

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

8803--A

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, DESTI-
TO, LUPARDO, DelMONTE, PEOPLES, HOYT, GABRYSZAK, FIELDS, GUNTHER,
JAFEE, KOON, SCHROEDER, CAHILL -- Multi-Sponsored by -- M. of A.
REILLY -- read once and referred to the Committee on Economic Develop-
ment, 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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (a) of section 959 of the general municipal
2 law, as amended by section 3 of part S-1 of chapter 57 of the laws of
3 2009, is amended and a new subdivision (a-1) is added to read as
4 follows:
5 (a) After consultation with the director of the budget, the commis-
6 sioner of labor, and the commissioner of taxation and finance, promul-
7 gate regulations, which, notwithstanding any provisions to the contrary
8 in the state administrative procedure act, may be adopted on an emergen-
9 cy basis, governing (i) criteria of eligibility for empire zone desig-
10 nation, provided, however, that such criteria be approved by the direc-
11 tor of the budget; (ii) the application process; (iii) the certification
12 by the commissioner as to the eligibility of business enterprises for
13 benefits referred to in section nine hundred sixty-six of this article,
14 which shall be governed by criteria including, but not limited to: (1)
15 whether the business enterprise, if certified, is reasonably likely to
16 create new employment or prevent a loss of employment in the zone, (2)
17 whether such new employment opportunities will be for individuals who
18 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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1 zone, (3) whether certification will have the undesired effect of caus-
2 ing individuals to transfer from existing employment with another busi-
3 ness enterprise to similar employment with the business enterprise so
4 certified, and transferring existing employment from one or more other
5 municipalities, towns or villages in the state, or transferring existing
6 employment from one or more other businesses in the zone, (4) whether
7 such enterprise is likely to enhance the economic climate of the zone,
8 (5) whether the commissioner of labor establishes that such business
9 enterprise, during the three years preceding the submission of an appli-
10 cation for certification, has engaged in a substantial violation or a
11 pattern of violations of laws regulating unemployment insurance, workers
12 compensation, public work, child labor, employment of minorities and
13 women, safety and health, or other laws for the protection of workers as
14 determined by final judgment of a judicial or administrative proceeding;
15 (6) whether such business meets the requirements of the cost benefit
16 analysis as established in paragraph (p) of section nine hundred fifty-
17 seven of this article, and (7) if the commissioner of labor establishes
18 that the business enterprise has been found in a criminal proceeding to
19 have violated, in the previous three years, any of the laws referred to
20 in subparagraph five of this paragraph or regulations promulgated pursu-
21 ant to such laws, the conditions of any permit issued thereunder, or
22 similar statute, regulation, order or permit condition of any other
23 government agency, foreign or domestic, such business shall not be
24 certified; provided, however, that a business enterprise that has shift-
25 ed its operations, or some portions thereof, from an area within New
26 York state not designated as an empire zone or zone equivalent area to
27 an area so designated shall not be certified to receive such benefits
28 except where such shift is entirely within a municipality and has been
29 approved by the local governing body of such municipality or in situ-
30 ations where it has been established, after a public hearing, that
31 extraordinary circumstances exist which warrant the relocation of a
32 business, in whole or part, into an empire zone or a zone equivalent
33 area from another municipality and the municipality from which the busi-
34 ness is relocating approves of such relocation; or where such shift in
35 operations is from a business incubator facility operated by a munici-
36 pality or by a public or private not-for-profit entity which provides
37 space and business support services to newly established firms; and (iv)
38 the decertification by the commissioner, upon the recommendation of the
39 commissioner of labor, so as to revoke the certification of business
40 enterprises for benefits referred to in section nine hundred sixty-six
41 of this article with respect to an empire zone or zone equivalent area
42 upon a finding that the business enterprise has committed substantial
43 violations of laws for the protection of workers including all federal,
44 state and local labor laws, rules or regulations; and (v) the decertif-
45 ication by the commissioner so as to revoke the certification of busi-
46 ness enterprises for benefits referred to in section nine hundred
47 sixty-six of this article with respect to an empire zone or zone equiv-
48 alent area upon a finding of any one of the following: (1) the business
49 enterprise made material misrepresentations of fact on its application
50 for certification or in any of its business annual reports, or the busi-
51 ness enterprise failed to disclose facts in its application for certifi-
52 cation that would constitute grounds for not issuing a certification;
53 (2) the business enterprise has failed to construct, expand, rehabili-
54 tate or operate or invest in its facility substantially in accordance
55 with the representations contained in its application for certification;
56 (3) the business enterprise has failed to create new employment or

