

February 14, 2006

Re: Request for Letter Ruling

Lower Manhattan Relocation Employment  
Assistance Program  
FLR 054842-006

Dear:

This is in response to your request received on November 9, 2005 for a ruling regarding eligibility under the New York City Lower Manhattan Employment Assistance Program (“LMREAP”) on behalf of (the “Taxpayer”).

**FACTS:**

The facts presented are as follows:

The Taxpayer, a limited liability company, was formed on October 20, 1999 and files as a partnership for federal tax purposes. It had substantial operations in , New York from 1999 through August 2003. The original location was the Taxpayer’s sole location through August 2003 at which time it had seven full-time employees working there. On August 20, 2003, the Taxpayer signed a sublease for office space at in lower Manhattan (the “Premises”) with an expiration date of January 30, 2010. At that time, the Taxpayer transferred all of its seven employees to the Premises and ceased business operations outside the City. From August 2003 through the present, the Taxpayer has hired twenty-two additional new employees on a full-time basis. All transferred employees plus new hires (29 employees in total) work full-time at the Premises. At the time it began its occupancy of the Premises, the Taxpayer had made capital expenditures in its space of approximately \$10 per square foot. The Taxpayer may make additional capital expenditures of approximately \$15 per square foot. Alternatively, it is possible, that pursuant to a work letter or other leasehold concession, the landlord for the Taxpayer will make the additional expenditures in order to meet the requisite capital expenditures of \$25 per square foot.

**ISSUE:**

You have requested a ruling as to whether the Taxpayer qualifies as an eligible business for purposes of LMREAP.

**CONCLUSION:**

Based on the facts presented, this office has determined that the Taxpayer cannot qualify as an eligible business under LMREAP and, thus, is not entitled to benefits. Because of this determination, additional specific questions raised by the Taxpayer are moot and will not be addressed.

**DISCUSSION:**

For purposes of LMREAP, an eligible business is defined as any person subject to the New York City General Corporation Tax, Unincorporated Business Tax, Bank Tax or Utility Tax that has been conducting substantial business operations outside New York City for the 24 consecutive months immediately preceding the taxable year in which it relocates to “eligible premises”. Section 22-623 of the Administrative Code of the City of New York (the “Code”). To constitute eligible premises for this purpose, the premises must be nonresidential premises that have been improved by construction or renovation and meet certain criteria, including the expenditure of at least \$25 per square foot for improvements to the premises. Code §22-623(e)(3). The date of relocation is the later of (1) the first day on which an employee transferred from existing operations outside the City commences work at premises that are or will become eligible premises, and (2) the date of completion of sufficient improvements to the eligible premises at which the employee has commenced work to meet the requirements of section 22-623(e) relating to expenditures for improvements. Code §22-623(j).

The Taxpayer discontinued all of its business operations outside the City on August 20, 2003. The Premises are currently not “eligible premises” because the Taxpayer has not spent \$25 per square foot for improvements as required under the statute. Consequently, a relocation for purposes of LMREAP has not yet occurred. Therefore, the date of relocation pursuant to the Code cannot be earlier than 2006. Based on these facts, the Taxpayer cannot qualify as an eligible business entitled to LMREAP benefits because it will not have conducted substantial business operations outside the City for the 24 consecutive months immediately preceding the taxable year in which the relocation will occur.

The Department reserves the right to verify the facts submitted.

Very truly yours,

Alan Roth  
Acting Assistant Commissioner  
for Legal Affairs

CS:cs