

Decertification of Economic Development
Zone Business

Chapter 624 of the Laws of 1990 and Chapter 423 of the Laws of 1991 amended the Tax Law regarding the EDZ Investment Tax Credit, provided under section 210.12-B of Article 9-A and section 606(j) of Article 22, with regard to the decertification of a business enterprise within an economic development zone. Chapter 624 also amended the Tax Law regarding the EDZ Wage Tax Credit, provided by section 210.19 Of Article 9-A, section 606(k) of Article 22, section 1456(e) of Article 32 and section 1511(g) of Article 33.

An economic development zone business may be decertified by the Department of Economic Development upon a finding that the business enterprise (1) made material misrepresentations of fact on its application or failed to disclose facts on its application that would constitute grounds for not issuing a certification, (2) failed to construct, expand, rehabilitate or operate its facility substantially in accordance with the representations contained in its application for certification, (3) failed to create new employment or prevent a loss of employment in the economic development zone, (4) failed to submit the annual report or other information to the local economic development zone certification officer when due or (5) committed substantial violations of laws designed for the protection of workers, including all federal, state and local labor laws, rules or regulations. Such decertification, pursuant to the above mentioned five clauses in section 959(a) of the General Municipal Law, will take effect as of the date of the earliest event constituting grounds for decertification. Such decertification will result in the loss of tax benefits and the recovery of any unwarranted benefits that it has received pursuant to the Tax Law.

EDZ Wage Tax Credit

Chapter 624 amended sections 210.19(b)(1), 606(k)(2)(A), 1456(e)(2)(A) and 1511(g)(2)(A) to provide that the computation of the EDZ Wage Tax Credit shall include only those wages paid by a business enterprise for employment in an economic development zone prior to its date of *decertification*. The EDZ Wage Tax Credit was also amended by adding paragraphs 210.19(b)(7), 606(k)(2)(G), 1456(e)(2)(G) and 1511(g)(2)(G) to provide a definition of "average number of full-time employees", and sections 210.19(c)(1), 606(k)(3)(A), 1456(e)(3)(A) and 1511(g)(3)(A) were amended regarding eligibility for the EDZ Wage Tax Credit. Prior law required that 20% of a taxpayer's employees, employed in jobs created in the zone during its period of designation as an EDZ, be residents of the economic development zone or census tracts contiguous to such zone in order to be eligible for the credit. The law was amended to require that 20% of the taxpayer's employees, employed in jobs created in the zone during its period of designation as an EDZ (1) in a municipality with a population of 100,000 or less, be residents of the county in which any part of the zone exists, (2) in a municipality between 100,000 and 999,000 population, be residents of the city, town or village in which any part of the zone exists or (3) in a municipality of one million or more population, be residents of the community planning district in which any part of the zone exists.

EDZ Investment Tax Credit

Chapter 624 and Chapter 423 amended sections 210.12-B(f) and 606(j)(6) to provide that the decertification of a business enterprise within an economic development zone will constitute a disposal or cessation of qualified use of the property on which the EDZ Investment Tax Credit was taken. A decertified business enterprise may be required to recapture some or all of the EDZ Investment Tax Credit claimed. The method of recapture is similar to the recapture required by sections 210.12(g) and 606(a)(7).

Example 1: A taxpayer (corporate or personal) places 3 year property in service on January 1, 1989, for which the taxpayer claimed and deducted from corporate or personal income taxes an EDZ Investment Tax Credit of \$60,000. The taxpayer is decertified on January 1, 1991. Since the property was only in qualified use for 2 of the 3 years of its useful life, the taxpayer will be required to recapture \$20,000, computed as follows:

$$\frac{12 \text{ months-not in qualified use}}{36 \text{ months-useful life of property}} \times \$60,000 \text{ EDZ Investment Tax Credit claimed and deducted} = \$20,000 \text{ Recapture}$$

The \$20,000 will be required to be recaptured on Form DTF-603. However, if the property was not actually disposed, but only deemed disposed for purposes of the EDZ Investment Tax Credit, the taxpayer may claim the regular Investment Tax Credit allowed under sections 210.12 or 606(a) for the 12 month period disallowed for EDZ Investment Tax purposes.

