



SUNY Tax-Free Areas to Revitalize and Transform Upstate New York Program

(START-UP NY program)

Chapter 68 of the Laws of 2013 (Part A) was signed on June 24, 2013. This new legislation creates the SUNY Tax-Free Areas to Revitalize and Transform Upstate New York program (START-UP NY program). This memorandum summarizes the tax benefits for approved businesses located within a tax-free NY area, and for the employees of these businesses, provided by the START-UP NY program.

Chapter 68 of the Laws of 2013 (Part A) amended the Economic Development Law (EDL), the Tax Law, the Administrative Code of the City of New York, the Real Property Tax Law (RPTL), and the Education Law to create the START-UP NY program. The START-UP NY program provides tax benefits to approved businesses that locate in vacant space or land of approved New York State public and private colleges and universities, approved strategic state assets, and New York State incubators affiliated with private universities or colleges that are designated as tax-free NY areas. The program will be administered by Empire State Development (ESD). Approved businesses will be issued a certificate of eligibility by the sponsoring campus, university, or college.

The legislation added new sections 39, 39-a, and 40 to the Tax Law and amended sections 180, 181, 210, 606, 612, 803, 1119, 1340, and 1405 of the Tax Law and section 11-1712 of the Administrative Code of the City of New York. These sections provide certain tax benefits for approved businesses that have located within tax-free NY areas, and for certain employees of these businesses. These benefits are available for taxable years beginning on or after January 1, 2014, sales tax quarters beginning on or after March 1, 2014, or transactions occurring on or after January 1, 2014, depending upon the benefit. An approved business is not allowed to claim any other tax credit allowed under the Tax Law with respect to its activities or employees in a tax-free NY area.

Sales tax benefits are available for a period of 120 consecutive months beginning with the month during which the business locates in the tax-free NY area. The Metropolitan Commuter Transportation Mobility Tax (MCTMT) benefit for employers is available for 40 consecutive calendar quarters beginning with the calendar quarter during which the business locates in the tax-free NY area in the Metropolitan Commuter Transportation District (MCTD). All other tax

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benefits are available for a period of 10 consecutive taxable years beginning with the taxable year during which the business locates in the tax-free NY area.

Eligible business taxpayers

A taxpayer that is a business, or an owner of a business in the case of a business taxed as a sole proprietorship, partnership (including a limited liability company taxed as a partnership), or New York S corporation, that is subject to tax under Article 9-A (corporation franchise tax) or Article 22 (personal income tax) of the Tax Law, is eligible for certain tax benefits if the business:

- is approved to participate in the START-UP NY program under Article 21 of the EDL;
- operates in a tax-free NY area at a location approved under Article 21 of the EDL;
- annually creates and maintains *net new jobs* as required by EDL section 433.1(b); and
- meets an annual *employment test* beginning with the first year of operation as required by EDL section 433.1(b).

Eligible taxpayers qualify for the following tax benefits:

- A credit that eliminates corporate entity-level franchise taxes (Article 9-A) and personal income taxes (Article 22) related to income earned in the tax-free NY area by the approved business. The exemption is provided via a [tax-free NY area tax elimination credit](#).
- An exemption from the organization tax imposed under section 180 of the Tax Law or the license and maintenance fees imposed under section 181 of the Tax Law, whichever is applicable, if the business is located exclusively in the tax-free NY area.
- An exemption from the [MCTMT](#) for the payroll expense of all covered employees attributable to an approved business located in a tax-free NY area within the MCTD.
- An exemption from the [MCTMT](#) for the net earnings from self-employment of an individual attributable to an approved business owned by such individual located in a tax-free NY area within the MCTD.
- A credit or refund of New York state and local [sales and use taxes](#) (including the 3/8% tax imposed by the state in the MCTD) imposed on the sale of tangible personal property, utility services, and services taxable under section 1105(c) of the Tax Law.

