

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

TSB-A-99(21)C  
Corporation Tax  
August 10, 1999

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C990727A

On July 27, 1999, a Petition for Advisory Opinion was received from New York State Department of Economic Development, 30 South Pearl Street, 7<sup>th</sup> Floor, Albany, New York 12245.

The issue raised by Petitioner, New York State Department of Economic Development, is whether the statutory limitation on the total amount of economic development zone capital credit allowable to a taxpayer under section 210.20(a), 1456(d)(1) or 1511(h)(1) of the Tax Law is applied to each corporation included in a combined group filing in a combined tax return, under the respective sections of the Tax Law, or is applied at the combined group level.

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

The New York State Economic Development Zones Act, codified in Article 18-B of the New York General Municipal Law and selected provisions of the New York Tax Law ("EDZ Program"), was enacted in 1986 and modified in 1993, to promote new jobs and investment in New York State's most economically distressed communities. The EDZ Program targets small businesses located within designated economic development zones who are certified under the EDZ Program ("Zone Certified Business"). To encourage private investment in and/or contributions to or for the benefit of Zone Certified Businesses, the EDZ Program authorizes the issuance of tax credits ("Zone Capital Credit"). The EDZ Program authorizes the Zone Capital Credit for individuals under section 606(l) of the Tax Law, for business corporations under section 210.20 of the Tax Law, for banking corporations under section 1456(d) of the Tax Law and for insurance corporations under section 1511(h) of the Tax Law.

There are three categories of activities identified under the EDZ Program for which Zone Capital Credit is available: (i) direct equity investments in Zone Certified Businesses; (ii) contributions of money to community development projects sponsored by a not-for-profit corporation which promote the goals of a Zone's economic development plan; and (iii) investment in a "zone capital corporation", a separate entity which pools funds and serves as a source of community based financial assistance to Zone Certified Businesses in the form of loans and/or equity. In each instance, the availability of the Zone Capital Credit is the primary inducement to attract private capital which ultimately will fulfill the purposes of the EDZ Program.

Under the EDZ Program, there are a few limitations on the use of Zone Capital Credit. For example, each economic development zone has only \$2.5 million in credits to allocate, as each Zone chooses, among the three categories of activities outlined above. (General Municipal Law section 964(d)). Also, an investor or contributor may only receive Zone Capital Credit equal to 25 percent

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of the amount of investment or contribution, but not to exceed a total tax credit of \$300,000 for all categories of investment, or \$100,000 for each category. (Tax Law sections 606(l)(1), 210.20(a), 1456(d)(1) and 1511(h)(1)). Furthermore, a taxpayer's New York State tax liability in any one year may not be reduced entirely by the Zone Capital Credit, depending upon the type of taxpayer receiving the credit. For example, an individual's limitation is 50 percent of the individual's tax liability (See, Tax Law section 606(l)(2)(A)), and the corporate limitations are the 50 percent of the taxpayer's tax liability provided that the tax is not reduced below the minimum franchise tax. (See, Tax Law sections 210.20(b), 1456(d)(2) and 1511(h)(2)). The impact of these limitations is softened by the unlimited ability to carry an unused tax credit forward to future tax years. Id. Finally, to ensure that investor or contributor dollars remain with Zone Certified Businesses for at least three years, the EDZ Program imposes gradational recapture provisions if the investor or contributor who claims Zone Capital Credits recovers all or a portion of its contribution or investment, or sells, transfers or otherwise disposes of the interest that was the basis for claiming the credit during the taxable year or within 36 months from the close of the taxable year with respect to which such credit is allowed (Tax Law sections 606(l)(4), 210.20(d), 1456(d)(4) and 1511(h)(4)).

Petitioner states that the statutory scheme was designed to encourage private investment which would ultimately benefit targeted economically distressed areas, and more specifically designated businesses within those areas. The EDZ Program was also designed to have an overall limited impact on New York State's fiscal budget by limiting the total Zone Capital Credit available under the program, and the annual limited impact of the New York State's tax revenues by limiting the use of such credit by investors or contributors as investments or contributions were made. However, the EDZ Program does not address the situation in which two or more corporate or institutional investors report their New York State tax obligations on a combined return.

