



Alert

Economic Development Incentives

Empire Zones: Decertification and Retention Certificates

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The FY 2010 New York State budget, enacted in April, brought about drastic changes to New York's Empire Zones (EZ) program that will affect every certified EZ business. The new law requires the Commissioner of Economic Development to review all zone-certified businesses and creates a retroactive tax impact for all taxpayers claiming Empire Zone tax credits. These changes require the immediate attention of all EZ businesses and EZ business owners.

There are about 9,000 Empire Zone businesses in New York State. The Commissioner must review each certified business – this year – to determine whether to decertify based on one of two new grounds:

- The business failed to invest in the Empire Zone (calculated by adding up capital investment and wages and benefits paid to employees over three years) an amount greater than the total tax credits and other benefits received under the EZ program (the "1:1" test); or
- The business was certified before August 1, 2002, and employees or real property were transferred to the certified business from another New York business with similar ownership (the so-called "shirt changer" test).

The law gives the Commissioner discretion (after consulting with the State budget director) to consider other factors relating to the costs and benefits to New York State of a particular project or business, in deciding whether or not to offer continued certification to the business. The law also creates or modifies other grounds for decertification, but does not mandate examination of those grounds.

Businesses that are not decertified under either of the above tests will receive an Empire Zone "Retention Certificate" from the Commissioner. The Retention Certificate will allow the business to continue to claim Empire Zone tax credits.

Businesses that are decertified will receive written notice from the Commissioner, the Department of Economic Development or Empire State Development. The new law provides only 15 business days to appeal the Commissioner's decision from the date of the notice revoking certification. Therefore, please immediately attend to any correspondence you receive from the Commissioner, the Department of Economic Development or Empire State Development in the coming months.

We expect that preliminary notices will be sent in the next week or so by the Commissioner that will indicate whether a business is going to be decertified or receive a retention certificate. If it is indicated that a business is likely to be decertified, it may be advisable to promptly submit additional information to the Commissioner that will contradict the findings. Such information may include correct wage and benefit data or additional capital expenditures that have been made since 2007 (the date of the last Business Annual Reports that have been submitted by each Empire Zone business). This process is expected to proceed quickly and final determinations may be made as soon as June 1, 2009.

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