

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

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CorporationTax
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Income Tax
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**Certification of S Corporations under Article 18-B of the General Municipal Law Required
for Empire Zone Tax Benefits**

In response to your letter to the Tax Department, we have looked into the circumstances under which a business appears not to qualify for Empire Zone (EZ) tax benefits.

As we understand the facts, the business is organized as follows: An individual owns 100% of a limited liability company (SMLLC), treated for tax purposes as a disregarded entity. This disregarded entity owns 100% of several subsidiaries that have elected to be taxed as Subchapter S corporations. Both the SMLLC and the S corporation at issue are located in an EZ, but only the SMLLC is certified under Article 18-B of the General Municipal Law, and only the S corporation has employees and equipment in the EZ.

The EZ and qualified empire zone enterprise (QEZE) tax credits are available only to entities that are certified and that meet the other requirements of the credits. For purposes of the QEZE Article 9-A franchise tax and Article 22 personal income tax credits, a SMLLC disregarded entity and its single member are generally treated as one taxpayer and either may be certified in order to claim the credits. This is not the case, however, with an S corporation. Despite the fact that an S corporation generally passes through its income and tax credits to its shareholders, the S corporation is regarded as a separate taxpayer. The S Corporation must file and pay the minimum tax under Article 9-A. Thus, in this case, EZ certification of the SMLLC, which owns the S corporation, does not mean that the S corporation will be treated as being zone certified. The S corporation must be certified in its own right in order to earn the credits, which then would be passed through to its owner if the S corporation has made the New York S election under section 660 of the Personal Income Tax Law.

If the S corporation becomes certified, it may qualify for the EZ and QEZE credits in the future.

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