

February 14, 2006

Re: Request for Ruling

Relocation Employment Assistance Program
FLR-054843-006

Dear _____ :

This is in response to your request dated November 16, 2005, for a ruling regarding the eligibility of _____ (the "Taxpayer") under the New York City Relocation Employment Assistance Program ("REAP").

FACTS:

The facts presented are as follows:

Taxpayer is a foreign air carrier that is engaged in international air transportation services. Taxpayer's headquarters are located outside of the United States. However, Taxpayer maintains a regional office in Midtown Manhattan (the "Midtown Office") where it currently employs 102 employees. At present, the Midtown Office is the taxpayer's only facility in New York City (the "City"). Taxpayer contemplates relocating all employees currently working at its Midtown office to premises qualifying for the Relocation Employment Assistance Program ("REAP") credit ("eligible premises").

ISSUE:

You have requested a ruling that if Taxpayer qualifies for REAP the fact that it is liable only for the \$300 minimum tax under the GCT will not make it ineligible to receive a Refundable REAP Credit.

CONCLUSION:

If Taxpayer qualifies for REAP it will be eligible for a Refundable REAP Credit even if Taxpayer's GCT liability is limited to the GCT minimum tax of \$300.

DISCUSSION:

REAP provides tax credits under the General Corporation Tax ("GCT") and other New York City business taxes to "eligible businesses" that relocate from outside the "eligible area"¹ to eligible premises² in the eligible area. *See* subdivision 17 of section 11-604 of the Code. To qualify as an eligible business under REAP, a business must be subject to one of the specified business taxes and meet other requirements. The business must obtain a certificate of eligibility before it can receive REAP benefits. *See* section 22-622 of the Code.

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. EAES can be roughly defined as full-time job equivalents, and 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").

In a taxable year, if the premises are in a "revitalization area", a business is entitled to a \$3,000 credit for each EAES it maintains in the eligible premises. In the taxable year of relocation and the next four taxable years this \$3,000 credit is "refundable." Unlike a "non-refundable" credit, which may only be taken to the extent of an actual tax liability³, a "refundable" credit is treated as an overpayment of tax. Therefore, a "refundable" credit is available even if there is no tax liability. If the premises are not in a "revitalization area", a business is entitled to a non-refundable \$1,000 credit per EAES. *See* paragraph (a) of subdivision 17 of section 11-604 of the Code. A revitalization area is a part of the eligible area that is zoned C4, C5, C6, M1 M2 or M3. *See* subdivision (n) of section 22-621 of the Code.

Taxpayer is doing business in the City and is, therefore, subject to the GCT. However, pursuant to section 11-602(8)(c-1) of the New York City Administrative Code (the "Code"), Taxpayer, as a qualifying foreign air carrier, is not subject to tax on the entire net income that it derives from international air transportation services. Typically, Taxpayer does not derive any entire net income from activities other than air transportation services, and, as a result, its GCT liability is generally the minimum tax of \$300.

If the Taxpayer relocates to eligible premises *in a revitalization area*, and obtains a certificate of eligibility, Taxpayer will be eligible for the "refundable" REAP Credit for the taxable year of relocation and the succeeding four taxable years, even if it is liable

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).

³ The nonrefundable REAP credit may be carried forward to a future year, but it is, nonetheless, still limited to an actual tax liability.

only for the \$300 GCT minimum tax. The Taxpayer must be subject to tax in order to receive the credit, but the amount of tax that it owes is not relevant to the refundable credit. After the fourth succeeding year, or if Taxpayer relocates to eligible premises that are not in a revitalization area, its credit will be limited to its actual tax liability subject to a carry-forward.

Sincerely,

Alan Roth,
Acting Counsel
Office of Legal Affairs