May 6, 2005

Re: Request for Ruling
Relocation Employment Assistance Program

FLR-044830-005

Dear :

This is in response to your request dated December 16, 2004, for a ruling regarding eligibility and calculation of benefits under the New York City Relocation Employment Assistance Program ("REAP"). Additional information was received by this office on February 2, 2005, February 28, 2005 and March 30, 2005.

FACTS

The facts presented are as follows:

The ("F Corp") currently operates a business (the "the Business") in Manhattan (the Manhattan Facility"). F Corp is owned in entirety by you (the "Owner"). The Owner plans to move the Business to a location in the Bronx (the "Bronx Facility"). He also plans to transfer the Business to the LLC ("OpCo"), which is another business entity that he controls as more fully explained below.

Both OpCo and F Corp are parts of larger business structures involving several entities. OpCo is a single member limited liability company of which , a limited partnership, (hereafter "Taxpayer") is the sole member. The Owner is the sole general partner of Taxpayer. The sole limited partner is set up by the Owner. Taxpayer is also the sole member of other limited liability companies (the "LLCs"). The LLCs currently operate as well as and a

in Manhattan south of 96th Street. A is currently being constructed in Manhattan north of 96th Street but is not yet in operation. All LLCs are disregarded entities for tax purposes.

In addition to operating the Business at the Manhattan Facility, F Corp operates two Manhattan south of 96th Street through limited liability companies of which it is the sole member. F Corp employs the workers at the Manhattan Facility. It also has until recently employed the workers at the operated by Taxpayer's LLCs as well as the employees in the operated by its own limited liability companies.

On , F Corp's employees working at the Manhattan Facility were transferred to Taxpayer in anticipation of a relocation of the Business to the Bronx Facility. It is anticipated that the Business will be transferred to the Bronx Facility, along with substantially all of the workers that currently are employed in the Business.

The business activities that are currently conducted at the Manhattan Facility consist of:

After the relocation, the same activities will be conducted at the Bronx Facility and will be performed by the employees that were transferred from F Corp to Taxpayer, subject to normal turnover and expansion. Taxpayer is not currently planning to move any of the employees of the LLCs to the Bronx Facility.

ISSUES

You have requested rulings that Taxpayer may claim a REAP credit in connection with the move of the Business to the Bronx Facility and that all of the employees of Taxpayer and of F Corp may be taken into account for purposes of calculating certain limitations of the REAP credit.

CONCLUSION

We will not address all of the issues relevant to eligibility for the REAP credit, however, based on the facts and representations presented, we have determined that Taxpayer qualifies as an eligible business and that the relocation of the Business will qualify as a relocation by Taxpayer.

We will not rule on whether the total number of employees of Taxpayer and F Corp may be counted in determining the relevant limitation to the credit. However, based on the facts and representations presented, we have determined that the limitation applicable in this case will not be less than two times the number of employees of F Corp working for the Business at the Manhattan Facility in the taxable year prior to the year of the relocation.

BACKGROUND

REAP provides tax credits under the Unincorporated Business Tax and other business taxes to "eligible businesses" that relocate from outside the "eligible area"[1] to "eligible premises"[2] located in the eligible area. *See* section 11-503(i) of the Administrative Code of the City of New York (the "Code").

To be eligible, a business must have conducted substantial business operations outside the eligible area for at least 24 consecutive months prior to the year in which it relocates. Section 22-621(a) of the Code.

For purposes of REAP, a relocation may consist of the transfer of pre-existing business operations to eligible premises or the establishment of new business operations at eligible premises. The eligible business must move at least one employee from premises located outside the eligible area, defined above, to eligible premises within the eligible area.

The amount of the credit is based on the number of eligible aggregate employment shares ("EAES") maintained by the eligible business at the eligible premises in a taxable year.[3] The number of EAES is roughly equal to the number of full time jobs at the eligible premises less any jobs that were maintained there in the year prior to the relocation (the "base year"). Several limitations also apply in determining the EAES. The limitations can be generally summarized as follows:

1. The Area Limitation. REAP requires that the eligible business increase its total employment in the eligible area either by shifting of employees from outside the eligible area or by additional hiring. The number of EAES cannot be greater than the amount by which the eligible business has increased employment in the eligible area relative to the base year.

2. The Expansion Limitation. The eligible business may add employees during the year of relocation and the following five years. After that, new jobs do not qualify for the credit.

3. The Outside Limitation. The credit is limited by the number of Aggregate Employment Shares ("AES") that were maintained by the eligible business outside the eligible area in the

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

[2] The premises to which a business relocates must meet a variety of requirements. Code section 22-621(e). The eligibility of the business and the premises must be certified before the business may claim any REAP benefits. Code section 22-622.