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- An exemption from [state or local real estate transfer tax or local real property transfer tax](#) on any lease of real property located in a tax-free NY area.
- Certain exemptions from Real Property Taxes (See [Appendix I](#)).
- A [wage exclusion](#) for eligible employees of an approved business for purposes of the personal income tax imposed under Article 22 of the Tax Law, the New York City personal income tax imposed under Article 30 of the Tax Law, the Yonkers city income tax imposed under Article 30-A of the Tax Law, and the Yonkers nonresident earnings tax imposed under Article 30-B.

Definitions

As defined in Article 21 of the EDL, a *net new job* means a job created by a business participating in the START-UP NY program in a tax-free NY area that satisfies all of the following criteria:

- the job is new to the state;
- the job has not been transferred from employment with another business located in this state through an acquisition, merger, consolidation, or other reorganization of businesses, or through the acquisition of assets of another business, or transferred from existing employment with a related person, as defined in Internal Revenue Code (IRC) section 465(b)(3)(C) (see [Appendix II](#)), located in the state, to similar employment with the business, unless the business has received approval for such transfers from the Commissioner of Economic Development;
- the job is not filled by an individual employed within the state within the preceding 60 months by a related person;
- the job is either a full-time wage-paying job or two or more part-time jobs which together constitute the equivalent of a full-time wage paying job (a full-time wage-paying job requires at least 35 hours of work per week); and
- the job is filled for more than six months during each year for which the tax benefits are being granted.

As defined in Article 21 of the EDL, the annual *employment test* is satisfied if the average number of employees of the business and its related persons in the state during the year equals or exceeds the sum of:

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- the average number of employees of the business and of its related persons in the state during the tax year immediately preceding the year in which the business submits its application to locate in a tax-free NY area; and
- net new jobs of the business in the tax-free NY area during the tax year.

The average number of employees of the business and of its related persons in the state is determined by adding the total number of employees of the business and of its related persons in the state on March 31, June 30, September 30, and December 31 during the applicable tax year and dividing the sum by the number of these dates occurring within the applicable tax year.

Tax-Free NY Area Tax Elimination Credit (Articles 9-A and 22)

The tax-free NY area tax elimination credit is available to approved businesses, or owners of an approved business in the case of a business taxed as a sole proprietorship, partnership (including a limited liability company taxed as a partnership), or New York S corporation, that are taxpayers subject to tax under Article 9-A and Article 22.

The *tax-free NY area tax elimination credit* is equal to the product of:

- the *tax-free NY area allocation factor* and
- the *tax factor*.

The *tax-free NY area allocation factor* is the percentage of the business's economic presence in the tax-free NY area where the business was approved to locate under Article 21 of the EDL. The tax-free area allocation factor is calculated as shown below:

$$(\text{tax-free NY area property factor} + \text{tax-free NY area wage factor}) \div 2$$

The *tax-free NY area property factor* is determined by dividing:

- the average value of the business's real and tangible personal property, whether owned or rented to it, in the tax-free NY area in which the business was located, during the period covered by the taxpayer's return, by
- the average value of all the business's real and tangible personal property, whether owned or rented to it, within New York State during the period covered by the taxpayer's return.

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Value of the business's real and tangible personal property means the adjusted basis of the properties for federal income tax purposes, except in the case of rented property, where the value is eight times the gross rents payable for the rental of the property during the taxable year.

The *tax-free NY area wage factor* is determined by dividing:

- the total wages, salaries, and other personal service compensation paid during the taxable year to employees, except general executive officers, employed at the business's location in the tax-free NY area, by
- the total wages, salaries, and other personal service compensation paid during the taxable year to all of the business's employees within New York State, except general executive officers.

Note: For Article 22 purposes, references to property, wages, salaries, and other personal service compensation are deemed to be references to those items connected with the conduct of a business.

