

New York Legislation Enacts Start-Up New York Tax Incentives Program and Modifies Other New York State Economic Development Incentives Programs

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Overview

On June 24, 2013, New York State Governor Andrew Cuomo signed A.B. 8113, enacting the Start-Up New York Tax Incentives Program (“Start-Up NY”)¹ and modifying the Excelsior Jobs Program.² We summarize these law changes in this External Tax Alert.

Start-Up New York Overview

Start-Up NY aims to entice businesses to create operations, expand within, or relocate to New York³ by offering approved businesses the opportunity to operate tax-free for up to ten years – including no individual income tax for employees on earned income from the approved operations of the business and no sales and use, property, or business taxes for the approved business. Both existing New York business and businesses new to New York can apply. The program will be open to approved businesses that locate operations in certain “Tax-Free NY Areas.” Tax-Free NY areas include designated areas of vacant land of public or private New York State universities or colleges as well as “strategic state assets,” which means land or buildings owned by the state of New York that are closed, vacant, or slated to be closed and/or vacated. The Governor’s office recently issued its final report on the new legislation.⁴

Business & Benefits Eligibility

To participate in Start-Up NY, an “eligible business”⁵ must be approved by Empire State Development, the administering agency. Further, the eligible business must demonstrate that it will be aligned with or further the academic mission of the campus, college or university sponsoring the tax-free community, as well as demonstrate the potential for positive community and economic benefits. Every business must create and maintain net new jobs in order to participate. Further, an eligible business must:

- Be a new start-up company;
- Be a company from out-of-state that is relocating to New York; or
- Be the expansion of an existing New York company, as long as it can demonstrate that it is creating new jobs and not moving or eliminating existing New York jobs.

¹ 2013 N.Y. A.B. 8113, enacted June 24, 2013, as 2013 N.Y. ALS 68; 2013 N.Y. LAWS 68; 2013 N.Y. A.N. 8113, creates the new Article 21 of the New York Economic Development Law, with cross references to other applicable New York Tax Law sections (§§ 39, 39-a, 40, 180, 181, 210, 606, 612, 803, 1119, 1340, and 1405; and New York Real Property Tax Law section 420-a).

² 2013 N.Y. A.B. 8113 also amended the Excelsior Jobs Program Act, which is codified under Article 17 of the New York Economic Development Law, with cross reference to New York Tax Law section 31 (Excelsior jobs program credit).

³ All references herein are to New York State unless indicated otherwise.

⁴ See <http://www.governor.ny.gov/assets/documents/EndofSessionReport.pdf>.

⁵ The law excludes numerous categories of businesses activities, such as: Retail and wholesale businesses, restaurants, real estate brokers, law firms, medical or dental practices, real estate management companies, hospitality, finance and financial services, personal services, accounting firms, and utilities.

Once approved to participate by Empire State Development, a business may locate within an eligible Tax-Free NY area. In each year in which the business seeks to claim Start-Up NY benefits, the business must meet an employment test.⁶ Further, participating businesses must comply with state prevailing wage requirements and may be required to comply with other requirements.

Program Benefits

Participating businesses in Start-Up NY will be eligible to be exempt from the following taxes for a period of up to ten years:

- Corporate franchise taxes and individual income taxes attributable to business operations at the Tax-Free NY Area project site (exempt amount based on an allocation factor of property and payroll in the Tax-Free NY area relative to state-wide property and payroll);
- Corporate organization tax and license and maintenance fees;
- Metropolitan commuter transportation district mobility tax;
- Sales and use taxes;
- Local property taxes; and
- State or local real estate transfer taxes.

In addition, employees of a participating business will pay no New York individual income taxes on the income earned from the approved business for the first five years. For the second five years, employees will pay no New York individual income taxes on income from the approved business for the first \$200,000 of wages for single individuals, \$250,000 for a head of household, and \$300,000 for taxpayers filing a joint return. The number of net new jobs eligible for these personal income tax benefits will not exceed 10,000 new jobs per year on a state-wide basis.

Tax benefits begin for taxable periods on or after January 1, 2014. The Commissioner of Economic Development will promulgate regulations to establish the process for the evaluation of applications, the eligibility criteria that will be applied in evaluating applications, the process for termination from Start-Up NY, and administrative appeals of such terminations.

Excelsior Jobs Program Amendments

A.B. 8113 also modified the Excelsior Jobs Program (“EJP”). The EJP was originally enacted in 2010, and offers incentives on a competitive basis to businesses engaging in certain qualified activities.⁷ The program offers a job creation tax credit, investment tax credit, real property tax credit, and research and development tax credit to projects approved by Empire State Development, the administering agency.

The EJP job creation thresholds, required for participation through the EJP “jobs track” provisions, have been reduced, for each category of “predominant operating activity” (research, software development, agriculture, manufacturing, distribution, and certain back office operations) by as much as half for some categories. The EJP amendments provide that if in any given year a participant creates less than the contractually agreed number of net new jobs, the awarded tax credit will be proportionately reduced based on actual performance, rather than forfeiture of the entire credit, provided that at least 75% of the agreed net new jobs have been created.

Previously, to the extent available funding for the program for a given tax year was not fully exhausted, the excess funds could not be carried forward and awarded in future tax years. Under the amendments to the EJP legislation, one-half of the excess funds may be carried forward.

⁶ The average number of employees of the business and its related persons in the New York during each year must equal or exceed such amounts for the year prior to applying for Start-Up NY benefits. Benefits may be adjusted for a business's failure to meet its commitments.

⁷ 2010 N.Y. A.B. 9709-C/S.B. 6609-B.

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