December 14, 2010

Ruling Request
Unincorporated Business Tax
Relocation and Employment Assistance Program
FLR-094902-005

Dear :

This responds to your request, on behalf of the (the "Taxpayer"), for a ruling regarding its eligibility for credits under the New York City Relocation Employment Assistance Program ("REAP") in the context of the Taxpayer's liability under the New York City Unincorporated Business Tax (the "UBT"). More specifically, it addresses the Taxpayer's eligibility for the credits based on the acquisition of the assets of an affiliated entity that had been certified to claim REAP credits. This office received additional information regarding this request on March 31, 2010.

FACTS

The facts presented are as follows:

The Taxpayer, a New York limited partnership subject to the UBT, was formed on. the general partner (the "General Partner") owns one percent of the Taxpayer. The General Partner, in turn, is wholly owned by (the "Individual Owner"). The Taxpayer's limited partner, (the "Family Trust") owns 99 percent of the Taxpayer. The Individual Owner established the Family Trust.

The Taxpayer is the sole member of ("Operating Entity 1") and other limited liability companies. Operating Entity 1 engages in the business.

Predecessor Entity and Relocation. Before, the Individual Owner operated a in lower Manhattan through his wholly-owned corporation,. (the "Predecessor Entity"). The Predecessor Entity was displaced by the City and encouraged to relocate to the Bronx.

As a result of the Predecessor Entity's relocation to the Bronx, on, this Department issued a Certificate of Eligibility to that entity, certifying it to receive REAP benefits, effective from. As a corporation, the Predecessor Entity reported its city income tax liability and claimed the REAP credit under the New York City General Corporation Tax (the "GCT"). The Predecessor Entity last claimed REAP credits in.

Transfer of Assets and Operations. Operating Entity 1 was formed on, to assist the Individual Owner's estate planning. On, Operating Entity 1 acquired the assets of the Predecessor Entity. You have represented that the Taxpayer chose to use a sale of assets rather than a stock transfer because, for income and estate tax

planning purposes, the ownership of the stock of a C Corporation, such as the stock of the Predecessor Entity, would not have been beneficial.

On, Operating Entity 1 began operating the business. It operates from the same space as the Predecessor Entity,. Operating Entity 1 continued the use of the same phone number and utilities account and retains the same employees as the Predecessor Entity.

As part of the continued growth of the business, on, the Taxpayer created another single member limited liability company, ("Operating Entity 2"). The Taxpayer is the sole member of Operating Entity 2.

Since it began operations in May 2007, Operating Entity 2 has engaged in the same business at the same location and with the same employees as Operating Entity 1.

Other matters. Operating Entity 1 and Operating Entity 2 are treated as disregarded entities for federal income tax purposes. Tax returns are prepared and filed solely for the Taxpayer.

You have also represented that:

- In terms of management and control of the business, there is no difference in substance between the Predecessor Entity and Operating Entity 1; and that

- All entities described in this ruling letter will report all activities relating to the REAP credit consistently.

ISSUE

You have requested a ruling that the Taxpayer may include employees of Operating Entity 1 and Operating Entity 2 in the computation of the annual employment shares for the eligible premises to the extent that they are continuing the business operations that had been conducted by the Predecessor Entity.

CONCLUSION

Based on the facts presented, we conclude that the Taxpayer may include employees of Operating Entity 1 and Operating Entity 2 in the computation of the annual employment shares for the eligible premises to the extent that they are continuing the business operations that had been conducted by the Predecessor Entity.

DISCUSSION

REAP provides tax credits under the UBT and the GCT to eligible businesses that relocate from outside the eligible area[1] to eligible premises located in the eligible area. Section 11-622 of the New York City Administrative Code (the "Code"). While the credit under the UBT is set out in Code section 11-503(i) and the GCT in Code section 11-604(17), eligibility for the credit under both taxes is determined under Code sections 22-621 and 22-622 and chapter 30 of title 19 of the Rules of the City of New York (the "RCNY").

The premises to which a business relocates must meet a variety of requirements. Code § 22-621(e). The eligibility of the business and the premises must be certified before the business may claim any REAP benefits. Code § 22-622. The amount of the credit is based on the number of eligible aggregate employment shares maintained by the eligible business at the eligible premises in a taxable year. Id.

[1] The eligible area is New York City with the exception of Manhattan south of 96th Street.

Code section 22-621(j) defines "[r]elocate" as "[t]o transfer pre-existing business operations to premises that are or will become eligible premises … or to establish new business operations at such premises," under certain conditions. Code section 22-621(a) defines "eligible business," as "[a]ny person subject to a tax imposed" under the UBT that meets certain conditions. Code section 22-621(b) defines "[p]erson" as "[i]nclud[ing] any individual, partnership, association, joint-stock company, corporation, estate or trust, limited liability company, and any combination of the foregoing."

Title 19 RCNY section 30-03, entitled "[c]ontinued eligibility despite sale of business," provides that "[a]n eligible business receiving benefits under this program will not be rendered ineligible for the program solely by virtue of the sale of the business."

In considering your request for a ruling that the Taxpayer may include employees of Operating Entity 1 and Operating Entity 2 in the computation of the annual employment shares for the eligible premises to the extent that they that they are continuing the business operations business that had been conducted by the Predecessor Entity, we must address the following three issues:

- The Taxpayer's eligibility to claim REAP credits that Operating Entity 1 and Operating Entity 2 are eligible to claim;

- The Taxpayer's eligibility to claim REAP credits that had been certified by this Department for the Predecessor Entity based the acquisition of the Predecessor Entity's assets; and

- The Taxpayer's ability to claim REAP credits certified under the GCT on its UBT liability.