The specific *tax factor* calculations for Articles 9-A and 22 are detailed below. These ratios may not exceed 1.0. If the partner's or shareholder's share of income, or the business's income in the case of a sole proprietorship, is zero or a loss, the tax factor is zero. The Commissioner of Taxation and Finance may prescribe other methods that reasonably reflect the portion of tax attributable to business activity in the tax-free NY area. In all cases, if the approved business is generating or receiving income from a line of business or intangible property that was previously conducted, created, or developed by the business or a related person as defined in IRC section 465(b)(3)(C) (see [Appendix II](#)), this income is disregarded in the computation of the tax factor.

For Article 9-A taxpayers, the tax factor is the largest of the taxes on the entire net income base, capital base, minimum taxable income base, or fixed dollar minimum tax after the deduction of any other credits (referred to below as the applicable tax). However, in the case of Article 9-A corporate partners and members of a combined group, the tax factor must be computed as follows:

- For corporate partners who are partners in an approved tax-free NY area partnership, the tax factor is the applicable tax determined above multiplied by a ratio of the partner's income from the partnership allocated within New York State to the partner's entire income allocated within New York State. The partner's income from the partnership means partnership items of income, gain, loss, deduction, and New York modifications entering into entire net income or minimum taxable income. The income from the partnership allocated within New York State is determined as if all of the

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partners were nonresidents. The partner's entire income means entire net income or minimum taxable income allocated within New York State.

- For taxpayers who are required or permitted to file a combined return, the tax factor is the portion of the largest of the taxes on the entire net income base, capital base, minimum taxable income base, or fixed dollar minimum tax, computed for the combined group, after the deduction of any other credits, attributable to the income of the business located in the tax-free NY area. The attribution is computed by multiplying the tax for the combined group after the deduction of any other tax credits by a ratio of the *business's income* allocated within the state to the *combined group's income* allocated within the state. The *business's income* means the entire net income or minimum taxable income calculated as if the taxpayer was filing separately, allocated within the state. *Combined group's income* means entire net income or minimum taxable income as shown on the combined return, allocated within the state.

For Article 22 taxpayers, the tax factor is determined by reducing the individual's tax computed under section 601(a)-(d) of the Tax Law for the tax year by any other allowable credits and adjusting that reduced amount as follows:

- For taxpayers who are sole proprietors, the tax factor is the reduced amount determined above multiplied by a ratio of the taxpayer's income from the business in the tax-free NY area allocated within New York State, entering into New York adjusted gross income, to the taxpayer's New York adjusted gross income. The income from the business allocated within New York State shall be determined as if the sole proprietor was a nonresident of New York State (see Regulation section 132.15).
- For taxpayers who are partners in a partnership that is a business located in an approved tax-free NY area, the tax factor is the reduced amount determined above multiplied by a ratio of the partner's income from the partnership allocated within New York State and included in New York adjusted gross income to the New York adjusted gross income as shown on the partner's New York State tax return. The term *partner's income from the partnership* means partnership items of income, gain, loss, deduction, and modifications entering into New York adjusted gross income. The partner's share of income allocable to New York State shall be computed as if the partner were a nonresident individual (see Regulation section 132.15).
- For taxpayers who are shareholders of a New York S corporation that is a business located in a tax-free NY area, the tax factor is the reduced amount determined above multiplied by a ratio of the shareholder's income from the New York S corporation that is an approved business located in a tax-free NY area allocable to New York State that is included in New York adjusted gross income to the shareholder's adjusted gross income. Do not include any wages paid by the approved business S corporation to the

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shareholder in the shareholder's income from the approved business S corporation allocable to New York State. The individual shareholder's income allocated within the state is determined by multiplying the shareholder's pro-rata share of the S corporation's income by the S corporation's business allocation percentage computed using a 3-factor formula that includes property, receipts, and wages (i.e. the 3-factor allocation percentage determined under Tax Law section 210.3(a), without regard to paragraph (a)(10)).

Application and refund of the credit. The credit will be applied against the taxpayer's tax as follows:

For Article 9-A taxpayers, the credit cannot reduce the tax due to an amount less than the fixed dollar minimum under Tax Law section 210.1(d) unless the taxpayer has a tax-free NY area allocation factor of 100%. In that instance, the tax can be reduced to zero. If the credit allowed for any tax year reduces the tax to the minimum amount, or to zero, any excess credit may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund.

