

Ask The Lawyer

by John R. Appler

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Empire Zones: **TAX-FREE ADVANTAGE**

Business owners in New York State are constantly looking for ways to save money, especially if it means paying less in taxes. No one wants to pay more than his or her fair share and most business owners feel that their "fair share" is somewhere in the vicinity of zero dollars per year.

Well, believe it or not, if you plan on starting a new business or expanding your existing one, you can reduce or entirely eliminate your business' New York State income tax liability by participating in New York's Empire Zone program. In addition, you may be exempt from New York State sales tax, pay reduced utility rates, and even receive money back from New York State as consideration for real estate taxes paid.

Empire Zones are designated areas throughout New York State that have historically experienced economic difficulties. The Empire Zone program was designed to stimulate economic development in these areas. Qualifying businesses that operate in an Empire Zone are eligible for various tax credits and other benefits.

Qualified Empire Zone Entities (QEZE) that are located in an Empire Zone are entitled to the following benefits:

- **Tax Reduction Credit** – A credit against their New York State franchise (business income) tax owed. The credit is based on the number of new full-time employment positions created by the QEZE in the applicable Empire Zone and the percentage of the QEZE's assets that are located in the Empire Zone. This credit could completely eliminate a QEZE's New York franchise tax liability and is available for up to 14 years.
- **Credit for Real Property Taxes** – A refundable credit against the business' annual franchise tax equal to a percentage of the real property taxes it paid during a taxable year. This credit is also based upon increased employment in the zone. If the credit is greater than the franchise tax liability of the company, any excess will be paid as a cash refund to the QEZE by the state. This credit is available for up to 14 years.
- **Sales Tax Exemption** – A 10-year exemption from New York State sales tax on purchases of goods and services used predominantly in the applicable Empire Zone. A certificate of exemption will be issued by the state for this benefit. Local taxing authorities may offer a similar exemption for local (county) sales tax as well.

Other credits against a QEZE's New York franchise tax may be available if new jobs for full-time employees are created and posted with the New York State Department of Labor. Also, investments in production, property and equipment may be credited against income earned for franchise tax purposes. Finally, special reduced utility rates are available in certain areas of New York State for QEZEs.

To qualify, you must first determine if your place of business is located in a Empire Zone. Each area of the state has a local zone coordinator that can assist you. Once you confirm that your location is within an Empire Zone, you must complete and file an application with the local zone coordinator. This application provides certain basic information about your business. Finally, your company must meet an employment test each year.

The employment test will be met for a taxable year if the number of full-time employees employed by your company in New York State (both in and out of Empire Zones) exceeds the average number of employees for the five years immediately preceding the year in which your business was qualified as a QEZE. In the case of a new business entity, the number of employees attributable to this five-year period is zero. As a result, the benefits will be available to a new company during its first year of operation and during each subsequent year that the company employs any full-time employees. A QEZE can be a sole proprietorship, corporation, limited liability company or any other business form permissible under New York State law.

The savings realized from participation in the Empire Zone program can mean the difference between success and failure in a business venture. When selecting a location within New York State for a new business or an expansion of an existing business, it is well worth your time to examine the feasibility of locating your facilities within an Empire Zone. □

These materials have been prepared for educational and informational purposes only and are not intended as legal advice or legal opinions on any matter. Always consult an attorney before taking any action with respect to the subject matter addressed.

Small-Biz Snapshot

About 1,000 mostly small-business owners in New York's Capital Region were asked to rank their major concerns in 2002:

1. U.S. economy
2. Health benefit costs
3. Finding qualified employees
4. Taxes
5. Government regulations
6. Workers' compensation
7. Energy pricing
8. Global economy
9. Employment levels
10. Transportation



Source: Marvin and Company P.C. Annual Business Climate Survey