

Empire Zone Legislative Changes



On April 15th, 2009, the New York State Department of Taxation and Finance issued TSB-M-09 relating to legislative changes to the Empire Zones Program. All businesses and individuals that benefit from Qualified Empire Zone credits must be recertified under new criteria. Empire State Development will issue an EZ retention certificate to businesses meeting the criteria for continued certification.

What does this mean to you?

If you have already filed a 2008 return claiming Zone benefits, the Department of Taxation and Finance is NOT asking you to prepare an amended return calculating and paying tax as if Zone benefits were not available for 2008. If it is anticipated that the QEZE business will pass the new tests for continued certification, then the only time an amended return ought to be filed is when the retention certificate is issued by Empire State Development (ESD). After the retention certificate is issued the taxpayer needs to file an amended return that assuming there are no other changes to report should be the same as the original return with a copy of the retention certificate attached. Under these circumstances no underpayment would result, and there should be no additional cost to the taxpayer (other than the cost to prepare the return).

If you think that the QEZE may not survive the ESD review and will be retroactively decertified, you can either: (1) send in an additional estimated payment to be credited to the 2008 tax year to avoid the accrual of additional interest in the event of a decertification retroactive to January 1, 2008; (2) do nothing and wait for the Department of Taxation and Finance to assess a liability for the underpayment with interest (currently at 7.5%) if a retention certificate is not forthcoming; or (3) file an amended return after a retroactive decertification computed without Zone benefits and pay the additional tax due, with interest.

We are in constant contact with Albany and as more information is known, we will communicate with those affected under this new regulation. Please contact David Schlein to determine the best course of action for you. Dave can be reached at 716-856-3300 or dschlein@lumsden CPA.com.