



Summary of Corporation Tax Changes Enacted in Extraordinary Legislative Session

This memorandum provides a summary of the corporation tax changes in the budget bill enacted on December 9, 2011 (Chapter 56 of the Laws of 2011). It includes discussion of the following legislative changes:

- [Empire State Jobs Retention Program](#)
- [New York Youth Works Tax Credit Program](#)
- [Tax rates for New York manufacturers](#)

Empire State Jobs Retention Program (Articles 9-A, 32, and 33)

Chapter 56 of the Laws of 2011 created the Empire State Jobs Retention Program. Elements of the program are in Article 20 of the Economic Development Law, and sections 36 and 210.44¹ of the Tax Law.

General. The Empire State Jobs Retention Program has been established to create financial incentives to retain strategic businesses and jobs that are at risk of leaving the state due to the impact on business operations of an event (such as a natural disaster) leading to an emergency declaration by the governor. The program will offer qualifying businesses a tax credit based on a percentage of the gross wages paid for retained jobs that otherwise would have been impacted by the event.

Eligible taxpayers subject to tax under Article 9-A (franchise tax on business corporations), 32 (franchise tax on banking corporations), and 33 (franchise tax on insurance corporations) may claim the credit. In addition, a taxpayer that is a partner in a partnership, member of a limited liability company, or shareholder in a New York S corporation that qualifies for the credit may claim its pro rata share of the credit earned by the partnership, limited liability company, or S corporation.

The program will be administered by the Empire State Development Corporation. To be a participant in the program, an eligible business must apply to and be certified by the Empire State Development Corporation. Applications must be made within 180 days of the declaration of an emergency by the governor in the county where the business is located, or by June 6, 2012, whichever is later.

¹ There are two corporation tax credits under 210.44 of the Tax Law that are discussed in this TSB-M. The other credit is the *New York Youth Works Tax Credit Program*. In addition, Chapter 604 of the Laws of 2011 added the *Credit for Taxicabs and Livery Service Vehicles Accessible to Persons with Disabilities* under section 210.44 of the Tax Law.

The following sections provide a brief overview of the Empire State Jobs Retention Program. For additional details about the program and how to apply, see the Empire State Development Corporation Web site (www.esd.ny.gov).

Eligibility for the program. To be eligible to participate in the program, a business entity must operate in New York State predominantly:

- as a financial services data center or a financial services back office operation;
- in manufacturing;
- in software development and new media;
- in scientific research and development;
- in agriculture;
- in the creation or expansion of back office operations in the state; or
- in a distribution center.

In determining whether a business entity is operating predominantly in one of the industries listed above, the Commissioner of Economic Development will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity.

In addition, a business entity must also meet the following requirements:

- it must be located in a county in which an emergency has been declared by the governor on or after January 1, 2011;
- it must demonstrate substantial physical damage and economic harm resulting from the event leading to the emergency declaration by the governor; and
- it must have had at least 100 full-time equivalent jobs in the county in which an emergency has been declared by the governor on the day immediately preceding the day the event leading to the declaration occurred, and must retain or exceed that number of jobs in New York State.

Furthermore, the business must agree to allow the Tax Department and the Department of Labor to share tax and certain other information with the Empire State Development Corporation. If admitted into the Empire State Jobs Retention Program, the business must also agree to be permanently disqualified for Empire Zone tax benefits at any location or locations that qualify for Empire State Jobs Retention Program benefits.

The following businesses are not eligible for the Empire State Jobs Retention Program:

- a not-for-profit entity;
- a business entity whose primary function is the provision of services, including personal services, business services, or the provision of utilities;
- a business entity engaged predominantly in the retail or entertainment industry;
- a business engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with generation of electricity;
- a business entity that is not in compliance with all worker protection and environmental laws and regulations;

- a business entity that owes past due state taxes; or
- a business entity that owes local property taxes for any year prior to the year the business applies to participate in the Program.

Amount of credit. The amount of the credit is equal to 6.85% of the gross wages paid for the impacted jobs. The participant will receive a certificate of tax credit from the Empire State Development Corporation each year. The certificate will specify the amount of the credit allowed for that year.

The credit may be claimed for up to ten consecutive tax years provided the participant continues to meet the eligibility requirements. The benefit period begins in the first year the participant receives a certificate of tax credit from the Empire State Development Corporation, or the first taxable year listed on the preliminary schedule of benefits, whichever is later. If the participant fails to satisfy the eligibility criteria in any one year, it will lose the ability to claim the credit for that year. The inability to claim the credit in any one year will not extend the original ten-year eligibility period. However, the credit may not be claimed prior to the tax year that begins on or after January 1, 2012, and before January 1, 2013.

If a certificate of eligibility or a certificate of tax credit issued by the Empire State Development Corporation is revoked, the amount of credit claimed by the taxpayer prior to the revocation must be added back to tax in the taxable year in which the revocation becomes final.

