



Continuing Eligibility for Empire Zone Tax Benefits

This memorandum provides guidance about certain actions that may affect the continuing eligibility to receive Empire Zone (EZ) tax benefits for a business enterprise or taxpayer that was certified under Article 18-B of the General Municipal Law (GML) before the expiration of the Empire Zones Program.

Background

Chapter 57 of the Laws of 2009 and Chapter 57 of the Laws of 2010 contained certain transitional rules regarding the expiration of the Empire Zones Program. The program expired at midnight on June 30, 2010.

Under the transitional rules, certain businesses retained their eligibility for the EZ benefits after the expiration of the program. For a full explanation of those rules see:

- TSB-M-09(5)C,(4)I, *Legislative Changes to the Empire Zones Program*;
- TSB-M-09(12)S, *Changes to Qualified Empire Zone Enterprise (QEZE) Program (Articles 28 and 29) – Effective September 1, 2009*; and
- TSB-M-10(6)C, (12)I, (19)S, *Legislative Changes to the Empire Zones Program*

The following sections provide guidance on whether certain actions or events may lead a business enterprise or taxpayer that was certified as an EZ business on or before June 30, 2010, to subsequently lose eligibility to receive EZ benefits during the time periods described in the memoranda referred to above.

Change of address due solely to the implementation of a local 911 program, the subdivision of a parcel, or a request by the U.S. Postal Service

A taxpayer's eligibility to continue to claim EZ tax benefits at a location will not be affected by a change of address due solely to the implementation of a 911 program, the subdivision of a parcel, or a request by the U.S. Postal Service.

Change of name or organizational structure

A mere change in the name of the business where there has been no change in ownership or business structure or incorporation will not affect the taxpayer's eligibility to continue to claim EZ tax benefits at that location.

A change of name or organizational structure for any other reason will generally result in a discontinuation of the EZ tax benefits for that taxpayer. Therefore, the EZ certification and accompanying eligibility for EZ tax benefits will not survive a merger, reincorporation, consolidation, reorganization from a limited liability company (LLC) to a partnership or a partnership to an LLC, reorganization from a sole proprietorship to a corporation or LLC, or any other type of business reorganization.

Relocation or expansion within an EZ

A business enterprise or taxpayer that was certified under Article 18-B of the GML before the program expired may continue to claim EZ tax benefits if it moves or expands after the expiration into a new property that is within the EZ where the business or taxpayer was certified. EZ tax benefits may still be claimed even if the property was not named on the business's certificate of eligibility, or was not owned or occupied by the business before the program expired.

However, in each case the property must be located in an EZ in which the business enterprise or taxpayer was certified, and there can be no change in business ownership and equity structure of the business enterprise or taxpayer.

The business enterprise or taxpayer must provide a letter from Empire State Development with its tax return stating that the property is in the area previously designated as an EZ in which it was certified.

Discontinuation of the operations on which the business enterprise's or taxpayer's certification was predicated

The discontinuance of the business operations on which an empire zone certification was predicated would have been grounds for the revocation of the certification of a business enterprise or taxpayer as an EZ business under Article 18-B of the GML (GML, Section 959(a)(v)(2)(a)). Accordingly, if the business enterprise or taxpayer discontinues the business operations on which its EZ certification was predicated, the business enterprise or taxpayer will no longer be deemed to be certified as an EZ business for Tax Law purposes. Therefore, the business enterprise or taxpayer can no longer claim EZ tax benefits.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.