

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

TSB-A-13(2)C
Corporation Tax
January 8, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C120403B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its Empire Zone (EZ) certification under Article 18-B of the General Municipal Law (GML) and its accompanying eligibility for EZ tax benefits, will survive and remain in full force and effect after its proposed change in its corporate structure.

We conclude that Petitioner will be eligible to claim the EZ tax benefits after the proposed change in its corporate structure for the remainder of its benefit period, provided that the Department of Economic Development (DED) continues its certification of Petitioner under Article 18-B of the GML and Petitioner meets the requirements in the Tax Law.

Facts

Petitioner is a New York State (NYS) corporation taxable as a Subchapter S corporation under Section 1361 of the Internal Revenue Code (IRC). Petitioner is owned by two individual NYS resident shareholders (“owners”), each owning 50%. Petitioner was certified under Article 18-B of the GML on November 1, 2007 and subsequently issued an EZ Retention Certificate (EZRC). For estate planning purposes, Petitioner’s owners propose to transfer a substantial percentage of the non-voting shares in Petitioner to two Grantor Trusts (“the trusts”), established for the benefit of their children. These transfers will be reported as gifts by the owners on Federal Form 709. One hundred percent of the voting shares and control of Petitioner will remain with the owners. For income tax purposes under IRC sections 671-678, the trusts will be disregarded entities. As such, all taxable income, deductions, and credits from the trusts will be reported on the individual tax returns of the owners as if they had received the items of income, deductions, and credits directly. The trusts will not obtain separate Federal Employer Identification Numbers and will not file separate trust tax returns.

Analysis

Petitioner asked whether Petitioner’s Empire Zone (EZ) certification under Article 18-B of the General Municipal Law (GML) and its accompanying eligibility for EZ tax benefits will survive and remain in full force and effect after its proposed change in its corporate structure. DED will determine whether Petitioner’s certification will continue after the trusts are created, and Petitioner should contact DED to confirm that its certification will be retained after a change in its corporate structure. Provided that DED determines that Petitioner’s certification will remain in effect, the addition of the trusts treated as disregarded entities by itself will not cause

Petitioner to fail to meet the requirements for the tax credits. The Department of Taxation and Finance (DTF) will accept the certification as evidence that Petitioner is eligible to claim the credits. In order to claim the credits, however, Petitioner must also meet the requirements in the Tax Law. To qualify to claim the qualified EZ enterprise (QEZE) credits, Petitioner must continue to meet the employment test annually. *See* Tax Law §14(a)(1)(C) and §14(b)(4). For federal income tax purposes, a corporation and its disregarded entities are treated as one. New York State follows the federal rule. Thus, Petitioner and its disregarded entities will be deemed one entity for purposes of calculating the employment number used in the employment test and the employment increase factor. *See* Tax Law sections 14(g), 14(b)(4), and 15(d) respectively.

DATED: January 8, 2013

/S/

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.