

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, subsection (a) of section 697 and subsection (a) of section 1096 of the Tax Law, the Commissioner of Taxation and Finance, at an open meeting held on even date with the signing of this regulation, hereby makes and adopts the following amendments to the regulations of the Department of Taxation and Finance, as published in Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, by amending the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of such Title, by amending the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I of such Title, by amending the Franchise Taxes on Insurance Corporations Regulations, as published in Subchapter C of Chapter I of such Title, and by amending the New York State Personal Income Tax Regulations, as published in Subchapter A of Chapter II of such Title, to read as follows:

Section 1. Subpart 5-9 of the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of Title 20, is REPEALED and a new Subpart 5-9 is added to read as follows:

SUBPART 5-9

EMPIRE ZONE WAGE TAX CREDIT

Sec.

5-9.1 General

5-9.2 Period of eligibility and eligibility requirements

5-9.3 Meaning of terms

5-9.4 Computation of the empire zone wage tax credit

§ 5-9.1 General. (Tax Law, §§ 210(19), 1083(c)(9), 1085(m))

(a) In accordance with section 210.19 of the Tax Law, a taxpayer that has been certified or that has applied for certification (see subdivision (b) of this section) pursuant to article 18-B of the General Municipal Law may be eligible to claim an empire zone wage tax credit (formerly known as "economic development zone wage tax credit") against the tax imposed by article 9-A of the Tax Law with respect to wages paid for full-time employment, other than to general executive officers, in newly created jobs located in empire zones (EZ's) or zone equivalent areas (ZEA's), designated as such pursuant to article 18-B of the General Municipal Law.

(b)(1) In order to claim a credit, a taxpayer must be certified pursuant to article 18-B of the General Municipal Law with respect to the taxable year. For purposes of this subdivision, a taxpayer is certified where the taxpayer has received certification pursuant to article 18-B of the General Municipal Law and such certification has not been revoked. A taxpayer will be deemed certified with respect to an entire taxable year if the taxpayer applied for such certification on or before the last day of the taxable year, whether such application was approved during such taxable year or in a subsequent taxable year.

Example: Taxpayer A is a calendar year taxpayer, located in an empire zone. On December 30, 1999, Taxpayer A applied for certification. On April 30, 2000, Taxpayer A received notice from the Department of Economic Development that it had been certified as of the date the local zone certifying officer signed and dated the application, which was April 1, 2000. For purposes of the empire zone wage tax credit, Taxpayer A is deemed to have been certified as of January 1, 1999, the first day of Taxpayer A's taxable year in which it applied for certification. If the requirements set forth in section 210.19 of the Tax Law, other than with respect to certification, are met, then wages paid by Taxpayer A on and after January 1, 1999, will constitute empire zone wages.

(2) Where a taxpayer's certification pursuant to article 18-B of the General Municipal Law has been revoked during the taxable year, an empire zone wage tax credit may be allowed with respect to empire zone wages paid during the taxable year prior to the revocation. For a special provision with respect to the assessment of tax due to a taxpayer's decertification pursuant to article 18-B of the General Municipal Law, see section 38.1 of this Title.

(c) A taxpayer entitled to claim an empire zone wage tax credit must submit a copy of its certificate of eligibility together with a "Claim for EZ Wage Tax Credit" form or a "Claim for ZEA Wage Tax Credit" form when claiming the credit. If the certificate of eligibility has not yet been received, a copy of the application for such certificate must

be submitted. The appropriate certificate of eligibility, or application for such certificate, must be attached to the taxpayer's franchise tax report for the year in which the taxpayer is claiming the credit.

(d) If a taxpayer has claimed an empire zone wage tax credit contingent on the approval of the application for certification according to article 18-B of the General Municipal Law and such application is subsequently denied, such taxpayer must file an amended report with the Commissioner to reflect the disallowance of the empire zone wage tax credit.

§ 5-9.2 Period of eligibility and eligibility requirements (Tax Law, § 210(19))

(a)(1) The empire zone wage tax credit is allowed for up to five consecutive taxable years, beginning in the first taxable year in which the taxpayer meets the eligibility rules described in section 210.19 of the Tax Law. Effective for taxable years beginning on or after January 1, 2001, the zone equivalent area wage tax credit is also allowed for up to five consecutive taxable years, beginning in the first taxable year in which the taxpayer meets the eligibility rules described in section 210.19 of the Tax Law.