Application of credit. The credit may not reduce the taxpayer's tax due below the limit for Articles 9-A, 32, or 33 as follows:

- For Article 9-A taxpayers, the credit cannot reduce the tax due to less than the fixed dollar minimum tax under section 210.1(d).
- For Article 32 taxpayers, the credit cannot reduce the tax due below the fixed minimum tax under section 1455(b)(3).
- For Article 33 taxpayers required to file under section 1502, the credit cannot reduce the tax due below the minimum tax under section 1502(a)(4).
- For Article 33 taxpayers required to file under section 1502-a, the credit cannot reduce the tax due to below the minimum tax under section 1502-a.

If the amount of the credit allowable for any tax year reduces the tax to the minimum amount for Article 9-A, 32, or 33 as explained above, any excess credit will be treated as an overpayment of tax that will be refunded or credited against next year's tax liability. Interest will not be paid on the overpayment.

(Tax Law sections 36, 210.44, 1456(y), and 1511(bb))

New York Youth Works Tax Credit Program (Article 9-A)

Chapter 56 of the Laws of 2011 created the New York Youth Works Tax Credit Program. Elements of the program are in section 25-a of the Labor Law and section 210.44² of the Tax Law.

General. The New York Youth Works Tax Credit Program has been established to provide tax incentives to qualified businesses employing at-risk youths in full-time and part-time positions in 2012 and 2013. The program is administered by the Department of Labor. The tax credit is available to qualified employers taxable under Article 9-A (franchise tax on business corporations) of the Tax Law.

A taxpayer that is a partner in a partnership, member of a limited liability company, or shareholder in a New York S corporation that qualifies for the credit may claim its pro rata share of the credit earned by the partnership, limited liability company, or S corporation.

Qualifications. A *qualified employer* is an employer that has been certified by the Department of Labor to participate in the New York Youth Works Tax Credit Program and that employs one or more qualified employees.

A *qualified employee* is an individual who:

- is between the ages of 16 and 24;
- resides in a city with a population of 62,000 or more, or a town with a population of 480,000 or more;
- is *low-income* or *at-risk*, as those terms are defined by the Department of Labor;
- is unemployed prior to being hired by the qualified employer;
- will be working for the qualified employer in a full-time or part-time position that pays wages that are equivalent to the wages paid for similar jobs, with appropriate adjustments for experience and training, and
- is filling a position for which no other employee has been terminated, or where the employer has not otherwise reduced its workforce by involuntary terminations with the intention of filling the vacancy by creating a new hire.

To participate in the program, an employer must submit an application to the Department of Labor no later than June 1, 2012. The qualified employees must start their employment on or after January 1, 2012, but no later than July 1, 2012.

In addition, the Department of Labor is empowered to establish guidelines and criteria that specify requirements for employers to participate in the program. Eligible employers will be issued a certificate of eligibility that establishes the employer as a qualified employer. The certificate of eligibility will specify the maximum amount of credit that the employer will be eligible to claim.

² There are two corporation tax credits under section 210.44 of the Tax Law that are discussed in this TSB-M. The other credit is the *Empire State Jobs Retention Program*. In addition, Chapter 604 of the Laws of 2011 added the *Credit for Taxicabs and Livery Service Vehicles Accessible to Persons with Disabilities* under section 210.44 of the Tax Law.

Amount of credit. A qualified employer is entitled to a tax credit in the following two amounts:

- \$500 per month for up to six months for each qualified employee employed in a full-time job, or \$250 per month for up to six months for each qualified employee employed in a part-time job of at least 20 hours per week; and
- \$1,000 for each qualified employee who is employed for at least an additional six months in a full-time job, and \$500 for each qualified employee employed for at least an additional six months in a part-time job of at least 20 hours per week.

However, in no case can the credit exceed the maximum amount of credit listed on the certificate of eligibility.

The first amount of the credit is allowable for tax years beginning on or after January 1, 2012, and before January 1, 2013. The second amount of the credit is allowable for tax years beginning on or after January 1, 2012, and before January 1, 2014.

Application of the credit: An Article 9-A taxpayer may not reduce the tax due for that year to less than the fixed dollar minimum tax. Any unused amount of credit in the current tax year will be treated as an overpayment of tax that will be refunded or credited against next year's tax liability. Interest will not be paid on the overpayment.

(Tax Law section 210.44)

Tax rates for New York manufacturers (Article 9-A)

For taxable years beginning on or after January 1, 2012, and before January 1, 2015:

- The Article 9-A rate on the entire net income base for eligible qualified New York manufacturers has been reduced to 3.25%.
- The tax rate on the minimum taxable income base for Article 9-A taxpayers that are eligible qualified New York manufacturers has been reduced to 0.75%.
- The amount of the fixed dollar minimum tax for eligible qualified New York manufacturers will be one-half of the amounts set in the law for other Article 9-A taxpayers.

The Tax Department will establish guidelines and criteria to determine if a qualified New York manufacturer (as currently defined in the Tax Law) meets the requirements to be considered an **eligible** qualified New York manufacturer. Among other factors, the criteria may include regional unemployment, the economic impact that manufacturing has on the surrounding community, population decline within the region, and median income within the region in which the manufacturer is located. Additional information relating to the determination will be available on the Tax Department Web site (www.tax.ny.gov).

(Tax Law sections 210.1(a)(vi), 210.1(c)(ii), and 210.1(d)(5))

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.