For Article 22 taxpayers, there is no credit limitation, and the credit may reduce the tax to zero. If the credit allowed exceeds the tax, the excess may be treated as an overpayment of tax to be credited or refunded. However, no interest will be paid on the refund.

Personal income tax - wage exclusion

All or part of the wages paid to eligible employees by an approved business are exempt from the New York State personal income tax, the New York City personal income tax, the Yonkers city income tax, and the Yonkers nonresident earnings tax. The tax exemption is accomplished through a subtraction modification (exclusion) on the individual's income tax return as follows:

- During the first five years of an approved START-UP NY business's 10 consecutive taxable year period, the total wages paid to an eligible employee by an approved business are to be subtracted from federal adjusted gross income, to the extent the wages are included in federal adjusted gross income, when computing New York adjusted gross income.
- During the second five years of the approved business's 10 consecutive taxable year period, the first \$200,000 of annual wages of an eligible employee whose filing status is single, \$250,000 of annual wages of an eligible employee filing as head of household, and \$300,000 of annual wages of an eligible employee filing a joint return, to the extent included in federal adjusted gross income of the employee of the approved business, are

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subtracted from federal adjusted gross income when computing New York adjusted gross income.

Eligible employees may claim an exemption from withholding on these wages for the New York State personal income tax (and New York City and Yonkers personal income tax, if applicable). Details on how to claim the withholding exemption(s) will be available on the Tax Department's Web site in January 2014. Additionally, employers should visit our Web site for instructions on reporting the wage exclusion on an eligible employee's New York State copy of federal Form W-2, *Wage and Tax Statement*.

To be eligible for the wage exclusion and the withholding exemption(s), the employee must:

- be engaged in work performed exclusively at the approved business's location within the tax-free NY area during the **employee's** tax year (generally, a calendar year);
- be engaged in work at the approved business's location within the tax-free NY area for at least one-half of the **employee's** tax year¹;
- be employed by an approved business that is in compliance with the START-UP NY program; and
- be employed by the approved business in a net new job created by the business in the tax-free NY area.

The aggregate total number of net new jobs eligible for the wage exclusion and withholding exemption may not exceed an annual allowable amount as determined by ESD in accordance with EDL section 434.2. If an approved business creates more net new jobs than it has been allocated for purposes of the wage exclusion, an employee of the approved business will not be eligible for the wage exclusion if he or she is hired after the approved business's annual allocated number of net new jobs is reached.

Note: If the employer's participation in the START-UP NY program is terminated during the employee's tax year, an employee of the business who would have qualified for the wage exclusion on or before the date the approved business is terminated from the program may claim the exclusion for all the wages paid during his or her tax year, including any wages paid after the date the business is terminated from the program.²

¹ Because of this requirement, an employee who begins work on or after July 1st of the employee's tax year would not qualify for the wage exclusion for that tax year.

² Economic Development Law section 436.4(b)

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Metropolitan Commuter Transportation Mobility Tax (MCTMT)

The MCTMT applies to the payroll expense of certain employers who engage in business within the MCTD whose payroll expense is allocated to the MCTD. It also applies to certain individuals (including partners or members in partnerships, limited liability partnerships that are treated as partnerships, and limited liability companies (LLCs) that are treated as partnerships) who have net earnings from self-employment and who engage in business within the MCTD. The MCTD includes the counties of New York (Manhattan), Bronx, Kings (Brooklyn), Queens, Richmond (Staten Island), Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

The payroll expense of an approved business in a tax-free NY area located within the MCTD that is attributable to that location is exempt from the MCTMT for 40 consecutive calendar quarters, beginning with the calendar quarter during which the employer locates in the tax-free NY area within the MCTD.

