

## **EMPIRE ZONE PROGRAM ALERT**

On April 15, 2009 NYS issued TSB-M-09(5)C which detailed changes to the Empire Zone Program for tax years beginning on or after January 1, 2008. This pronouncement states that all recipients of Empire Zone benefits **can not claim** those benefits on their 2008 tax returns until the Empire Zone business has been recertified by Empire State Development. Empire State Development (ESD) will be sending letters to all Empire Zone businesses detailing these changes.

ESD will be reviewing data based on at least 3 Business Annual Reports (BAR) filed by the zone certified entity. The review will look at several factors to determine if an entity should be decertified but there are three situations which will require decertification:

- 1) If an entity was certified prior to August 1, 2002, and either (a) employees were transferred to the certified entity (QEZE) from a related company, or (b) property was transferred, sold or leased from a related party to the QEZE;
- 2) If the amount of wages and benefits paid to employees and capital investments made by the QEZE is not greater than the amount of benefits received by the QEZE during the same time period;
- 3) If the QEZE has changed ownership or moved out of the Empire Zone.

Once a business has been recertified by ESD, it will receive a retention certificate. This certificate must be attached to your 2008 tax return in order to receive your Empire Zone benefits. If you have already filed your 2008 tax return, you will need to file an amended return which will include the retention certificate. If your entity is decertified, all or most of the unused credits carried forward will be disallowed. In addition, EZ benefits will likely be challenged to the extent claimed in a tax year occurring after the date of decertification is established.

Changes have also been made to the QEZE sales tax exemption. All QEZE entities will be allowed to claim sales tax exemptions through August 31, 2009 until decertified. After September 1, 2009, QEZE entities with a retention certificate must pay the sales tax and request a refund.

At this time, no timetable has been set for when a company can expect to receive a retention certificate or letter of decertification. Please visit our website at [www.bcpllc.com](http://www.bcpllc.com) for more information as we will continue to monitor the situation and update our website. Please feel free to contact us so we can discuss these issues in more detail and develop an action plan.