

July 13, 2005

Re: Request for Ruling
Relocation Employment Assistance Program

FLR-054834-006

Dear:

This is in response to your request dated April 25, 2005, for a ruling regarding eligibility under the New York City Relocation Employment Assistance Program (“REAP”). Additional information was received by this office on May 3, 2005.

FACTS

The facts presented are as follows:

(“Taxpayer”) is a professional corporation with approximately employees at eligible premises (see footnote 2) in . Taxpayer was certified for and has been receiving REAP benefits since . Taxpayer intends to merge into Associates, Inc. (“Transferee”). Transferee will be the surviving entity. After the merger Transferee will own all of the assets and have all of the rights and privileges of Taxpayer and assume all of the liabilities of Taxpayer. Transferee will continue to conduct Taxpayer’s business at the eligible premises under Taxpayer’s name. The employees of Taxpayer will be retained subject to normal turnover and will continue to be employed in the same business along with additional employees of Transferee. Other than the employees maintained by Taxpayer at the eligible premises and employees currently maintained by Transferee in Manhattan south of 96th Street, neither Taxpayer nor Transferee maintains any employees in New York City.

ISSUES

You have requested a ruling that after the merger Transferee may continue to receive the REAP benefits currently received by Taxpayer.

CONCLUSION

Transferee may continue to receive Taxpayer's REAP benefits after the merger.

DISCUSSION

REAP provides tax credits under the General Corporation Tax and other business taxes to "eligible businesses" that relocate from outside the "eligible area"¹ to "eligible premises"² in the eligible area. See subdivision 17 of section 11-604 of the Administrative Code of the City of New York (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.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.

Neither the Code nor the Rules of the City of New York relating to REAP ("RCNY" or "Rules") specifically address the issue of whether the surviving entity after a merger can continue receiving the REAP credit if the original REAP recipient is the entity that ceases to exist. However, the Rules do deal with the sale to a new entity of a business that is 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.

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 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 question, 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.

Title 19 RCNY §30-03.

Thus, if the business that relocated and qualified for REAP is later sold to another entity, the credit continues to be available to the purchaser of the business. The operative principle is that the credit stays with the business operation and is not necessarily specific to the owner of the business. With regard to the facts presented, it is clear that the actual business operation for which Taxpayer received the REAP credit is being continued despite the change in the entity that operates it, and thus, the same principle should apply.

Based on the facts presented, it is our conclusion that the REAP credit shall continue to be available to Transferee after the merger for the period that the credit would have been available to Taxpayer so long as Transferee continues the business that had been conducted by Taxpayer at the eligible premises. Under certain circumstances it would be necessary to analyze the effect of the merger on the calculation of the credit. In this case, because neither Taxpayer nor Transferee maintains any employees in the eligible area prior to the merger other than those maintained by Taxpayer at the eligible premises, the merger will have no effect on the calculation of the credit and such analysis is not necessary.

The Department reserves the right to verify the information submitted.

Sincerely,

/S/ Ellen E. Hoffman
Assistant Commissioner
For Tax Law and Conciliations