

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

5598--B

2009-2010 Regular Sessions

I N S E N A T E

May 20, 2009

Introduced by Sens. STACHOWSKI, AUBERTINE, BRESLIN, DIAZ, C. JOHNSON, THOMPSON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Local Government -- reported favorably from said committee and committed to the Committee on Commerce, Economic Development and Small Business -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

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)

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

LBD11998-05-9

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

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

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

1 ENTERPRISE HAS PAID WAGES AND BENEFITS TO ITS EMPLOYEES WHO WERE NEVER
2 EMPLOYED WITHIN THE STATE BY A RELATED PERSON TO THE QEZE AND MADE CAPI-
3 TAL INVESTMENTS IN ITS FACILITIES IN ZONE LOCATIONS, AND SUCH WAGES,
4 BENEFITS, AND CAPITAL INVESTMENT TOTAL MORE THAN THIRTY MILLION DOLLARS.
5 FOR PURPOSES OF THIS SUBDIVISION THE TERM "RELATED PERSON" IS DEFINED IN
6 SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR
7 HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, AND SHALL INCLUDE AN
8 ENTITY WHICH WOULD HAVE QUALIFIED AS A "RELATED PERSON" TO THE QEZE IF
9 IT HAD NOT BEEN DISSOLVED, LIQUIDATED, MERGED WITH ANOTHER ENTITY, OR
10 OTHERWISE CEASED TO EXIST OR OPERATE. THE ANALYSES SET FORTH IN PARA-
11 GRAPHS (I) AND (II) OF THIS SUBDIVISION SHALL BE BASED UPON THE WAGES
12 AND BENEFITS PAID AND CAPITAL INVESTMENTS MADE FROM THE FIRST DAY OF THE
13 BUSINESS ENTERPRISE'S TAXABLE YEAR DURING WHICH THE BUSINESS ENTERPRISE
14 WAS CERTIFIED THROUGH THE LAST DAY OF THE BUSINESS ENTERPRISE'S TAXABLE
15 YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND SEVEN; PROVIDED,
16 HOWEVER, QUALIFIED EMPIRE ZONE ENTERPRISES THAT HAVE MORE THAN ONE
17 EMPIRE ZONE LOCATION WITH THE SAME FEDERAL TAX IDENTIFICATION NUMBER MAY
18 ELECT TO BE REVIEWED IN AGGREGATE AND NOT PER EMPIRE ZONE LOCATION;
19 PROVIDED, FURTHER THAT QUALIFIED EMPIRE ZONE ENTERPRISES WHICH HAVE
20 DIFFERENT FEDERAL TAX IDENTIFICATION NUMBERS AND MEET THE "RELATED
21 PERSON" DEFINITION AS SET FORTH IN SUBPARAGRAPH (C) OF PARAGRAPH THREE
22 OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL
23 REVENUE CODE MAY ELECT TO BE REVIEWED IN AGGREGATE BASED UPON TWO OR
24 MORE SUCH ENTERPRISES, WHILE LEAVING OTHER SUCH ENTERPRISES FOR INDE-
25 PENDENT REVIEW, AND NOT PER ENTERPRISE OR EMPIRE ZONE LOCATION. THE
26 VALUE OF THE TAX BENEFITS THE BUSINESS ENTERPRISE USED AND HAD REFUNDED
27 TO IT FOR THE ANALYSIS SET FORTH IN PARAGRAPHS (I) AND (II) OF THIS
28 SUBDIVISION WILL EQUAL THOSE TAX BENEFITS USED OR REFUNDED TO THE BUSI-
29 NESS ENTERPRISE DURING ALL TAXABLE YEARS FROM THE TAXABLE YEAR DURING
30 WHICH THE BUSINESS ENTERPRISE WAS CERTIFIED THROUGH THE LAST DAY OF THE
31 BUSINESS ENTERPRISE'S TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST,
32 TWO THOUSAND SEVEN.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 S 14. Subsection (h) of section 1088 of the tax law is REPEALED.
- 2 S 15. Subsection (h) of section 688 of the tax law is REPEALED.
- 3 S 16. Paragraph 4 of subsection (c) of section 1089 of the tax law is
- 4 REPEALED.
- 5 S 17. Paragraph 4 of subsection (c) of section 689 of the tax law is
- 6 REPEALED.
- 7 S 18. Subsection (k-2) of section 1085 of the tax law is REPEALED.
- 8 S 19. Subsection (p-2) of section 685 of the tax law is REPEALED.
- 9 S 20. This act shall take effect immediately.