(2) Transition Rule. For purposes of the zone equivalent area wage tax credit:

(i) a taxpayer who is first eligible to claim the zone equivalent area wage tax credit prior to January 1, 1997 will be allowed to claim the zone equivalent area wage tax credit for up to two consecutive

years, beginning in the first taxable year in which the taxpayer meets the eligibility rules described in section 210.19 of the Tax Law;

(ii) a taxpayer who is first eligible to claim the zone equivalent area wage tax credit on or after January 1, 1997 and before January 1, 2001, will be allowed to claim the zone equivalent area wage tax credit for up to two consecutive taxable years beginning in the first taxable year in which the taxpayer meets the eligibility rules described in section 210.19 of the Tax Law. In addition, for taxable years beginning on or after January 1, 2001, such taxpayer will be allowed to claim the credit for up to three additional consecutive taxable years, in which the taxpayer continues to meet such eligibility rules. Each of such additional taxable years must fall within the five year period beginning with the first taxable year in which the taxpayer is eligible to claim the zone equivalent area wage tax credit.

Example: Taxpayer B is a calendar year taxpayer, located in a zone equivalent area. Taxpayer B meets the eligibility requirements, described in section 210.19 of the Tax Law, to claim the zone equivalent area wage tax credit for taxable years 1997 and 1998 and claims the credit for such years. Taxpayer B continues to meet such eligibility requirements for taxable years 1999 and 2000. Since the extension of the zone equivalent area wage tax credit to a period of up to five consecutive taxable years is not effective until January 1, 2001, Taxpayer B may not claim the zone equivalent area wage tax credit for taxable years 1999 or 2000. However, if

Taxpayer B continues to meet the eligibility rules in taxable year 2001, it may claim the credit for that one additional taxable year. (Taxable year 2001 would fall within the five year period beginning when Taxpayer B originally claimed the credit (1997), and such taxable year begins on or after January 1, 2001.)

(b) In addition to the eligibility rules described in section 210.19 of the Tax Law, the following also applies. Taxpayers which have shifted their operations or portions thereof from an area within New York State, which is not an empire zone or zone equivalent area, to an area which is an empire zone or zone equivalent area, and have been certified under section 959(a) of article 18-B of the General Municipal Law, are eligible to include the employees which have been shifted from the area which is not an empire zone or zone equivalent area, when determining the number of full-time employees employed by the taxpayer in the zone or area during the taxable year. Taxpayers which have shifted their operations or portions thereof from an area outside New York State are similarly eligible to include the employees which have been shifted from outside the State.

§ 5-9.3 Meaning of terms. (Tax Law, § 210(19)(b),(c))

In addition to the terms provided in section 210.19 of the Tax Law, the following terms, as used in this Subpart and in section 210.19, have these meanings:

(a) The term "empire zone wages" means wages paid by a certified taxpayer for full-time employment, other than to general executive

officers, during the taxable year in an area designated or previously designated as an empire zone or zone equivalent area pursuant to article 18-B of the General Municipal Law, where such employment is in a job created in the area (i) during the period of its designation as an empire zone, (ii) within four years of the expiration of such designation, or (iii) during the ten year period immediately following the date of designation as a zone equivalent area. Where a taxpayer's certification pursuant to article 18-B of the General Municipal Law has been revoked, any wages paid by the taxpayer on or after the effective date of such decertification will not constitute empire zone wages.

(b) For purposes of calculating the empire zone wage tax credit, the term "individuals employed" includes any individual for which the relationship of employer and employee exists when the taxpayer has the right to control and direct the individual not only as to the result to be accomplished by the individual but also as to the means by which such result is to be accomplished. If the relationship of employer and employee exists, the designation or description of the relationship, and the measure, method or designation of the compensation are immaterial.

(c) The term "full-time employment" means a job consisting of at least 35 hours per week or two or more jobs which together constitute the equivalent of a job of at least 35 hours per week. A seasonal job which meets the requirements of the preceding sentence qualifies as a full-time employment position if such job is of at least three months continuous duration.

(d) For purposes of meeting the requirements for being a targeted employee, as defined in section 210.19(b)(2) of the Tax Law: (i) The Department will only recognize Form ES 450, issued by the Department of Labor (DOL), and signed by a DOL representative as proof of the targeted status of an individual under the empire zone wage tax credit program; and

(ii) the term "family" means a group of two or more persons (one of whom is the householder (i.e., the person who owns or maintains the house)) related by birth, marriage, or adoption and residing together; all such persons (including related subfamily members) are considered members of the same family. For example, if the son of the householder and the son's wife are in the household, they are treated as part of the householder's family. However, a lodger and spouse, not related to the householder, are considered as a separate family and not as part of the householder's family for purposes of this definition.

