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Empire Zone Legislation Introduced in the New York State Assembly

On Wednesday, June 10th, bill A8803 was introduced in the Assembly. If passed, the bill will modify the criteria by which an Empire Zone Enterprise may be decertified and eliminate a retroactive application of decertification. The budget bill passed in March enacted a new procedure by which Empire State Development will review each entity certified in an empire zone, and determine which entities will continue to be eligible to receive benefits under the program.

Assembly bill A8803 is similar to Senate bill S5598, which was introduced on May 20, 2009. Both bills make the following changes in an effort to more fairly recognize businesses that have made significant investment and created new employment in Empire Zones since the date of certification.

- In its review of qualified empire zone enterprises ("QEZE") for purposes of the cost benefit analysis, the Department of Economic Development will consider investments and wages made by a QEZE at all its certified locations combined, rather than analyzing investment and wages paid at each location separately.
- Further, the Department of Economic Development will allow QEZE's which have different federal tax identification numbers and are subsidiaries of a parent business enterprise to elect to be reviewed in aggregate based upon the parent business enterprise, and not per subsidiary or empire zone location.
- The effective date of decertification will not be earlier than the first day of the QEZE's tax year beginning on or after January 1, 2009. This eliminates the retroactive aspect of the changes made by the budget.
- An entity that was certified prior to August 1, 2002 and which transferred employees or property from a related entity will not be decertified if:
 - the business enterprise has provided economic returns to the state in the form of total remuneration to its employees and investments in its facility greater in value than the tax benefits the business enterprise used and had refunded to it; **and**

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- **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 than the total tax benefits it 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 entity to the QEZE and made capital investments in its facilities in zone locations, and such wages, benefits and capital investment total more than \$30 million.

- Wages and benefits will be considered from the first day of the QEZE's tax year in which it was certified, through the last day of its tax year beginning on or after January 1, 2007.
- A business enterprise that has changed ownership would only be decertified if the change resulted in the business enterprise having a different federal tax identification number than that under which it was originally certified.

We are working in Albany with members of the Legislature to get both the Senate and Assembly bills passed as soon as possible. As always, we will keep you updated on our progress and any action that is taken in Albany with respect to this legislation. ■

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