S T A T E   O F   N E W   Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

June 9, 2009

Introduced by M. of A. SCHIMMINGER, STIRPE, MAGNARELLI, MORELLE, DESTITO, LUPARDO, DelMONTE, PEOPLES, HOYT, GABRYSZAK, FIELDS, GUNTHER, JAFFEE, KOON, SCHROEDER, CAHILL -- Multi-Sponsored by -- M. of A. REILLY -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general municipal law, in relation to certification and decertification of businesses as empire zone enterprises; and to repeal certain provisions of the tax law relating to the carryover of certain tax credits and tax refunds of certain tax credits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (a) of section 959 of the general municipal law, as amended by section 3 of part S-1 of chapter 57 of the laws of 2009, is amended and a new subdivision (a-1) is added to read as follows:

(a) After consultation with the director of the budget, the commissioner of labor, and the commissioner of taxation and finance, promulgate regulations, which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis, governing (i) criteria of eligibility for empire zone designation, provided, however, that such criteria be approved by the director of the budget; (ii) the application process; (iii) the certification by the commissioner as to the eligibility of business enterprises for benefits referred to in section nine hundred sixty-six of this article, which shall be governed by criteria including, but not limited to: (1) whether the business enterprise, if certified, is reasonably likely to create new employment or prevent a loss of employment in the zone, (2) whether such new employment opportunities will be for individuals who will perform a substantial part of their employment activities in the

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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zone, (3) whether certification will have the undesired effect of causing individuals to transfer from existing employment with another business enterprise to similar employment with the business enterprise so certified, and transferring existing employment from one or more other municipalities, towns or villages in the state, or transferring existing employment from one or more other businesses in the zone, (4) whether such enterprise is likely to enhance the economic climate of the zone, (5) whether the commissioner of labor establishes that such business enterprise, during the three years preceding the submission of an application for certification, has engaged in a substantial violation or a pattern of violations of laws regulating unemployment insurance, workers compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding; (6) whether such business meets the requirements of the cost benefit analysis as established in paragraph (p) of section nine hundred fifty-seven of this article, and (7) if the commissioner of labor establishes that the business enterprise has been found in a criminal proceeding to have violated, in the previous three years, any of the laws referred to in subparagraph five of this paragraph or regulations promulgated pursuant to such laws, the conditions of any permit issued thereunder, or similar statute, regulation, order or permit condition of any other government agency, foreign or domestic, such business shall not be certified; provided, however, that a business enterprise that has shifted its operations, or some portions thereof, from an area within New York state not designated as an empire zone or zone equivalent area to an area so designated shall not be certified to receive such benefits except where such shift is entirely within a municipality and has been approved by the local governing body of such municipality or in situations where it has been established, after a public hearing, that extraordinary circumstances exist which warrant the relocation of a business, in whole or part, into an empire zone or a zone equivalent area from another municipality and the municipality from which the business is relocating approves of such relocation; or where such shift in operations is from a business incubator facility operated by a municipality or by a public or private not-for-profit entity which provides space and business support services to newly established firms; and (iv) the decertification by the commissioner, upon the recommendation of the commissioner of labor, so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding that the business enterprise has committed substantial violations of laws for the protection of workers including all federal, state and local labor laws, rules or regulations; and (v) the decertification by the commissioner so as to revoke the certification of business enterprises for benefits referred to in section nine hundred sixty-six of this article with respect to an empire zone or zone equivalent area upon a finding of any one of the following: (1) the business enterprise made material misrepresentations of fact on its application for certification or in any of its business annual reports, or the business enterprise failed to disclose facts in its application for certification that would constitute grounds for not issuing a certification; (2) the business enterprise has failed to construct, expand, rehabilitate or operate or invest in its facility substantially in accordance with the representations contained in its application for certification; (3) the business enterprise has failed to create new employment or prevent a loss of employment in the empire zone or zone equivalent area; (4) where applicable, the business enterprise has failed to submit an annual report after it has applied for zone tax benefits or program assistance based on new hires or investments or failed to submit other information when due; (5) the business enterprise, if first certified pursuant to this article prior to the first day of August, two thousand two, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (6) the business enterprise has failed to provide economic returns to the state in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; PROVIDED, HOWEVER, QUALIFIED EMPIRE ZONE ENTERPRISES THAT HAVE MORE THAN ONE EMPIRE ZONE LOCATION WITH THE SAME FEDERAL TAX IDENTIFICATION NUMBER MAY ELECT TO BE REVIEWED IN AGGREGATE AND NOT PER EMPIRE ZONE LOCATION; PROVIDED, FURTHER THAT QUALIFIED EMPIRE ZONE ENTERPRISES WHICH HAVE DIFFERENT FEDERAL TAX IDENTIFICATION NUMBERS AND MEET THE "RELATED PERSON" DEFINITION AS SET FORTH IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE MAY ELECT TO BE REVIEWED IN AGGREGATE BASED UPON TWO OR MORE SUCH ENTERPRISES, WHILE LEAVING OTHER SUCH ENTERPRISES FOR INDEPENDENT REVIEW, AND NOT PER ENTERPRISE OR EMPIRE ZONE LOCATION; or (7) the business enterprise has changed ownership RESULTING IN THE BUSINESS ENTERPRISE HAVING A DIFFERENT FEDERAL TAX IDENTIFICATION NUMBER THAN THAT WHICH THEY WERE ORIGINALLY CERTIFIED UNDER or moved its operations out of the empire zone; said regulations shall provide that whenever any business enterprise is decertified with respect to an empire zone: (A) the [date determined to be the earliest event constituting grounds for revoking certification shall be the effective date of decertification] EFFECTIVE DATE OF DECERTIFICATION SHALL NOT BE EARLIER THAN THE FIRST DAY OF THE BUSINESS ENTITY'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND NINE; (B) its certified single enterprise, if any, may also be decertified; and (C) the commissioner shall notify the commissioner of taxation and finance that such decertification has occurred, and such notification should include the effective date of such decertification and the zone or zone equivalent area to which such decertification applies;