Example 2: Assume the same facts as Example 1, except that the taxpayer has deducted from its tax only \$20,000 of the \$60,000 credit. In a situation where the amount of credit deducted (\$20,000) does not exceed the amount of credit allowed (\$40,000), the taxpayer will not be required to recapture the credit and will be allowed a carryforward of \$20,000. If the property was not actually disposed, but only deemed disposed for purposes of the EDZ Investment Tax Credit, the taxpayer may claim the regular Investment Tax Credit allowed under sections 210.12 or 606(a) for the 12 month period disallowed for EDZ Investment Tax purposes.

However, if an economic development zone business is decertified pursuant to clauses (1), (2) or (5) of section 959(a) of the General Municipal Law, the recaptured EDZ investment tax credit required to be recaptured must be augmented by an amount equal to the recaptured EDZ investment tax credit multiplied by the interest rate in effect on the last day of the taxable year.

Example 3: Assume the same facts as Example 1, except that the taxpayer was decertified pursuant to clause (1) of section 959(a) of the General Municipal Law. The interest rate at the end of 1991 is 11%. The \$20,000 recapture must be augmented by an additional \$2,200 (\$20,000 x 11%) to require a total recapture of \$22,200.

When a business enterprise is decertified and EDZ Investment Tax Credit is allowed to be carried forward the carryover of this credit will be limited to the seven taxable years following the taxable year in which the credit was allowed, or until it is used up. The taxpayer may claim the regular Investment Tax Credit under sections 210.12 or 606(a), for property ceasing to be in qualified use as a result of decertification, by filing the appropriate Investment Tax Credit claim form for either personal income tax or corporation franchise tax purposes.

EDZ Employment Incentive Tax Credit

EDZ Employment Incentive Tax Credit allowed to a corporation pursuant to section 210.12-C, will also be required to be recaptured as a result of disposal of property because of decertification, if a recapture of the EDZ Investment Tax Credit is required. Assume the same facts as Example 1. The method of recapture will be as follows:

Example 4: A corporate taxpayer places 3 year property in service on January 1, 1989, for which the taxpayer receives a \$60,000 EDZ Investment Tax Credit. For the taxable year ending December 31, 1990, the taxpayer claims and applies against taxes the EDZ Employment Incentive Tax Credit of \$18,000 (30% of \$60,000). The taxpayer is decertified on January 1, 1991. The taxpayer is required to add back \$6,000, computed as follows:

$\frac{12 \text{ months not in qualified service}}{36 \text{ months - life of property}} \times \$18,000 \text{ EDZ Employment Incentive Tax Credit} = \$6,000 \text{ Recapture}$

No augmentation will be required for recapture of the EDZ Employment Incentive Tax Credit.

Even though the property has been deemed disposed, the taxpayer will qualify for a \$12,000 EDZ Employment Incentive Tax Credit (2/3 of \$18,000) for the next 2 years if it meets the employment requirements of section 210.12-C.

Assessments

Sections 683(c) of the personal income tax law and 1083(c) of the corporate tax procedures were amended with regards to the assessment of a liability generated by reason of the decertification of a business enterprise. These sections were amended to provide that such a liability maybe assessed within three years after the Commissioner of Taxation and Finance received notice of the decertification.

Effective Date

All of the personal income tax provisions as well as most of the corporation tax provisions will be effective for taxable periods beginning on or after January 1, 1986. The corporation tax provisions relating to Article 9-A which deal with the decertification of an eligible business as it relates to the EDZ Investment Tax Credit (§210.12-B(f)) and EDZ Wage Tax Credit (§210.19(b)(1)) will be effective July 18, 1990.