[3] EAES can be roughly defined as full time job equivalents. In a taxable year, a business is entitled to a $3,000 credit for each EAES it maintains in the eligible premises in question, if the premises are in a "revitalization area" or a $1,000 credit per EAES if the premises are not in a revitalization area. A revitalization area is a part of the eligible area that is zoned C4, C5, C6, M1 M2 or M3.

base year. Where this number is 50 or less, the Outside Limitation is 100. If the number of outside AES in the base year is greater than 50, the Outside Limitation is two times the number of outside AES.

DISCUSSION

The issues in the present case all arise from the fact that the Business is being transferred from F Corp to Taxpayer in conjunction with the relocation.

The Eligible Business Requirement

REAP is intended only for businesses that conducted substantial business operations for two years prior to the year of the relocation. The transfer of a business to a different entity creates the possibility of evading this requirement if, for example, a business that has been in operation for less than two years is transferred to an older entity and is then relocated. Here, as Taxpayer, F Corp and the Business all independently meet the two-year requirement, this problem does not arise. Therefore it is our opinion that it is consistent with the policy of the REAP program to allow Taxpayer to qualify for REAP based on its acquisition of the Business and the relocation of the Business to the eligible area.

The Relocation

Under the facts presented Taxpayer is not relocating any employees other than those transferred from F Corp in preparation for the relocation. Under REAP the term "relocate" means:

> To transfer pre-existing business operations to premises that are or will become eligible premises. . . or to establish new business operations at such premises, . . . provided that an eligible business shall not be deemed to have relocated unless at least one employee, partner, or sole proprietor of the eligible business is transferred to such premises from pre-existing business operations conducted outside the eligible area. Code section 22-621(j).

If Taxpayer, as it existed prior to acquiring the Business's employees, is viewed as the eligible business, it arguably will not meet the definition of "relocate". However, if the Business is treated as the eligible business, it meets the definition of relocate but the question remains whether its new owner, the Taxpayer, can receive the credit.

Neither the Code nor the Rules of the City of New York ("RCNY" or "Rules") relating to REAP specifically address the issue of whether the new owner of a business that is transferred in conjunction with a relocation is entitled to take the credit. However, the Rules do deal with the sale to a new entity of a business that is already receiving REAP benefits. The Rules provide:

> An eligible business receiving benefits under this program will not be rendered ineligible for the program solely by virtue of the sale of the business.

Title 19 RCNY §30-03.

Thus, if the business that had relocated and qualified for REAP is sold to another entity, the credit continues to be available to the purchaser of the business. The operative principle is that credit stays with the business operation and is not necessarily specific to the owner of the business. Applying this principle to the current facts, it is clear that the Business is being relocated in its entirety. Based on the facts presented there is no evidence that the transfer of the Business to Taxpayer was for the purpose of qualifying for REAP. Therefore, it is consistent with the policy of REAP to allow Taxpayer to be treated as the eligible business and to qualify for benefits on the basis of the "relocation" of the Business.

The Area Limitation

The policy behind the Area limitation is that REAP credits should only be given for increases of employment in the eligible area. As with the definition of "relocate" the transfer of the Business to Taxpayer in conjunction with the relocation could present an opportunity for abuse. For example, if F Corp had other business locations in the eligible area that it intended to eliminate in conjunction with the relocation of the Business, it could avoid the Area Limitation by transferring the Business to Taxpayer. Under the current facts, there is no potential for such abuse because none of the entities involved had any employees in the eligible area prior to the proposed relocation.

The Outside Limitation

Because, the REAP credit is limited by the size of the eligible business's operations outside the eligible area in the base year, the transfer of the Business to Taxpayer provides an opportunity for avoiding a REAP limitation. For example, if Taxpayer had a larger number of employees outside the eligible area in the base year than F Corp, the Outside Limitation would be increased by treating Taxpayer as the eligible business.

The statute gives no specific guidance as to whose employees should be counted in determining the Outside Limitation where a business is transferred prior to relocation. However, based on the fact that Taxpayer is not relocating any of its own employees who predated the relocation plan, and the fact that the Business is being relocated in its entirety, it is appropriate to calculate the Outside Limitation based on the number of employees of the Business prior to the relocation.

This ruling does not address the issue of whether under the facts presented, the Outside Limitation might be calculated based on employees other than those working for the Business, which is being relocated. However, it is our conclusion that the number should in no case be less than twice the number of employees of the Business, the actual business operation that is being relocated, in the year prior to relocation.

The Department reserves the right to verify the information submitted.

Sincerely,

Ellen E. Hoffman
Assistant Commissioner
For Tax Law and Conciliations