The net earnings from self-employment of an individual who is an owner of an approved business in a tax-free NY area located within the MCTD that are attributable to that location are exempt from the MCTMT for 10 consecutive taxable years beginning with the taxable year during which the business locates in the tax-free NY area.

Note: To determine the correct threshold and MCTMT rate, the payroll expense of all covered employees, inside and outside of the tax-free NY area, must be taken into account. To determine the threshold for net earnings from self-employment, all net earnings allocated to the MCTD must be included. However, they should be excluded from the actual computation of the MCTMT liability.

Sales and use tax

An approved business that is located in a tax-free NY area is eligible for a credit or refund of New York State and local sales and use taxes, including the 3/8% tax imposed by the state in the MCTD (MCTD state sales tax), imposed on the sale of tangible personal property, utility services, and services taxable under section 1105(c) of the Tax Law. In addition, a credit or refund is available for certain purchases of tangible personal property by contractors, subcontractors, and repairmen that is used in constructing, improving, maintaining, servicing, or repairing real property of an approved business that is located in a tax-free NY area. The credit or refund is allowed for 120 consecutive months beginning with the month during which the business locates in the tax-free NY area.

Note: An approved business located in a tax-free NY area that makes sales subject to sales and use tax is still required to be registered as a sales tax vendor and to collect and remit the appropriate state and local sales tax on its sales.

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Purchases by an approved business eligible for a refund or credit. For purchases and uses of property and services to be eligible for a credit or refund, the property or services (other than the section 1105(b) consumer utility services discussed below) must be directly and predominantly used or consumed by an approved business at its location in a tax-free NY area. For purposes of the credit or refund, *predominantly* means more than 50%.

Consumer utility services (other than telephony and telegraphy, telephone and telegraph services, and telephone answering services) and prepaid telephone calling services must be used or consumed directly and exclusively (100%) by an approved business at its location in a tax-free NY area. Consumer utility services include sales of gas, electricity, refrigeration, and steam, as well as gas, electric, refrigeration, and steam services of whatever nature. Telephony and telegraphy, telephone and telegraph services, and telephone answering services must be delivered and billed to the approved business at an address at its location in the tax-free NY area. Mobile telecommunications services purchased by an approved business will qualify for the credit or refund where the approved business's place of primary use is at its location in a tax-free NY area. See [TSB-M-02\(4\)C, \(6\)S](#), *Amendments Affecting the Application of the Sales and Use Tax and Excise Tax Imposed on Mobile Telecommunications Service*, for additional information on the application of sales tax to mobile telecommunications services.

The credit or refund for an approved business located in a tax-free NY area does not apply to:

- the sales tax imposed under section 1105(d) of the Tax Law on sales of food or drink at restaurants, taverns, or other establishments, or by caterers;
- the sales tax on rent for hotel occupancy imposed under section 1105(e) of the Tax Law;
- the sales tax on admission charges and dues imposed under section 1105(f) of the Tax Law; and
- the sales tax on transportation services imposed under section 1105(c)(10) of the Tax Law.

Contractors, subcontractors, and repairmen. Contractors, subcontractors, and repairmen are eligible to claim a credit or refund for New York State and local sales and use tax, including the MCTD state sales tax, paid on purchases of tangible personal property used in erecting a structure or building for an approved business at its location in a tax-free NY area; or for use in adding to, altering, improving, maintaining, servicing, or repairing real property, property, or land of an approved business at its location in a tax-free NY area. This credit or refund is available for purchases of tangible personal property that becomes an integral component part of the approved business's structure, building, real property, property, or land.

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Tangible personal property that becomes an integral component part of the approved business's structure, building, real property, property, or land includes items such as building and landscaping materials, but does not include items such as tools, equipment, and supplies that are used or consumed by the contractor, subcontractor, or repairman.

How to claim the credit or refund. A claim for credit or refund for the sales and use tax paid on eligible purchases must be made by filing Form AU-11, *Application for Credit or Refund of Sales or Use Tax*. Taxpayers may submit Form AU-11 electronically using [Sales Tax Web File](#). An approved business may file a claim for credit or refund only once each sales tax quarter. No interest is payable on any credit allowed or refund made.

