

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

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Availability of Empire Zone Wage Tax Credit for Employees that Work Outside an Empire Zone

The issue raised by Company X is whether wages paid by Company X to employees at its Empire Zone location as described below are Empire Zone wages (EZ wages) for purposes of determining whether Company X's members are eligible for an Empire Zone wage tax credit (EZ wage tax credit) under section 606(k) of the Tax Law.

Company X is a limited liability company (LLC) and is treated as a partnership for federal income tax purposes. Company X was certified under Article 18-B of the General Municipal Law at its Empire Zone location as a business enterprise eligible to receive Empire Zone program benefits. Company X employs a few salespeople who are located outside New York State to solicit hospitals for the service it provides, and administrative functions, such as payroll, are outsourced.

Company X is a hospital equipment management service provider that currently services hospitals along the Northeast Corridor. The hospital services are performed at locations outside the Empire Zone in which Company X is certified but within the tri-state area of New York, New Jersey, and Connecticut. The Empire Zone location is used primarily to store supplies, equipment, and vehicles that are used to provide the services at hospital facilities. Company X does not perform administrative functions or maintain office staff at the Empire Zone location. Company X's president works from his home and can be contacted by calling an 800 telephone number.

Company X operates two crews of six full-time employees each that, in most cases, initiate and finish their working days at the Empire Zone location. The crews also report to and receive job instructions from the Empire Zone location on an ongoing basis. Another employee, the operations manager, accepts deliveries at the Empire Zone location, oversees the activities of the crews, and accompanies them on jobs at hospital facilities. Generally, no employees are present at the Empire Zone location for most hours of the business day.

Because the hospital equipment being serviced is in demand and cannot be taken from the hospital facility, Company X's crews must work on the premises of Company X's hospital customers, where the crews clean, tag, and repair the equipment. Company X's services and business model require that in completing some hospital contracts, some of Company X's crews may occasionally travel for several days at a time outside the Empire Zone in which it is certified.

Applicable law and regulations

Section 606(k) of the Tax Law provides for an EZ wage tax credit and states, in part:

(1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, where the taxpayer has been certified pursuant to article 18-B of the general municipal law. The amount of such credit shall be as prescribed in paragraph four of this subsection.

(2) For the purposes of this subsection, the following terms shall have the following meanings: (A) "Empire zone wages" means wages paid by the taxpayer for full-time employment during the taxable year, in an area designated or previously designated as an empire zone or zone equivalent area pursuant to article eighteen-B of the general municipal law, where such employment is in a job created in the area (i) during the period of its designation as an empire zone, (ii) within four years of the expiration of such designation, or (iii) during the ten year period immediately following the date of designation as a zone equivalent area, provided, however, that if the taxpayer's certification under article 18-B of the general municipal law is revoked with respect to an empire zone or zone equivalent area, any wages paid by the taxpayer, on or after the effective date of such decertification, for employment in such zone shall not constitute empire zone wages.

* * *

(3) The credit provided for herein shall be allowed only where the average number of individuals employed full-time by the taxpayer in (i) the state and (ii) the empire zone or area previously constituting such zone or zone equivalent area, during the taxable year exceeds the average number of such individuals employed full-time by the taxpayer in (i) the state and (ii) such zone or area subsequently or previously constituting such zone or such zone equivalent area, respectively, during the four years immediately preceding the first taxable year in which the credit is claimed with respect to such zone or area. Where the taxpayer provided full-time employment within (i) the state or (ii) such zone or area during only a portion of such four-year period, then for purposes of this paragraph the term "four years" shall be deemed to refer instead to such portion, if any.

* * *

(4) The amount of the credit shall equal the sum of

(i) the product of three thousand dollars and the average number of individuals employed full-time by the taxpayer, computed pursuant to the provisions of subparagraph (C) of paragraph two of this subsection, who

(I) received empire zone wages for more than half of the taxable year,

(II) received with respect to more than half of the period of employment by the taxpayer during the taxable year, an hourly wage which was at least one hundred thirty-five percent of the minimum wage specified in section six hundred fifty-two of the labor law, and

(III) are targeted employees; and

(ii) the product of fifteen hundred dollars and the average number of individuals (excluding individuals described in subparagraph (i) of this paragraph) employed full-time by the taxpayer, computed pursuant to the provisions of subparagraph (C) of paragraph two of this subsection, who received empire zone wages for more than half of the taxable year.

* * *

(iv) If a taxpayer is certified in an empire zone designated under subdivision (a) or (d) of section nine hundred fifty-eight of the general municipal law, the dollar amounts specified under subparagraph (i) or (ii) of this paragraph shall be increased by five hundred dollars for each qualifying individual under such subparagraph who received, during the taxable year, wages in excess of forty thousand dollars.

Opinion

In general, EZ wages are wages paid by a taxpayer for full-time employment during the taxable year in an area designated or previously designated as an Empire Zone where such employment is in a job created in the Empire Zone (section 606(k)(2)(A) of the Tax Law.) In the present case, Company X is a certified Empire Zone business at its location in an Empire Zone. The Empire Zone location is used primarily to store supplies, equipment, and vehicles that are used to provide the services at hospital facilities. Company X does not perform administrative functions or maintain office staff at the Empire Zone location. Company X's president works from his home and can be contacted by calling an 800 telephone number. Generally, no employees are present at the Empire Zone location for most hours of the business day and no one is being communicated with at that location. The hospital services are performed at locations outside the Empire Zone in which Company X is certified but within the tri-state area of New York, New Jersey, and Connecticut.

The employees described have only a minimal connection with the place of business located in the Empire Zone. As such, these workers are not being paid wages for full-time employment in an area designated as an Empire Zone. Thus, Company X is not paying EZ

wages to these employees and Company X's members would not be eligible to claim the EZ wage tax credit for these employees.

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