

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

TSB-A-13(3)I
Income Tax
February 25, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. I121108A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner is certified under Article 18-B of the General Municipal Law (GML) and has been receiving Qualified Empire Zone Enterprise (QEZE) tax benefits. Petitioner asks whether a sale or transfer of less than a majority ownership interest in Petitioner will change its entitlement to such benefits under the facts provided.

We conclude that the proposed change in the corporate structure by a transfer of no more than a 49% ownership interest in Petitioner to an unrelated third party will not result in a loss of QEZE tax benefits to Petitioner, provided that the Department of Economic Development (DED) determines that Petitioner's Empire Zone certification will remain in effect and Petitioner continues to meet the requirements in the Tax Law to qualify for the tax credits.

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 Retention Certificate. Petitioner, which is treated as a partnership for federal income tax purposes, is 99 percent owned by an LLC treated for tax purposes as a partnership. Another LLC owns the remaining one percent. Under the proposed change in the ownership of Petitioner, the 99 percent owner would sell up to 49 percent of its ownership interest to an unrelated third party, either by (i) selling the ownership interest directly or (ii) establishing a new LLC (NEWCO) which would own and control 99 percent of Petitioner. NEWCO would be owned no less than 51% by the current 99 percent owner and no more than 49 percent by an unrelated third party. Regardless of whether the change in ownership of Petitioner occurs under proposal (i) or proposal (ii), Petitioner's current majority owner will retain, directly or indirectly, majority ownership and control of Petitioner. DED has determined in a Declaratory Ruling dated October 3, 2012, that the proposed minority ownership change will not result in revocation of Petitioner's Empire Zone certification, because such proposed change in ownership is not a ground for revocation pursuant to the GML and the regulations promulgated thereunder.

Analysis

The Department of Taxation and Finance (DTF) will accept the DED's Empire Zone certification as evidence that Petitioner is eligible to claim the QEZE credits. Provided that Petitioner continues to be certified by DED and meets the requirements in the Tax Law to qualify for the tax credits, Petitioner will be able to continue to claim the tax credits.

DATED: February 25, 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.