

July 9, 2009

Dear Clients and Friends:

As we have already mentioned to you in various email alerts and letters, significant changes to the Empire Zone Program have been adopted in the 2009-10 New York State Budget.

Decertification/Recertification

The new law requires that decertification of businesses is determined based upon three new tests.

1. For businesses certified prior to August 1, 2002 if either:
 - the business transferred individuals from existing employment with another New York business with similar ownership, or
 - the business acquired, purchased, leased or transferred real property previously owned by an entity with similar ownership
2. For all businesses regardless of date of certification there is a "one-to-one" test, which considers whether annual wages paid to all employees and investments in the facility are greater in value than the tax benefits provided to the business under the Empire Zone Program. This test looks at wages and employee benefits, investments, and tax benefits during a three-year period.
3. For all businesses regardless of date of certification the final test is whether the business enterprise had changed ownership or moved its operations out of the Empire Zone.

Next Steps

Many have already received letters from Empire State Development notifying each business that recertification will occur and have also began receiving actual Empire Zone Retention Certificates.

If you have not received a letter as of yet, please contact us for further information!

- If you have already filed, an additional copy of the original return will need to be filed simply to attach the new certificate. **Per recent New York State guidance, these should be filed by the end of July 2009 to receive your full refund.**
- If you have not already filed, filing should be held off until the new certificate is obtained.

Any business enterprise receiving decertification notification by the Commissioner may challenge the Commissioner's determination by filing a notice within 15 business days, and a

formal written appeal within 60 days following the date of the Commissioner's revocation notification.

The new law states that decertification under the new rules is retroactive back to January 1, 2008, however there are arguments that decertification under the new rules could be effective no earlier than the date Governor Patterson signed the 2009-2010 budget bill, which is April 7, 2009.

Sales Tax Exemption Change

Please note, effective September 1, 2009, the new law also repeals the sales tax provisions that permitted Empire Zone businesses to buy goods and services to be used in the zone, free from State sales tax using an exemption certificate. **Under the new rules, taxpayers first certified in zones prior to April 1, 2009 are no longer permitted to avoid up-front payment of the sales tax to the vendor at the time of the sale. Instead, they will be required to pay the tax and then claim a credit or refund of the tax paid no more often than quarterly.**

Please be aware, if a blanket exemption certificate has been given to a vendor prior to this, it is each taxpayer's responsibility to notify the vendor to begin charging sales tax again, starting September 1, 2009.

Finally...

Any new application to become an Empire Zone business must be received by:
June 30, 2010 - one year earlier than in the prior law!

Additional new stringent tests exist for businesses seeking certification after April 1, 2009, as well as certain limits to the amount of credits available.

Please contact us for further information for post April 1, 2009 certifications!

For further information and clarification on these and any Empire Zone matters, please contact Cheryl Prout, CPA and Partner, at (716) 250-6600.

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