1 prevent a loss of employment in the empire zone or zone equivalent area;
2 (4) where applicable, the business enterprise has failed to submit an
3 annual report after it has applied for zone tax benefits or program
4 assistance based on new hires or investments or failed to submit other
5 information when due; (5) the business enterprise, if first certified
6 pursuant to this article prior to the first day of August, two thousand
7 two, caused individuals to transfer from existing employment with another
8 business enterprise with similar ownership and located in New York
9 state to similar employment with the certified business enterprise or if
10 the enterprise acquired, purchased, leased, or had transferred to it
11 real property previously owned by an entity with similar ownership,
12 regardless of form of incorporation or organization; (6) the business
13 enterprise has failed to provide economic returns to the state in the
14 form of total remuneration to its employees (i.e. wages and benefits)
15 and investments in its facility greater in value to the tax benefits the
16 business enterprise used and had refunded to it; PROVIDED, HOWEVER,
17 QUALIFIED EMPIRE ZONE ENTERPRISES THAT HAVE MORE THAN ONE EMPIRE ZONE
18 LOCATION WITH THE SAME FEDERAL TAX IDENTIFICATION NUMBER MAY ELECT TO BE
19 REVIEWED IN AGGREGATE AND NOT PER EMPIRE ZONE LOCATION; PROVIDED,
20 FURTHER THAT QUALIFIED EMPIRE ZONE ENTERPRISES WHICH HAVE DIFFERENT
21 FEDERAL TAX IDENTIFICATION NUMBERS AND MEET THE "RELATED PERSON" DEFINITION
22 AS SET FORTH IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION
23 (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE MAY
24 ELECT TO BE REVIEWED IN AGGREGATE BASED UPON TWO OR MORE SUCH ENTERPRISES,
25 WHILE LEAVING OTHER SUCH ENTERPRISES FOR INDEPENDENT REVIEW, AND
26 NOT PER ENTERPRISE OR EMPIRE ZONE LOCATION; or (7) the business enterprise
27 has changed ownership RESULTING IN THE BUSINESS ENTERPRISE HAVING
28 A DIFFERENT FEDERAL TAX IDENTIFICATION NUMBER THAN THAT WHICH THEY WERE
29 ORIGINALLY CERTIFIED UNDER or moved its operations out of the empire
30 zone; said regulations shall provide that whenever any business enterprise
31 is decertified with respect to an empire zone: (A) the [date
32 determined to be the earliest event constituting grounds for revoking
33 certification shall be the effective date of decertification] EFFECTIVE
34 DATE OF DECERTIFICATION SHALL NOT BE EARLIER THAN THE FIRST DAY OF THE
35 BUSINESS ENTITY'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO
36 THOUSAND NINE; (B) its certified single enterprise, if any, may also be
37 decertified; and (C) the commissioner shall notify the commissioner of
38 taxation and finance that such decertification has occurred, and such
39 notification should include the effective date of such decertification
40 and the zone or zone equivalent area to which such decertification
41 applies;

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

1 TAL INVESTMENTS IN ITS FACILITIES IN ZONE LOCATIONS, AND SUCH WAGES,
2 BENEFITS, AND CAPITAL INVESTMENT TOTAL MORE THAN THIRTY MILLION DOLLARS.
3 FOR PURPOSES OF THIS SUBDIVISION THE TERM "RELATED PERSON" IS DEFINED IN
4 SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR
5 HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, AND SHALL INCLUDE AN
6 ENTITY WHICH WOULD HAVE QUALIFIED AS A "RELATED PERSON" TO THE QEZE IF
7 IT HAD NOT BEEN DISSOLVED, LIQUIDATED, MERGED WITH ANOTHER ENTITY, OR
8 OTHERWISE CEASED TO EXIST OR OPERATE. THE ANALYSES SET FORTH IN PARA-
9 GRAPHS (I) AND (II) OF THIS SUBDIVISION SHALL BE BASED UPON THE WAGES
10 AND BENEFITS PAID AND CAPITAL INVESTMENTS MADE FROM THE FIRST DAY OF THE
11 BUSINESS ENTERPRISE'S TAXABLE YEAR DURING WHICH THE BUSINESS ENTERPRISE
12 WAS CERTIFIED THROUGH THE LAST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE
13 YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN; PROVIDED,
14 HOWEVER, QUALIFIED EMPIRE ZONE ENTERPRISES THAT HAVE MORE THAN ONE
15 EMPIRE ZONE LOCATION WITH THE SAME FEDERAL TAX IDENTIFICATION NUMBER MAY
16 ELECT TO BE REVIEWED IN AGGREGATE AND NOT PER EMPIRE ZONE LOCATION;
17 PROVIDED, FURTHER THAT QUALIFIED EMPIRE ZONE ENTERPRISES WHICH HAVE
18 DIFFERENT FEDERAL TAX IDENTIFICATION NUMBERS AND MEET THE "RELATED
19 PERSON" DEFINITION AS SET FORTH IN SUBPARAGRAPH (C) OF PARAGRAPH THREE
20 OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL
21 REVENUE CODE MAY ELECT TO BE REVIEWED IN AGGREGATE BASED UPON TWO OR
22 MORE SUCH ENTERPRISES, WHILE LEAVING OTHER SUCH ENTERPRISES FOR INDE-
23 PENDENT REVIEW, AND NOT PER ENTERPRISE OR EMPIRE ZONE LOCATION. THE
24 VALUE OF THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED
25 TO IT FOR THE ANALYSIS SET FORTH IN PARAGRAPHS (I) AND (II) OF THIS
26 SUBDIVISION WILL EQUAL THOSE TAX BENEFITS USED OR REFUNDED TO THE BUSI-
27 NESS ENTERPRISE DURING ALL TAXABLE YEARS FROM THE TAXABLE YEAR DURING
28 WHICH THE BUSINESS ENTERPRISE WAS CERTIFIED THROUGH THE LAST DAY OF THE
29 BUSINESS ENTERPRISE'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST,
30 TWO THOUSAND SEVEN.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 S 16. Paragraph 4 of subsection (c) of section 1089 of the tax law is
2 REPEALED.
3 S 17. Paragraph 4 of subsection (c) of section 689 of the tax law is
4 REPEALED.
5 S 18. Subsection (k-2) of section 1085 of the tax law is REPEALED.
6 S 19. Subsection (p-2) of section 685 of the tax law is REPEALED.
7 S 20. This act shall take effect immediately.