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Diana Beinart
General Counsel/Deputy Commissioner

September 14, 2020

Re: Request for Ruling
New York City Relocation Employment Assistance Program
FLR No.: 19-5001

Dear Ms. XXXX:

This is in response to your request for a ruling dated XXXX regarding eligibility under the New York City Relocation Employment Assistance Program ("REAP"). Additional information was received by this office on XXXX. After a change of taxpayer representation, further correspondence was received on XXXX.

FACTS:

The Business Entities:

XXXX LLP (the "Taxpayer") is an Illinois limited liability partnership that registered as a foreign limited liability partnership with the New York Secretary of State's Office on XXXX. Taxpayer is currently subject to the New York City Unincorporated Business Tax ("UBT"). Taxpayer's fiscal year ends on August 31.

Prior to the transactions described below, XXXX ("Acquired Entity") was a Delaware corporation that registered as a foreign business corporation with the New York Secretary of State's Office on XXXX. It was subject to the New York City General Corporation Tax ("GCT") and had a fiscal year ending September 30th.

Acquired Entity's REAP Eligibility:

On XXXX, Acquired Entity submitted a REAP application request to the Department of Finance ("DOF"). In the REAP application, (i) the Relocated Business Operations was "Marketing & Branding, Consulting", and (ii) the Relocation Address was XXXX.

By Certificate of Eligibility dated XXXX, DOF acknowledged that Acquired Entity is eligible to receive REAP benefits effective XXXX (the "Eligibility Date").

Acquisition of Acquired Entity and Integration into Taxpayer:

On XXXX, an affiliate of the Taxpayer, Affiliate A, acquired the former corporate parent of the Acquired Entity. Affiliate A is ultimately owned by the same entity as the Taxpayer.

On XXXX, the Acquired Entity's former parent was then transferred to Affiliate B, which directly and indirectly owns 100% of Taxpayer. Affiliate A and Affiliate B are related because they ae both indirectly owned by the same ultimate parent.

On XXXX, ("Integration Date"), Acquired Entity converted from a corporation to a single-member limited liability company that is disregarded for tax purposes ("SMLLC"). Also, on XXXX, Affiliate B transferred Acquired Entity directly to the Taxpayer.

Business Operations:

The facts set forth by Acquired Entity in the REAP Application regarding its business operations have not changed.

Beginning on the Eligibility Date and continuing to the Integration Date (i) Acquired Entity conducted the Relocated Business Operations set forth in the REAP application, (ii) Acquired Entity conducted the Relocated Business Operations at the Relocation Address set forth in the REAP Application, and (iii) Acquired Entity employed its employees to conduct the Relocated Business Operations at the Relocation Address.

Beginning on the Integration Date and continuing thereafter, Taxpayer (either directly or through its SMLLC) (i) conducted the Relocation Business Operations set forth in the REAP Application, (ii) conducted the Relocated Business Operations at the Relocation Address set forth in the REAP Application, and (iii) employed the former employees of Acquired Entity to conduct the Relocated Business Operations at the Relocation Address.

ISSUES:

You are seeking the following rulings:

(1) That Acquired Entity is eligible for credits under REAP for the period beginning on the Eligibility Date and continuing to the Integration Date.
(2) That the Taxpayer may continue to receive the Acquired Entity's REAP benefits beginning on the Integration Date and continuing thereafter.

CONCLUSION:

The Acquired Entity is eligible for credits under REAP for the period beginning on the Eligibility Date and continuing to the Integration Date. The Taxpayer is eligible for credits under REAP beginning on the Integration Date and continuing thereafter.

DISCUSSSION:

REAP provides tax credits under the Unincorporated Business Tax ("UBT"), the General Corporation Tax ("GCT") and the Business Corporation TAX ("BCT") 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), the GCT in Code section 11-604(17), and the BCT in Code Section 11-654(17), eligibility for the credit under these 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").

An "eligible business" is defined, under Code section 22-621(a) in pertinent part as:

"[a]ny person subject to a tax imposed under [UBT, GCT, or BCT] that: (1) has been conducting substantial business operations at one or more business locations outside the eligible are for the twenty-four consecutive months immediately preceding the taxable year during which such eligible business relocates as defined in subdivision (j) of this section; and (2) on or after May twenty-seventh, nineteen hundred eighty-seven relocates as defined in subdivision (j) of this section all or part of such business operations; and (3)…on or after May twenty-seventh, nineteen hundred eighty-seven first enters into a contract to purchase or lease the premises to which it relocates as defined in subdivision (j) of this section, or a parcel on which will be constructed such premises…"

A "person" is defined to include "any individual, partnership, association, joint-stock company, corporation, estate or trust, limited liability company, and any combination of the foregoing." Code §22-621(b).

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.

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.

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." ("Continued Eligibility Rule").

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

In general, the word "business" can be used to refer to a specific entity, in this case, the Acquired 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. Thus, the credit continues to be available if the business that had relocated and qualified for REAP is sold to another entity. The credit stays with the business operation and is not specific to the owner of the business. The second part, which allows for new business operations, suggests that it is the entity that is critical.

The issue of whether the Acquired Entity is eligible for REAP benefits from the Eligibility Date to the Integration Date turns on whether it continued its business operations despite the acquisition of its corporate parent. You have represented that for that time period:

(i) Acquired Entity conducted the Relocated Business Operations set forth in the REAP application,
(ii) Acquired Entity conducted the Relocated Business Operations at the Relocation Address set forth in the REAP Application, and
(iii) Acquired Entity employed its employees to conduct the Relocated Business Operations at the Relocation Address.

Based on these facts, we have concluded that the Acquired Entity continued its business operations from the Eligibility Date to the Integration Date. These were the same business operations for which the Acquired Entity had been granted REAP benefits. Furthermore, Acquired Entity's individual corporate existence continued during this period. The change of ownership of its corporate parent relates to the corporate structure of the group, not to the structure of Acquired Entity. Acquired Entity remained intact as a business entity during this period and its business operations continued unchanged. Therefore, under the facts presented, Acquired Entity is an eligible business receiving benefits under REAP to which the Continued Eligibility Rule applies.

Whether the Taxpayer is an eligible business under REAP depends on whether the Continued Eligibility Rule was met following the Integration Date. In Finance Memorandum 99-1, DOF 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. Because there has been a discontinuation of the business entity (i.e., Acquired Entity has been converted to a SMLLC, which is a disregarded entity for both federal and city purposes), the facts presented are analogous to the sale of the business operations. Thus, a determination must be made as to whether the Acquired Entity's business operations were continued after Integration Date.

In this case beginning on the Integration Date and continuing thereafter, you have represented that Taxpayer (either directly or through its SMLLC):

(i) conducted the Relocation Business Operations set forth in the REAP Application,
(ii) conducted the Relocated Business Operations at the Relocation Address set forth in the REAP Application, and

(iii) employed the former employees of Acquired Entity to conduct the Relocated Business Operations at the Relocation Address.

Based on these facts, we have concluded that there is a strong degree of continuity of the business operations of the Acquired Entity despite the conversion of the Acquired Entity to a SMLLC. Because the SMLCC is a disregarded entity for purposes of the New York City Tax Law, the activities of the SMLCC are treated as activities of the Taxpayer. Therefore, it is our conclusion that the REAP credit will continue to be available to the Taxpayer from the Integration Date and continuing thereafter for the period that the credit would have been available to the Acquired Entity so long as the Taxpayer continues the business that had been conducted by the Acquired Entity at the eligible premises.

DOF reserves the right to verify the information submitted. Please advise DOF of any material change in the facts presented.

Very truly yours,

Diana Beinart
General Counsel

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