Taxpayer's Eligibility To Claim REAP Credits Through Operating Entities 1 and 2

The Taxpayer is the sole member of Operating Entity 1, the entity that purchased the assets of the Predecessor Entity, and of Operating Entity 2. While those entities are continuing the business engaged in by the Predecessor Entity, they are single member limited liability companies treated as disregarded entities for federal income tax purposes. In Finance Memorandum 99-1, the Department concluded that single owner entities that are treated as disregarded entities for federal income tax purposes will be similarly disregarded for New York City tax purposes, including the UBT. As a result, for UBT purposes, the activities of Operating Entity 1 and Operating Entity 2 are treated as activities of the Taxpayer, and the Taxpayer may include employees of the Operating Entity 1 and Operating Entity 2 in the computation of the annual employment shares for the eligible premises to the extent that Operating Entity 1 and Operating Entity 2 could include those employees.

Because the activities of Operating Entities 1 and 2 are considered the activities of the Taxpayer for UBT purposes, this ruling will generally use "the Taxpayer" to refer to activities of Operating Entities 1 and 2.

Sale of Assets and Eligibility To Claim REAP Credits

Under 19 RCNY section 30-03, "[a]n eligible business receiving benefits under this program will not be rendered ineligible for the program solely by virtue of the sale of the business." Because the Predecessor Entity was an "eligible business receiving benefits under [the REAP] program," whether 19 RCNY section 30-03 applies will depend on whether the sale of its assets to the Taxpayer constitutes a "sale of the business" under that provision.

In general, the word "business" can be used to refer to a specific entity, in this case, the Predecessor Entity, or it could refer to the particular type of operations, here, the business. The word "business" in the phrase

"sale of the business," as used in 19 RCNY section 30-03, is not defined in the Rules or the Code. However, the statutory intent is reflected by Code section 22-621(j), which defines "[r]elocate" as "[t]o transfer pre-existing business operations to premises that are or will become eligible premises … or to establish new business operations at such premises," under certain conditions. The first part of this definition suggests that it is the business operation that is critical. The second part, which allows for new business operations, suggests that it is the entity that is critical.

As a result, looking at the statute as a whole, the term "business," as used in 19 RCNY section 30-03, can involve both a sale of the entity and of the business operations. Thus, in cases where the business operation is sold, but the business entity is not, we will consider the transfer to meet the requirements of the regulation only if a strong degree of continuity of the entity can be demonstrated.

Operation of business. In this case, the facts presented show that, following its asset purchase, the Taxpayer has carried on the same business operations, , as the Predecessor Entity. It has operated from the same space as the Predecessor Entity, continued the use of the same phone number and utilities account, and has retained the same employees as the Predecessor Entity. In addition, in terms of management and control of the business, there is no difference in substance between the Predecessor Entity and the Taxpayer 1.

As a result, we conclude that in the sale of the Predecessor Entity's assets has satisfied the requirement that the business operations be continued to constitute a "sale of the business" under 19 RCNY section 30-03.

Business entity. In this case, the eligible business that received the REAP credits was the Predecessor Entity, a corporation, and the Taxpayer is a different entity, a limited partnership. The differences, however, relate to the Individual Owner's corporate structure and do not relate to the business, in general, or the REAP credit, in particular. The entity is largely unchanged. For example: the Individual Owner, through his capacity as the General Partner, and through the Family Trust as the limited partner, has retained ownership, management, and control rights to the Taxpayer to the same extent as in the Predecessor Entity; and by conducting the business from the same space, with the same phone number and utilities account, and the same employees as the Predecessor, the Taxpayer appears to outside observers, such as customers and suppliers, as the same entity as the Predecessor Entity. In addition, you have represented that all entities described in this ruling letter will report all activities relating to the REAP consistently, thereby preventing a situation involving conflicting or inconsistent claims.

As a result, based on your representations, we conclude that the Taxpayer represents a business entity sufficiently similar in substance to the Predecessor Entity to satisfy the business entity requirement of a "sale of the business" under 19 RCNY section 30-03. Because the business operation requirement was also satisfied, we conclude the sale of the assets of the Predecessor Entity meets the requirements of 19 RCNY section 30-03. Thus, the Taxpayer is eligible to claim REAP credits that had been certified by this Department for the Predecessor Entity based on its acquisition the assets of the Predecessor Entity.

UBT and GCT Credits

The REAP credit is provided under Code section 11-503(i) for the UBT and Code section 11-604(17) for the GCT. Eligibility for the credit under both taxes, however, is determined under Code sections 22-621 and 22-622 and chapter 30 of title 19 of the RCNY. In addition, in this case, the Taxpayer's eligibility to take the credit is based on 19 RCNY section 30-03, which provides that "[a]n eligible business receiving benefits under this program will not be rendered ineligible for the program solely by virtue of the sale of the business." That section provides that "benefits under this program," which applies to both the GCT and UBT, may continue following a "sale of the business," and does not limit the benefits to the tax under which the credit was certified.

As result, we conclude that the Taxpayer may apply the credits certified under the GCT to its UBT liability.

Summary

Based on the representations submitted, we have determined that: the Taxpayer is eligible to claim REAP credits that Operating Entity 1 and Operating Entity 2 are eligible to claim; the Taxpayer is eligible to claim REAP credits that had been certified by this Department for the Predecessor Entity based on the acquisition of the assets of the Predecessor Entity; and the Taxpayer may claim REAP credits certified under the GCT on its UBT liability. As a result, we have concluded that the Taxpayer may include employees of Operating Entity 1 and Operating Entity 2 in the computation of the annual employment shares for the eligible premises to the extent that they that they are carrying on the business that was carried on by the Predecessor Entity.

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The Department of Finance reserves the right to verify the information submitted.

Very truly yours,

Beth E. Goldman
General Counsel

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