New York State Department of Taxation and Finance

Instructions for Form IT-607

Claim for Excelsior Jobs Program Tax Credit

Tax Law — Sections 31 and 606(qq)

IT-607-I

Temporary deferral of certain tax credits

For tax years beginning on or after January 1, 2010, and before January 1, 2013, if the total amount of certain credits that you may use to reduce your tax or have refunded to you is greater than $2 million, the excess over $2 million must be deferred to, and used or refunded in, tax years beginning on or after January 1, 2013. For more information about the credit deferral, see Form IT-500, *Income Tax Credit Deferral.*

If you are subject to the credit deferral, you must complete all credit forms without regard to the deferral. However, the credit amount that is transferred to your tax return to be applied against your tax due or to be refunded to you may be reduced. Follow the instructions for Form IT-500 to determine the amounts to enter on your tax return.

General information

The Tax Law provides a credit to taxpayers who are participants in the Excelsior Jobs Program. Individuals (including sole proprietors), estate and trusts, shareholders of an S corporation, partners in a partnership (including a member of a limited liability company (LLC) that is treated as a partnership for federal tax purposes), and beneficiaries of an estate or trust may claim the credit.

A business enterprise must submit a completed application to Empire State Development (ESD). If ESD determines that a business entity will be a participant in the program, based on its application, it will issue to the entity a certificate of eligibility, a preliminary schedule of benefits, and a certificate of tax credit for one tax year. To receive a certificate of tax credit for subsequent tax years, the participant must demonstrate to ESD that the entity continues to satisfy the eligibility criteria. For more information about the Excelsior Jobs Program application and approval process, visit ESD's Web site (at *www.esd.ny.gov)*.

A taxpayer who has been issued a certificate of tax credit by ESD will be allowed to claim the excelsior jobs program tax credit. The certificate of tax credit will indicate the amount of each credit component that may be claimed for the tax year. A taxpayer will be allowed to claim only the amount listed on the certificate of tax credit for that tax year. The certificate of tax credit must be attached to the taxpayer's return.

A business accepted into the Excelsior Jobs Program must agree to be permanently disqualified for Empire Zone benefits at any location that qualifies for Excelsior Jobs Program benefits.

Eligibility

To be a participant in the Excelsior Jobs Program, a business entity must operate predominantly in New York State in certain industries. It must also be a regionally significant project or create a minimum number of net new jobs. See the chart below.

Business entity	Number of net new jobs
Operating predominantly as a financial services data service center or a financial services back office operation	100
Operating predominantly in manufacturing	25
Operating predominantly in software development and new media	10
Operating predominantly in scientific research & development	10
Operating predominantly in agriculture	10
A business entity creating or expanding back office operations or a distribution center in the state	150
Operating predominantly in an industry with significant potential private-sector economic growth and development in this state	N/A

A business entity operating predominantly in one of the industries listed above that does not meet the net new job requirement must have at least 50 full-time job equivalents and demonstrate that its benefit-cost ratio is at least 10 to 1.

The following are not eligible to claim the excelsior jobs program tax credit:

- 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; **or**
- a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity.

A taxpayer may claim the excelsior jobs program tax credit for 10 consecutive tax years commencing with the first tax year for which the taxpayer receives a certificate of tax credit or the first tax year listed on its preliminary schedule of benefits, whichever is later. If a participant fails to satisfy the eligibility criteria in any one year, it will lose the ability to claim the tax credit for that year. Such failure does not extend the original 10-year eligibility period.

The excelsior jobs program tax credit is equal to the sum of the following four credit components:

- the excelsior jobs tax credit component,
- the excelsior investment tax credit component,
- the excelsior research and development tax credit component, **and**
- the excelsior real property tax credit component.

See the instructions for Schedule A, Parts 1 through 4, for more information on these components.

No cost or expense paid or incurred can be the basis for more than one component of this credit or any other credit, with two exceptions. First, a participant may claim both the excelsior investment tax credit component and the investment tax credit (Tax Law section 606(a)) for research and development property. Second, research and development expenditures in this state, including salary or wage expenses for jobs related to research and development activities in

this state, may be used as the basis for both the excelsior research and development tax credit component and the qualified emerging technology company (QETC) facilities, operations and training tax credit (Tax Law section 606(nn)).

Any unused amount of credit for the current tax year will be treated as a refund or overpayment of tax to be credited to next year's tax. Interest will not be paid on the refund or overpayment.

If a certificate of eligibility or a certificate of tax credit is revoked because you do not meet the eligibility requirements, you must recapture the amount of excelsior jobs program tax credit previously claimed prior to that revocation. The amount of credit to be recaptured must be added back to tax for the tax year in which the revocation becomes final.

