



Tax Alert

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EMPIRE ZONE LEGISLATION INCLUDES OTHER IMPORTANT CHANGES IN ADDITION TO REVOCATION PROVISIONS

The New York State Legislature made significant changes to the Empire Zone program as part of the Budget Bill that was enacted on April 7, 2009. Most significantly, the legislation added several new grounds for decertifying (i.e., removing) a certified business from the Empire Zone program. The new grounds for decertification, and their retroactive application to 2008 tax returns, are discussed in our April 21, 2009 Tax Alert (which can be found at www.bsk.com, see Tax Practice Group web page).

The Budget Bill contained other important changes to the Empire Zone rules, including the following:

- Sales Tax Exemption Replaced with Sales Tax Refund or Credit: Under the prior law, before the Budget Bill amendments, certified businesses were entitled to a New York State sales and use tax exemption. This exemption has been repealed effective August 30, 2009 and replaced with a sales tax refund or credit process. Beginning September 1, 2009, all certified businesses must pay sales tax on purchases that would otherwise be exempt under the prior law, and submit a claim to New York State for a refund or credit no more frequently than once each sales tax quarter.
- Reduced Credit for Real Property Taxes and Sales Tax Credits/Refunds: Businesses that are first certified under the Empire Zone Program on or after April 1, 2009 will be allowed a credit for real property taxes equal to 75% of the credit amount allowed to businesses that were certified before April 1, 2009. Also, businesses certified on
- Earlier Sunset Date for Empire Zone Program: The Empire Zone Program will now expire June 30, 2010 rather than June 30, 2011. Businesses that are certified before June 30, 2010 will continue to receive Empire Zone benefits for the remainder of their original 15 year or 10 year benefit period.

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or after April 1, 2009 will be eligible for the sales tax credit/refund only if the municipality in which the business is located has adopted a local law allowing a credit or refund of the local portion of the sales and use tax.

- New Cost/Benefit Test for Initial Certification:

Businesses seeking initial certification to participate in the Empire Zone Program on or after April 1, 2009 must meet a cost/benefit ratio of 20:1. The new cost/benefit ratio is 10:1 for manufacturers. Under the cost/benefit test, the estimated value of all wages and benefits paid to existing and projected Empire Zone employees during the first three years following certification of the business, plus the estimated value of capital investments for the first three years of certification must be at least 20 times (10 times for manufacturers) the total estimated Empire Zone tax benefits to be received by the business and its owners for the first three years of certification.

We understand regulations will soon be issued providing guidance as to how the new rules will be interpreted and applied. The legislature may also enact technical corrections or “clean-up” provisions for the Budget Bill, perhaps including some changes to the Empire Zone legislation. We continue to monitor developments in this area. For updates, visit www.bsk.com (see Tax Practice Group web page).

If you have any questions, please contact us.

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