### **Discussion**

Section 210.20(a) of the Tax Law provides that an economic development zone capital tax credit (the Zone Capital Credit) is allowed against the tax imposed on business corporations under Article 9-A of the Tax Law. Section 1456(d)(1) of the Tax Law provides that an economic development zone capital tax credit (the Zone Capital Credit) is allowed against the tax imposed on banking corporations under Article 32 of the Tax Law. Section 1511(h)(1) of the Tax Law provides that an economic development zone capital tax credit (the Zone Capital Credit) is allowed against the tax imposed on insurance corporations under Article 33 of the Tax Law. Under sections 210.20(a), 1456(d)(1) and 1511(h)(1) of the Tax Law, respectively, the amount of the Zone Capital Credit is equal to 25 percent of the sum of the following investments and contributions made during the taxable year and certified by the Commissioner of Economic Development:

(1) qualified investments made in, or contributions in the form of donations made to, one or more economic development zone capital corporations established pursuant to section 964 of the General Municipal Law,

(2) qualified investments in certified zone businesses which during the 12 month period immediately preceding the month in which such investment is made employed full-time within New York State an average number of individuals, excluding general executive officers, of 250 or fewer, computed pursuant to the provisions of section 210.19(b)(3)(for business corporations), 1456(e)(2)(C) (for banking corporations) and 1511(g)(2)(C) (for insurance corporations) of the Tax Law, respectively, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in section 465(b)(3)(C) of the Internal Revenue Code, and

(3) contributions of money to community development projects as defined in regulations promulgated by the Commissioner of Economic Development. (See, section 10.2 of the Economic Development Zones Regulations.)

The total amount of credit allowable to a taxpayer under the above provisions for all years, taken in the aggregate, shall not exceed \$300,000, and shall not exceed \$100,000 with respect to the investments and contributions described in each of three categories of activities listed above.

Pursuant to sections 211.4 (for business corporations), 1462(f) (for banking corporations) and 1515(f) (for insurance corporations) of the Tax Law, respectively, the Commissioner of Taxation and Finance may permit or require the filing of a combined return of two or more corporations if certain conditions are met, not at issue herein. Such provisions address certain elements of income to be combined, and other transactions to be eliminated in the combination process. The Zone Capital Credit is not an item addressed under sections 211.4, 1462(f) and 1515(f) of the Tax Law, respectively. Rather, the amount of the Zone Capital Credit allowable is determined under sections 210.20(a), 1456(d)(1) and 1511(h)(1) of the Tax Law, respectively.

Pursuant to sections 210.20(a), 1456(d)(1) and 1511(h)(1) of the Tax Law, respectively, the total amount of Zone Capital Credit allowable to each taxpayer for all years, taken in the aggregate, shall not exceed \$300,000, and shall not exceed \$100,000 with respect to the investments and contributions described in each of the three categories of activities listed in those sections, respectively. Therefore, each corporation included in a combined group that files a combined return pursuant to sections 211.4, 1462(f) or 1515(f) of the Tax Law, respectively, computes the total amount of Zone Capital Credit allowable under sections 210.20(a), 1456(d)(1) and 1511(h)(1) of the Tax Law, respectively, and each corporation included in the combined group could have a maximum Zone Capital Credit allowable not in excess of \$300,000 in the aggregate for all years, and not in excess of \$100,000 with respect to investments and contributions described in each of the three categories of activities.

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Such treatment is consistent with the computation of the investment credit base under section 210.12(a) of the Tax Law for business corporations included in a combined return pursuant to section 211.4 of the Tax Law. Section 210.12(a) of the Tax Law provides that each corporation that is included in a combined group must calculate its own investment credit base. The sum of the individual corporation's investment credit bases is the investment credit base of the combined group. See, H &S Holdings Limited, Dec St Tax Trib, September 11, 1997, TSB-D-97(6)C.

The sum of the Zone Capital Credits allowed for each corporation included in a combined group is allowed against the tax imposed on the combined group as computed on the combined return pursuant to the provisions of Article 9-A, Article 32 and Article 33, respectively, subject to the other limitations contained in sections 210.20(b), 1456(d)(2) and 1511(h)(2) of the Tax Law, respectively, and any recapture required pursuant by section 210.20(d), 1456(d)(4) and 1511(h)(4) of the Tax Law, respectively.

DATED: August 10, 1999

/s/  
John W. Bartlett  
Deputy Director  
Technical Services Bureau

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