



Tax Alert

April 30, 2009

Bond, Schoeneck & King, PLLC

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ADDITIONAL LEGISLATION DURING BUDGET BILL "CLEAN-UP" PROCESS MAY INCLUDE EMPIRE ZONE PROVISIONS

Quite often, the New York State Legislature will enact so called "clean-up provisions" to make technical corrections and other changes to laws enacted as part of the budget process. We anticipate that, as part of the 2009 budget clean-up, the legislature may make some changes to the recent Empire Zone legislation.

We urge all businesses that may be impacted by the Empire Zone legislation to contact your State Senator as soon as possible to express your concerns regarding the new rules. We prepared the letter below that you may use for this purpose.

For your convenience, click here for a link to the mailing addresses for State Senators.

We will continue to monitor the Empire Zone legislation and the State's efforts to implement the recent changes.

** Sample Letter **

_____, 2009

Re: Retroactive Changes in Empire Zone Rules

Dear Senator _____:

I am writing to express my extreme dismay regarding the changes to the Empire Zone rules that were enacted as part of the 2009 Budget Bill and the retroactive application of these changes to our 2008 tax return. As I assume you are aware, the Budget Bill added several new grounds for decertifying an Empire Zone business including provisions directed at businesses that have transferred employees or property, and companies that do not meet a new cost/benefit requirement. The new law also provides for decertification of a business that has "changed ownership" without defining what that term means. Is the change in a 1% owner of a limited liability company a change of ownership for this purpose?

Some of the changes were intended to tighten provisions curbing abuses but are so broad that they may sweep companies who have fully met job and investment targets out of the program. For example, the new language is so broad that it may sweep companies who have changed their equity ownership or received transfers of assets or employees for legitimate business reasons, even though they have met all program requirements for new jobs and investments. There can be no defensible public policy reason for such broad changes other than to throw legitimate businesses out of the program.

We are extremely upset that, in April of 2009, the legislature would adopt a change in the tax law that may increase our 2008 tax liability. Making retroactive changes to the tax law is certainly no way to attract or retain businesses in New York. In these uncertain economic times, the last thing we need is even more uncertainty as to whether last year's taxes may be increased after the fact.

To make matters worse, we understand the New York State Tax Department intends to disallow all of our 2008 Empire Zone tax credits until the Commissioner of Economic Development decides whether or not we are eligible to receive those credits. When the State finally decides, we will be required to file an amended tax return (and incur additional accounting fees) to claim the tax credits that we rightfully claimed on our original tax return. Requiring us to wait to receive our 2008 tax credits, and forcing us to incur the additional cost of amending our tax return, demonstrates a total disregard and lack of respect for business owners in New York State.

I strongly urge you to do whatever is necessary to seek appropriate chapter amendments during the budget "clean-up process" to change these new rules and stop the Tax Department from disallowing our 2008 tax credits and forcing us to file amended returns. I appreciate your efforts in this regard. If you would like to discuss our comments further, please contact me at your convenience.

Very truly yours,

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