petitioner should follow the following steps to obtain the credit.

- If the Petitioner filed a return claiming the credit without attaching a retention certificate, Petitioner must re-file a signed copy of the return with the retention certificate attached. The Department of Taxation and Finance will issue a refund and/or adjust the bill when the re-filed return is processed.
- Alternatively, if Petitioner filed a return without claiming a credit, Petitioner should file an amended return claiming the credit and submit that return along with the retention certificate. Petitioner has two years from the date the tax was paid or three years from the date the return was filed, whichever is later, to claim a refund on an amended return.

DATED: June 3, 2010

/S/

Jonathan Pessen
Director of Advisory Opinions
Office of 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.