

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

TSB-A-12(1)I  
Income Tax  
January 31, 2012

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. 1110614A

The Department of Taxation and Finance (the Department) received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks (1) whether the Petitioner's empire zone (EZ) certification as a qualified empire zone enterprise (QEZE), and its accompanying eligibility for EZ tax benefits will survive and remain in full force and effect after the proposed change in its corporate structure, and (2) whether a future modification by the Commissioner of this Advisory Opinion on the issue presented in (1) above will operate prospectively to impact only subsequent changes in structure which occur after the date of such future modification.

We conclude that a proposed change in the corporate structure by adding two new single member limited liability companies (SMLLCs), treated as disregarded entities, that will become the new legal owners of Petitioner will not result in a loss of EZ tax benefits to Petitioner. We also conclude that any future modifications of this Advisory Opinion by the Commissioner on the issue presented in (1) will operate prospectively.

**Facts**

Petitioner, a limited liability company (LLC), is a QEZE which was certified under Article 18-B of the General Municipal Law (GML) on February 13, 2008 and subsequently issued an EZ Recertification Certificate. Petitioner, which is treated as a partnership for federal income tax purposes, is 99% owned by LLC A and 1% owned by LLC B. Petitioner's owners would like to modify the partnership structure when the partnership takes on new debt. The proposed structure would add two new SMLLCs, treated as disregarded entities, as follows: LLC A would form SMLLC 1, whereby LLC A would contribute its 99% ownership interest in Petitioner to SMLLC 1 in exchange for 100% of its ownership. LLC B would form SMLLC 2 whereby LLC B would contribute its 1% ownership interest in Petitioner to SMLLC 2 in exchange for 100% of its ownership. The additional debt contemplated by Petitioner would then become the liability of SMLLC 1 and SMLLC 2 pro rata, 99% and 1%, respectively.

After the proposed structure is implemented, Petitioner will remain the same LLC which is treated as a partnership for tax purposes. In addition, LLC A will still indirectly own and control 99% of Petitioner through its 100% ownership interest in SMLLC 1. LLC B will still indirectly own and control 1% of Petitioner through its 100% ownership interest in SMLLC 2.

**Analysis**

**Issue 1:** You have asked if Petitioner will lose its certification as a QEZE and the attendant tax benefits, if the SMLLCs are introduced into the ownership structure of the partnership as described above. It has come to our attention that the Department of Economic Development (DED) issued a declaratory ruling on August 24, 2011 that stated that the proposed restructuring would not result in the decertification of Petitioner. Because the restructuring in this instance does not change who ultimately

will be able to obtain the EZ tax benefits, we conclude that the Petitioner will not lose its attendant tax benefits.

**Issue 2:** Petitioner asked whether a future modification of this Advisory Opinion by the Department on issue 1 will operate prospectively to impact only subsequent changes in structure which occur after the date of such future modification, and will not impact tax years within the Petitioner's EZ benefit period occurring after the date of such modification, as a result of the structural changes described issue 1. Generally, issued Advisory Opinions are binding on the Commissioner with respect to the petitioner and the facts described in the Opinion. Advisory Opinions may be affected by subsequent changes in law, regulations, or court or Tribunal decisions, or they may be modified or revoked by the Commissioner. Modifications and revocations operate prospectively only. See 20 NYCRR §2376.5(a).

DATED: January 31, 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.