State or local real estate transfer tax or real property transfer tax

Leases of real property located in tax-free NY areas to an approved business are exempt from the New York State real estate transfer tax. To claim this exemption, file [Form TP-584-SNY](#), *Real Estate Transfer Tax Return for START-UP NY Leases*, and attach documentation that the lease is to an approved business participating in the START-UP NY program, and the property is located in a tax-free NY area.

This exemption also applies to any local real estate transfer tax or local real property transfer tax imposed by a county or municipality pursuant to the authority of the Tax Law.

Tax benefit recapture

In accordance with EDL section 436.3(d), an approved business that fails to meet the performance benchmarks specified in its application to participate in the START-UP NY program is subject to consequences as determined by the business and the sponsoring campus, university, or college and stipulated in its application. ESD is responsible for monitoring and evaluating an approved business to determine if its performance benchmarks are met, and will notify the Tax Department if a business fails to meet its performance benchmarks, and the selected consequence(s).

A business must stipulate in its application to one or more of the following consequences for failure to meet its performance benchmarks:

- suspension of the business's participation in the START-UP NY program for one or more tax years;
- termination of the business's participation in the START-UP NY program; and/or

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- proportional recovery of tax benefits awarded under the START-UP NY program as specified in Tax Law section 39(j) and in accordance with the regulations of the Commissioner of Economic Development.

If the business selects proportional recovery of tax benefits, the business must reduce the total amount of tax benefits that were claimed or received during the taxable year by the business or its owners by the percentage reduction in net new jobs promised by the performance benchmarks in accordance with Tax Law section 39(j) and the regulations of the Commissioner of Economic Development. In addition, if the tax benefits are reduced to less than zero, those negative amounts must be added back as tax. The amount required to be added back is reported on the business's corporation franchise tax return if the business is taxed as a corporation or is a corporate partner of a partnership, or on a personal income tax return if the owner of the business is a sole proprietor, an individual partner in a partnership, or a shareholder of a New York S corporation.

Penalties for fraud

If the Commissioner of Economic Development makes a final determination that an approved business participating in the START-UP NY program has acted fraudulently in connection with its participation in the program, the business will be:

- immediately terminated from the program;
- subject to criminal penalties, including but not limited to the felony crime of offering a false instrument for filing in the first degree in accordance with Penal Law section 175.35; and
- required in that year to add back to tax the total value of all of the tax benefits provided under the START-UP program that the business and the employees of the business have received up to the date of the final determination. The amount required to be added back is reported on the business's corporation franchise tax return if the business is taxed as a corporation or is a corporate partner of a partnership, or on a personal income tax return if the owner of the business is a sole proprietor, an individual partner in a partnership, or a shareholder of a New York S corporation.

Termination

If the Commissioner of Economic Development makes a final determination that a business is terminated from the START-UP NY program, the business is no longer eligible for any tax benefits provided for under section 39 of the Tax Law. Notice will be given in writing to the business with an effective date of termination by ESD. The final determination is effective for the tax year that includes the date of termination and for any future tax years, calendar

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quarters, or sales tax quarters. However, an eligible employee of such business may be able to continue to claim the wage exclusion and withholding exemption for the remainder of his or her tax year (see note on page 8).

Disclosure

The Tax Department is authorized to publicly disclose information from the tax returns of a business or any of its owners and any wage reporting information relating to the employees of such business or its related persons participating in the START-UP NY program.

The Commissioner of Taxation and Finance may publicly disclose:

- the names and addresses of the businesses receiving any of the tax benefits provided under the START-UP NY program;
- the amounts of benefits allowed to each business;
- whether or not a business created or maintained net new jobs during the taxable year;
- the number of net new jobs each business reports on its tax return; or
- any other information necessary for the Commissioner of Economic Development or the campus, college, or university sponsoring the tax-free NY area to monitor and enforce compliance with the law, rules and regulations governing the START-UP NY program.