Who must file

File Form IT-607 if you are an individual, a beneficiary or fiduciary of an estate or trust, a partner in a partnership, or a shareholder of an S corporation, and:

— you are claiming the excelsior jobs program tax credit; **or**

— you are required to recapture any previous excelsior jobs program tax credit due to a certificate of eligibility or certificate of tax credit being revoked.

An estate or trust that divides the credit or addback of credit among itself and its beneficiaries must attach Form IT-607 to Form IT-205, *Fiduciary Income Tax Return*, showing each beneficiary's share of the credit or recapture of the credit.

A partnership must file Form IT-607 with Form IT-204, *Partnership Return*, showing the total of each credit component of the partnership and any recapture of credit.

An S corporation does not file Form IT-607. It must file Form CT-607. If you are a shareholder in an S corporation that has made the election under Tax Law section 660, obtain your share of the corporation's credit or recapture of credit from the corporation.

Definitions

Certificate of eligibility means the document issued by ESD to an applicant that has completed an application to be admitted into the Excelsior Jobs Program and has been accepted into the program by ESD. Possession of a certificate of eligibility does not by itself guarantee the eligibility to claim the tax credit.

Certificate of tax credit means the document issued to a participant by ESD, after ESD has verified that the participant has met all applicable excelsior jobs program tax credit eligibility criteria. The certificate will be issued annually if such criteria are met and will specify the exact amount of each of the excelsior jobs program tax credit components that a participant may claim, and will specify the tax year for which those tax credit components may be claimed.

Participant means a business entity that has completed an application to be admitted into the Excelsior Jobs Program, has been issued a certificate of eligibility by ESD, has demonstrated that it meets the eligibility requirements of the Excelsior Jobs Program, and has been certified as a participant by ESD.

Specific instructions

See the instructions for your tax return for the *Privacy notification* or if you need help contacting the Tax Department.

Individuals (including sole proprietors): Complete Schedules A and D. If applicable, also complete Schedule E.

Partnerships: Complete Schedule A. If applicable, also complete Schedule E.

A married couple in a business enterprise that made an IRC 761(f) election to file two federal Schedule C forms instead of a partnership return: If you file jointly, compute your credit as if you were filing one federal Schedule C for the business (enter the total of all applicable amounts from both federal Schedule C forms). Complete Schedules A and D. If applicable, also complete Schedule E.

Fiduciaries: Complete Schedules A, C, and D. If applicable, also complete Schedule E.

Partners in a partnership, shareholders of an S corporation, and beneficiaries of an estate or trust: Complete Schedules A, B, and D. If applicable, also complete Schedule E.

Note: If more than one of the above applies to you, complete all appropriate schedules on one Form IT-607.

Line A — Year of eligibility

You may claim the excelsior jobs program tax credit for 10 consecutive tax years starting with the first tax year for which you receive a certificate of tax credit or the first tax year listed on your preliminary schedule of benefits, whichever is later. Enter a number from 1 to 10. Failure to qualify for credits in any of those years does not extend the 10-year benefit period.

Schedule A — Credit components

Individuals (including sole proprietors), partnerships and fiduciaries: Enter the components of your excelsior jobs program tax credit, which can be obtained from your certificate of tax credit issued by ESD, on lines 1, 6, 11, and 16. Attach a copy of your certificate of tax credit to Form IT-607.

Partners: Obtain the amounts to enter on lines 2, 7, 12, and 17 from the partnership. If you are a partner in more than one partnership, enter on the appropriate line the total of all your shares of each credit component received from the partnership. Attach a copy of the partnership(s) certificate of tax credit to Form IT-607.

S corporation shareholders: Obtain the amounts to enter on lines 3, 8, 13, and 18 from the S corporation. If you are a shareholder in more than one S corporation, enter on the appropriate line the total of all your shares of each credit component received from the S corporations. Attach a copy of the S corporation(s) certificate of tax credit to Form IT-607.

Beneficiaries: Obtain the amounts to enter on lines 4, 9, 14, and 19 from the estate or trust. If you are a beneficiary of more than one estate or trust, enter on the appropriate line the total of all your shares of each credit component received from the estates or trusts. Attach a copy of the estate(s) or trust(s) certificate of tax credit to Form IT-607.

Part 1 — Excelsior jobs tax credit component

A participant in the Excelsior Jobs Program is eligible to claim a tax credit for each net new job that it creates in New York State. The amount of excelsior jobs tax credit component is shown on your certificate of tax credit, or the amount allocated to you.