(e) The term "general executive officers" has the same meaning as in section 4-5.3 of this Title-General executive officers.

§ 5-9.4 Computation of the empire zone wage tax credit (Tax Law § 210 (19)(d))

In addition to the rules provided in section 210.19(d) of the Tax Law, with respect to the computation of the empire zone wage tax credit, the rule provided in subdivision (b) of section 5-9.2 of this Subpart, with respect to the shifting of operations or some portions thereof, also applies to the computation of the empire zone wage tax credit.

Taxpayers which have shifted operations or some portions thereof from an area within New York State, which is not an empire zone or zone equivalent area, to an area which is an empire zone or zone equivalent area, and have been certified under section 959(a) of Article 18-B of the General Municipal Law, are eligible to include the employees which have been shifted from the area which is not an empire zone or zone equivalent area, when determining the amount of the empire zone wage tax credit, provided the taxpayer has met the eligibility requirements to claim the empire zone wage tax credit under section 5-9.2 of this Subpart and section 210.19 of the Tax Law. Taxpayers which have shifted their operations or portions thereof from an area outside New York State are similarly eligible to include the employees which have been shifted from outside the State.

Section 2. Subpart 20-4 of the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I of Title 20, is REPEALED and a new Subpart 20-4 is added to read as follows:

SUBPART 20-4

EMPIRE ZONE WAGE TAX CREDIT

Sec.

20-4.1 General

§ 20-4.1 General. (Tax Law, § 1456(e))

In accordance with section 1456(e) of the Tax Law, a taxpayer that has been certified or that has applied for certification pursuant to

article 18-B of the General Municipal Law may be eligible to claim an empire zone wage tax credit against the tax imposed by Article 32 of the Tax Law with respect to wages paid for full-time employment, other than to general executive officers, in newly created jobs located in empire zones (EZ's) or zone equivalent areas (ZEA's), designated as such pursuant to article 18-B of the General Municipal Law. The provisions of Subpart 5-9 of this Chapter, dealing with the empire zone wage tax credit against the tax imposed by article 9-A of the Tax Law, are applicable to the credit allowed by section 1456(e) of the Tax Law, except that references in Subpart 5-9 to section 210.19 of the Tax Law are deemed to refer to section 1456(e) for article 32 taxpayers.

Section 3. Subpart 32-2 of the Franchise Taxes on Insurance Corporations Regulations, as published in Subchapter C of Chapter I of Title 20, is REPEALED and a new Subpart 32-2 is added to read as follows:

SUBPART 32-2

EMPIRE ZONE WAGE TAX CREDIT

Sec.

32-2.1 General

§ 32-2.1 General. (Tax Law, § 1511(g))

In accordance with section 1511(g) of the Tax Law, a taxpayer that has been certified or that has applied for certification according to article 18-B of the General Municipal Law may be eligible to claim an empire zone wage tax credit against the tax imposed by Article 33 of the

Tax Law with respect to wages paid for full-time employment, other than to general executive officers, in newly created jobs located in empire zones (EZ's) or zone equivalent areas (ZEA's), designated as such according to article 18-B of the General Municipal Law. The provisions of Subpart 5-9 of this Chapter, dealing with the empire zone wage tax credit against the tax imposed by article 9-A of the Tax Law, are applicable to the credit allowed by section 1511(g) of the Tax Law, except that references in Subpart 5-9 to 210.19 of the Tax Law are deemed to refer to section 1511(g) for Article 33 taxpayers.

Section 4. Section 106.8 of the Personal Income Tax Regulations, as published in Subchapter A of Chapter II of Title 20, is REPEALED and a new Section 106.8 is added to read as follows:

§ 106.8 Empire zone wage tax credit. (Tax Law, § 606(k))

In accordance with section 606(k) of the Tax Law, a taxpayer who has been certified or who has applied for certification according to article 18-B of the General Municipal Law may be eligible to claim an empire zone wage tax credit against the ordinary tax (see section 101.1 of this Article), with respect to wages paid for full-time employment in newly created jobs located in empire zones (EZ's) or zone equivalent areas (ZEA's), designated as such according to article 18-B of the General Municipal Law. The provisions of Subpart 5-9 of this Chapter, dealing with the empire zone wage tax credit against the tax imposed by Article 9-A of

the Tax Law, are applicable to the credit allowed by section 606(k) of the Tax Law, except that references in Subpart 5-9 to section 210.19 of the Tax Law are deemed to refer to section 606(k) for Article 22 taxpayers.

Dated: Albany, New York

January 25, 2002

Arthur J. Roth
Commissioner of Taxation and Finance