

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-12(3)C  
Corporation Tax  
April 2, 2012

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C120320A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the Department of Taxation and Finance (DTF) will respect the Empire Zone (EZ) Certificate of Eligibility transferred by the Department of Economic Development (DED) from a corporation acquired by the Petitioner's parent to the Petitioner, and, if so, when will Petitioner's sales tax benefit period end.

We conclude that the Department will accept the Certificate of Eligibility transferred to Petitioner from the acquired business, as evidence that Petitioner is certified as an EZ business. Petitioner's sales tax benefit period began on June 1, 2010 and ends on May 30, 2020.

**Facts**

On September 11, 2011, an LLC holding company (Parent) purchased all of the shares of stock of the Petitioner. With that purchase, the LLC holding company became Petitioner's parent company. Prior to that acquisition, Petitioner operated under a different name. Following the acquisition of its stock by Parent, Petitioner's name was changed, but the corporation continued to exist and use the same federal employer identification numbers that it had always used. Petitioner was certified as an EZ business, effective May 18, 2010 but did not claim any EZ tax benefits prior to its acquisition. DED intends to transfer the acquired company's EZ Certificate of Eligibility to Petitioner to reflect the name change.

**Analysis**

The General Municipal Law authorizes the Commissioner of DED to certify a business enterprise as eligible to apply for EZ tax benefits.<sup>1</sup> Once a business has been certified, it will be eligible for the EZ tax benefits if it meets the requirements under the Tax Law. DTF will accept a copy of the Certificate of Eligibility and a Retention Certificate (if required) as evidence that the certification criteria have been met. Thus, DTF will respect the EZ Certificate of Eligibility issued by DED in the name of Petitioner.

For purposes of Articles 28 and 29 of the Tax Law, with regard to business enterprises certified pursuant to Article 18-B on or after April 1, 2009, the benefit period consists of 120 consecutive months beginning on the first day of the month next following the date of

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<sup>1</sup> §959(a) of the General Municipal Law.

certification, provided that such period shall not include any month falling within a taxable year immediately preceded by a taxable year with respect to which the business enterprise did not meet the employment test.<sup>2</sup> Thus, Petitioner's benefit period for purposes of the EZ sales and use tax benefit period began on June 1, 2010 and ends on May 30, 2020, provided that it meets the required employment test during that time.

DATED: April 2, 2012

/S/  
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DEBORAH R. LIEBMAN  
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

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<sup>2</sup> §14(a)(2) of the Tax Law.