Line 5

Partnerships: Enter the line 5 amount on Form IT-204, line 136, and continue with Part 2.

Fiduciaries: Include the line 5 amount on the *Total* line of Schedule C, column C, and continue with Part 2.

All others: Continue with Part 2.

Part 2 — Excelsior investment tax credit component

A participant in the Excelsior Jobs Program is eligible to claim a credit on qualified investments. The credit is equal to 2% of the cost or other basis for federal income tax purposes of the qualified investment.

You may not claim both the excelsior investment tax credit component and the investment tax credit (Tax Law section 606(a)) for the same property for any tax year, except that you may claim both the excelsior investment tax credit component and the investment tax credit for research and development property. You may not claim both the excelsior investment tax credit component

and the brownfield tangible property credit component (Tax Law section 21) with regard to a particular piece of property. The election to claim the excelsior investment tax credit component, the investment tax credit, or the brownfield tangible property credit component with regard to the same property, is irrevocable. The amount of excelsior investment tax credit component is shown on your certificate of tax credit, or the amount allocated to you.

Line 10

Partnerships: Enter the line 10 amount on Form IT-204, line 137, and continue with Part 3.

Fiduciaries: Include the line 10 amount on the *Total* line of Schedule C, column D, and continue with Part 3.

All others: Continue with Part 3.

Part 3 — Excelsior research and development tax credit component

A participant in the Excelsior Jobs Program is eligible to claim an excelsior research and development tax credit for research and development expenditures in New York State. The credit component is equal to 50% of the portion of your federal research and development tax credit that relates to your research and development expenditures in New York State during the tax year. However, the credit component cannot exceed 3% of the qualified research and development expenditures attributable to activities conducted in New York State.

Research and development expenditures in this state, including salary or wage expenses for jobs related to research and development activities in this state, may be used as the basis for both the excelsior research and development tax credit component and the QETC facilities, operations and training credit (Tax Law section 606(nn)). The amount of excelsior research and development tax credit component is shown on your certificate of tax credit, or the amount allocated to you.

Line 15

Partnerships: Enter the line 15 amount on Form IT-204, line 138, and continue with Part 4.

Fiduciaries: Include the line 15 amount on the *Total* line of Schedule C, column E, and continue with Part 4.

All others: Continue with Part 4.

Part 4 — Excelsior real property tax credit component

A participant in the Excelsior Jobs Program that is qualified as a regionally significant project or is located in an investment zone is eligible to claim an excelsior real property tax credit.

The credit is a percentage of the eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone. The amount of excelsior real property tax credit component is shown on your certificate of tax credit, or the amount allocated to you.

Line 20

Partnerships: Enter the line 20 amount on Form IT-204, line 139.

Fiduciaries: Include the line 20 amount on the *Total* line of Schedule C, column F, and continue with line 21.

All others: Continue with line 21.

Schedule B – Partnership, S corporation, estate and trust information

Enter the appropriate information for each partnership, New York S corporation, or estate or trust from which you received a share of the credit. If you need more space, attach a separate schedule.

Schedule C – Beneficiary's and fiduciary's share of credit component and recapture of credit

An estate or trust must complete Schedule C. If an estate or trust allocates or assigns the credits to its beneficiaries, base the division on each beneficiary's proportionate share of the income of the estate or trust.

Schedule D – Computation of credit

Line 27

If your total credits from all sources are **$2 million or less**, enter the line 27 amount and code ***607*** on Form IT-201-ATT, line 12, or Form IT-203-ATT, line 12, or include it on Form IT-205, line 33.

If your total credits from all sources are **more than $2 million**, you may be subject to a credit deferral. Complete line 27, but do not enter the line 27 amount on your tax return. See Form IT-500, *Income Tax Credit Deferral,* to determine the proper amount to enter on your tax return.

Schedule E — Summary of recapture of credit

If a certificate of eligibility or a certificate of tax credit issued by ESD is revoked because you do not meet the eligibility requirements of the excelsior jobs program tax credit, the amount of all excelsior jobs program tax credits previously allowed and claimed by you under Tax Law section 31 prior to that revocation must be added back to your tax for the tax year in which the revocation becomes final.

Complete lines 28 through 33 as applicable.

Line 29 Beneficiaries: Enter on line 29 your share of recapture of credit from the estate or trust from the fiduciary's Form IT-607, Schedule C, column G.

Line 30 Partners: Enter on line 30 your share of the total recapture of credit made by the partnerships (the total is shown on Form IT-204). This information should be provided to you by the partnership.

Line 31 S corporation shareholders: Enter on line 31 your share of the recapture of credit made by S corporations. This information should be provided to you by your S corporations.