

**New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit**

TSB-A-13(8)C
Corporation Tax
August 30, 2013

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. C130801A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its Empire Zone (EZ) tax credits, previously earned and currently being carried forward, must be forfeited, if Petitioner is accepted into the Excelsior Jobs Program (the Program) and begins claiming the Program tax credits.

We conclude that Petitioner may continue to carry forward and claim the EZ tax credits that it earned prior to entering the Program.

Facts

Petitioner operates a factory located in New York State. Petitioner was approved for EZ Certification for the factory site on December 23, 1998, and subsequently received an EZ Retention Certificate on June 19, 2009. Petitioner's EZ certification expires April 1, 2014. Petitioner currently maintains approximately \$17 million in EZ carryforward credits. The Department of Economic Development recently offered to admit Petitioner's New York State factory into the Program with tax benefits for Petitioner scheduled to begin in 2015.

Analysis

Economic Development Law § 354(d) requires applicants for admission into the Program to agree, if admitted into the Program, to be permanently disqualified for EZ benefits at any location or locations that qualify for the Program benefits. The purpose of this requirement is to prevent a taxpayer from receiving both EZ and Program benefits that are attributable to the same activity or investment. The EZ tax benefits that Petitioner is currently eligible to carry forward were earned in taxable years prior to Petitioner's admittance into the Program. The tax benefits that Petitioner may receive as a participant in the Program must be earned by activities or investments performed after Petitioner has received a Certificate of Eligibility to participate in the Program. Because the EZ benefits at issue were earned prior to Petitioner's acceptance into The Program, no possibility of

double dipping exists. Thus, after Petitioner becomes a participant in the Program, Petitioner can continue to claim the EZ carryforward credits that were earned prior to its admission into the program.

DATED: August 30, 2013

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.