

Tompkins County Area Development

Empire Zone Program Modifications Passed in State Budget Bill

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New York State recently adopted budget bill (S. 57-B/A. 157-B) modifying the Empire Zone Program. The modifications will impact business entities that are currently certified to participate in the program as well as those certified on or after April 1, 2009. The following document summarizes the modifications. For additional information about tax credit implications see New York State Department of Taxation and Finance memo TSB-M-09(5)C, (4)I, Legislative Changes to the Empire Zones Program at www.tax.state.ny.us/pdf/memos/multitax/m09_5c_4i.pdf.

1. Existing Businesses

2009 Review of all Certified Businesses

In 2009, the State is required to review all existing certified business against two new decertification criteria:

- “Shirt Changers” - Businesses reincorporating prior to August 1, 2002 in order to maximize tax benefits.
- Businesses in the program for at least three years having a benefit-cost ratio of less than 1:1. *Tompkins County businesses should not have any problem here. All but two have not been certified for three years, so they won't need to meet the 1:1 ratio.*

Businesses that ‘pass’ the review will remain in the program and be issued an Empire Zone Retention Certificate. *It is unclear how long it will take the State to complete its review of 8,700+ businesses and issue Retention Certificates.*

Businesses that do not ‘pass’ the review will have their Empire Zone Certificates revoked (i.e. be decertified). The regulations state that the date determined to be the earliest event constituting grounds for revoking certification shall be the effective date of decertification. *There is some concern that implementation of the effective date of decertification may have a retroactive impact on previous tax years.* Companies that have their Empire Zone Certificates revoked as a result of the 2009 review will have just 15 days to request an appeal.

Tax Credits/Benefits

Certified businesses must attach a **Retention Certificate** with their New York State income tax filing for **tax years beginning on or after January 1, 2008** to claim a tax credit or carry forward from any previous year. Claims filed without the Retention Certificate will be denied, and the return will be processed without the benefit of the credits. Interest will be charged on any resulting underpayment of tax.

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Tax payers that have already filed a tax return for a tax year that began on or after January 1, 2008 claiming new or carryover EZ credits without the Retention Certificate must file an amended return with the Retention Certificate attached to receive EZ tax credits.

Petitions for refunds based on EZ tax credits may be filed beginning six months from the date the Retention Certificate is issued. *It is unclear how long it will take the State to complete its review of 8,700+ businesses and issue Retention Certificates.*

The **QEZE Sales Tax Exemption** will no longer be available beginning on September 1, 2009. A credit or refund of sales tax will replace the QEZE Sales Tax Exemption. The refund can be claimed no more frequently than quarterly with the first refund paid in January of 2010. *It is likely that the EZ Retention Certificate will be required to apply for the refund.*

2. Businesses Applying for Certification on or after April 1, 2009

Cost-Benefit Test

To be eligible for Empire Zone Certification businesses will be required to meet a new cost benefit ratio (ratio of wages and capital investments made by the business to projected incentives received by the state). Non-manufacturing businesses must meet a 20:1 ratio (the same as before) and manufacturers must meet a 10:1 ratio. The ratio will be calculated based upon the first three years of Empire Zone Certification rather than five. *The State has not placed any restrictions on the types of businesses that are eligible. New application forms will be issued.*

Tax Credits/Benefits

The **QEZE Credit for Real Property Taxes** will be 75 percent of the amount available to businesses certified on or after April 1, 2005.

The **QEZE Sales Tax Exemption** is no longer available. It has been replaced by a credit or refund of sales tax. However, a credit or refund of the State share of any sales or use taxes will not be allowed unless the county or city provides for the exemption of the local share (i.e. opts in). Currently, Tompkins County has not opted in to exempt the local share of sales tax.

3. Administration

- The program sunset date was moved up from June 30, 2011 to June 30, 2010.
- The Zone Certifying Officer was eliminated.
- The local Zone Administrative Board role has been changed from approving certification applications to recommending them to the State for approval.
- The Commissioner of the New York Department of Economic Development will be the ONLY certifying entity. The Department of Labor, previously one of the joint certifiers, will check for labor violations only.
- There is no State funding for local zone coordinators.

This summary is for informational purposes only. It is not meant to be a substitute for the advice of counsel.