

Anchin Alert

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Anchin, Block & Anchin LLP
Accountants & Advisors



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The Empire has fallen; Excelsior reigns

Effective July 1, 2010, the 22-year-old NYS Empire Zone Program was replaced by the Excelsior Jobs Program that will provide \$250 million a year in tax incentives and credits. **Businesses that are now receiving tax credits and other incentives under the Empire Zone Program would continue to obtain benefits until their eligible period expires.** Alternatively, if an Empire Zone certified business applies for the Excelsior Program, it will be decertified under the Empire Zone Program.

Some of the key provisions of the new Excelsior Jobs Program include:

The Excelsior Jobs Tax Credit - Qualifying businesses are eligible to claim a refundable New York State tax credit for each "net-new-job" created in the state. Net-new-jobs is that number of newly created jobs in the State of New York that exceeds existing jobs that have not been transferred from another business in the state. The amount of the credit is based upon a sliding scale calculation not to exceed \$5,000 per net-new-job.

The Excelsior Investment Tax Credit - Qualifying businesses are eligible to claim a refundable New York State tax credit equal to 2% of the total cost of qualified investments. This Excelsior refundable tax credit may not be combined with the existing New York State Investment Tax Credit in any given tax year and an eligible business may need to elect which New York State tax credits to claim in any given tax year.

The Excelsior Research & Development Tax Credit – Qualifying businesses are eligible to claim a refundable New York State tax credit equal to 10% of the federal R&D credit that is that portion attributable to R&D conducted in the State of New York.

The Excelsior Real Property Tax Credit – Only certain categories of New York State businesses within targeted industries and businesses that qualify as either regionally significant projects or are located within certain distressed areas of New York State are eligible to apply for the refundable Excelsior Real Property Tax Credit. Targeted industries include manufacturing, agriculture, financial services data center or back-office, scientific R&D, software development & new media, and back-office operations or distribution centers. Minimum employment increases for various targeted industries that meet higher employment and investment thresholds will be a requirement for eligibility. The amount of the refundable credit is equal to 50% of the eligible real property tax for those qualifying projects within an Investment Zone that was assessed and paid in the year prior to application. The benefit period for eligible companies is 5 years and is reduced by 10% in each of the 5 years.

Businesses are required to submit a New York State Empire State Development ("NYSED") Excelsior Jobs Program application and a comprehensive economic development expansion plan directly with NYSED regional offices throughout the state. NYSED will determine eligibility for tax credits over a 5 year period based upon the business' expansion plan and will require the business to enter into a formal performance agreement. Firms that meet all obligations under the agreement in each of the 5 years will be issued a certificate of eligibility that will enable the business to claim benefits only after NYSED has issued a certificate

of tax credit for one taxable year. A participating business will be eligible to claim pre-determined benefits upon submission of accepted performance reports that satisfy eligibility requirements in each of the following years.

Key legislative issues remain

1. A modification is required to the Empire Zones Program provision to insure the continuation through 2014 of Investment Tax Credit/ Employment Incentive Credits.
2. An Empire Zones Program sales tax refund to contractors on building materials technically had sunset on 6/30/2010. This provision was extended until 8/31/2010.

Members of Anchin's Economic Development Services Team are ready to answer your questions regarding the Empire Zone or Excelsior Jobs Program. The team tracks the continuing evolution of New York State's Economic Development programs and can determine how your business can qualify. For further information, contact your Anchin relationship partner or Richard Stieglitz at 212.840.3456 or by email at richard.stieglitz@anchin.com.



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