(A-1) NOTWITHSTANDING THE PROVISIONS IN PARAGRAPH (A) OF THIS SECTION, A BUSINESS ENTERPRISE WHICH MEETS THE CRITERIA SET FORTH IN CLAUSE FIVE OF PARAGRAPH (V) OF SUBDIVISION (A) OF THIS SECTION WILL NOT BE SUBJECT TO DECERTIFICATION IF: (I) THE BUSINESS ENTERPRISE HAS PROVIDED ECONOMIC RETURNS TO THE STATE IN THE FORM OF TOTAL REMUNERATION TO ITS EMPLOYEES (I.E. WAGES AND BENEFITS) AND INVESTMENTS IN ITS FACILITY GREATER IN VALUE TO THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED TO IT; AND (II) EITHER (1) THE BUSINESS ENTERPRISE HAS PAID WAGES AND BENEFITS TO ITS EMPLOYEES WHO WERE NEVER EMPLOYED WITHIN THE STATE BY A RELATED PERSON TO THE QEZE AND MADE CAPITAL INVESTMENTS IN ITS FACILITIES IN ZONE LOCATIONS, AND THE TOTAL AMOUNT OF SUCH WAGES, BENEFITS, AND CAPITAL INVESTMENT IS GREATER IN VALUE THAN THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED TO IT; OR (2) THE BUSINESS ENTERPRISE HAS PAID WAGES AND BENEFITS TO ITS EMPLOYEES WHO WERE NEVER EMPLOYED WITHIN THE STATE BY A RELATED PERSON TO THE QEZE AND MADE CAPI-

TAL INVESTMENTS IN ITS FACILITIES IN ZONE LOCATIONS, AND SUCH WAGES, BENEFITS, AND CAPITAL INVESTMENT TOTAL MORE THAN THIRTY MILLION DOLLARS. FOR PURPOSES OF THIS SUBDIVISION THE TERM "RELATED PERSON" IS DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, AND SHALL INCLUDE AN ENTITY WHICH WOULD HAVE QUALIFIED AS A "RELATED PERSON" TO THE QEZE IF IT HAD NOT BEEN DISSOLVED, LIQUIDATED, MERGED WITH ANOTHER ENTITY, OR OTHERWISE CEASED TO EXIST OR OPERATE. THE ANALYSES SET FORTH IN PARAGRAPHS (I) AND (II) OF THIS SUBDIVISION SHALL BE BASED UPON THE WAGES AND BENEFITS PAID AND CAPITAL INVESTMENTS MADE FROM THE FIRST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE YEAR DURING WHICH THE BUSINESS ENTERPRISE WAS CERTIFIED THROUGH THE LAST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN; PROVIDED, HOWEVER, QUALIFIED EMPIRE ZONE ENTERPRISES THAT HAVE MORE THAN ONE EMPIRE ZONE LOCATION WITH THE SAME FEDERAL TAX IDENTIFICATION NUMBER MAY ELECT TO BE REVIEWED IN AGGREGATE AND NOT PER EMPIRE ZONE LOCATION; PROVIDED, FURTHER THAT QUALIFIED EMPIRE ZONE ENTERPRISES WHICH HAVE DIFFERENT FEDERAL TAX IDENTIFICATION NUMBERS AND MEET THE "RELATED PERSON" DEFINITION AS SET FORTH IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE MAY ELECT TO BE REVIEWED IN AGGREGATE BASED UPON TWO OR MORE SUCH ENTERPRISES, WHILE LEAVING OTHER SUCH ENTERPRISES FOR INDEPENDENT REVIEW, AND NOT PER ENTERPRISE OR EMPIRE ZONE LOCATION. THE VALUE OF THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED TO IT FOR THE ANALYSIS SET FORTH IN PARAGRAPHS (I) AND (II) OF THIS SUBDIVISION WILL EQUAL THOSE TAX BENEFITS USED OR REFUNDED TO THE BUSINESS ENTERPRISE DURING ALL TAXABLE YEARS FROM THE TAXABLE YEAR DURING WHICH THE BUSINESS ENTERPRISE WAS CERTIFIED THROUGH THE LAST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN.

S 2. Paragraph (e-1) of subdivision 19 of section 210 of the tax law is REPEALED.

S 3. Paragraph 5-a of subsection (k) of section 606 of the tax law is REPEALED.

S 4. Paragraph 5-a of subsection (e) of section 1456 of the tax law is REPEALED.

S 5. Paragraph 5-a of subsection (g) of section 1511 of the tax law is REPEALED.

S 6. Paragraph (d-1) of subdivision 12-B of section 210 of the tax law is REPEALED.

S 7. Paragraph 4-a of subsection (j) of section 606 of the tax law is REPEALED.

S 8. Paragraph (c-1) of subdivision 12-C of section 210 of the tax law is REPEALED.

S 9. Paragraph 3-a of subsection (j-1) of section 606 of the tax law is REPEALED.

S 10. Paragraph (b-1) of subdivision 20 of section 210 of the tax law is REPEALED.

S 11. Paragraph 1-a of subsection (1) of section 606 of the tax law is REPEALED.

S 12. Paragraph 2-a of subsection (d) of section 1456 of the tax law is REPEALED.

S 13. Paragraph 2-a of subdivision (h) of section 1511 of the tax law is REPEALED.

S 14. Subsection (h) of section 1088 of the tax law is REPEALED.

S 15. Subsection (h) of section 688 of the tax law is REPEALED.

S 16. Paragraph 4 of subsection (c) of section 1089 of the tax law is REPEALED.

S 17. Paragraph 4 of subsection (c) of section 689 of the tax law is REPEALED.

S 18. Subsection (k-2) of section 1085 of the tax law is REPEALED.

S 19. Subsection (p-2) of section 685 of the tax law is REPEALED.

S 20. This act shall take effect immediately.