The Commissioner of Taxation and Finance may also publicly disclose the aggregate amounts of the income tax wage exclusion for the eligible employees of an approved business.

In determining whether a business or any of its owners is entitled to the tax benefits provided under the START-UP NY program, the Commissioner of Taxation and Finance may utilize and, if necessary, disclose to the Commissioner of Economic Development, information derived from the tax returns of the business or related persons of the business and wage reporting information relating to any employees of the business or its related persons.

Future Information: For the most up-to-date information concerning the tax benefits of the START-UP NY program, visit our Web site at www.tax.ny.gov.

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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.

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Appendix I

START UP-NY Real Property Tax Exemption Matrix

	Institution	The eligible business occupies:	The property is:
1	SUNY	Property owned by the state	Tax-exempt per RPTL §404
2	SUNY	Land owned by the state, building owned by private party	Building taxable per RPTL §564(1), land tax-exempt
3	SUNY	Property leased to SUNY by a non-profit entity organized exclusively for educational purposes	Tax-exempt per RPTL §420-a if on 6/1/2013, it was owned by the non-profit and exempt under §420-a
4	SUNY	Property leased to SUNY by a private landlord	Taxable per RPTL §300
5	SUNY	Property held in trust for SUNY by a non-profit entity organized exclusively for educational purposes	Tax-exempt per RPTL §420-a if on 6/1/2013, it was owned by the non-profit and exempt under §420-a
6	SUNY	Property held in trust for SUNY by a taxable private owner	Taxable per RPTL §300
7	Community College	Property located within the county that owns the property	Tax-exempt per RPTL §406(1)
8	Community College	Property located outside the county that owns the property	Taxable per RPTL §300
9	CUNY	Property owned by CUNY located within NYC	Tax-exempt per RPTL §406(1)
10	CUNY	Property owned by CUNY located outside NYC	Taxable per RPTL §300
11	Private college or university	Property owned by the private college or university	Tax-exempt per RPTL §420-a if on 6/1/2013, it was owned by the college or university and exempt under §420-a
12	Private college or university	Property leased to the private college or university by a non-profit entity organized exclusively for educational purposes	Tax-exempt per RPTL §420-a if on 6/1/2013, it was owned by the non-profit and exempt under §420-a
13	Private college or university	Property leased to a private college or university by an LLC	Tax-exempt if on 6/1/2013, property was owned by the LLC and the LLC qualifies for exemption under §420-a (a fact-specific analysis)
14	Private college or university	Land owned by the college or university, building owned by private party	Building taxable per RPTL §300

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	Institution	The eligible business occupies:	The property is:
15	Ground lease of privately owned land	Building constructed by one of the above institutions ³ under a ground lease of land owned by private landlord	Tax-exempt if (1) the lease grants “incidents of ownership” of the building to the lessee ⁴ and if (2) the exemption would apply if the lessee were the owner of the building
16	IDA property	Any property owned by, or under the jurisdiction, supervision or control of an IDA	Tax-exempt per RPTL §412-a and GML §874, but possibly subject to PILOTs if agreement so provides
17	Other	Arrangement that does not clearly fit into an exemption statute	Taxable per RPTL §300

³ I.e., a public or private college or university, a non-profit educational organization or an LLC.

⁴ See Matter of Colleges of the Seneca v City of Geneva, 94 N.Y.2d 713, 731 N.E.2d 149, 709 N.Y.S.2d 493 (2000).

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Appendix II

The information below represents the Internal Revenue Service's interpretation of the definition of *related person* in section 465(b)(3)(C) of the Internal Revenue Code as contained in IRS Publication 925, *Passive Activity and At-Risk Rules*. When preparing your tax return, you should refer to section 465(b)(3)(C) to see if the definition of related person has been amended.

Related person includes the following:

- members of a family, but only an individual's brothers and sisters, half-brothers and half-sisters, a spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.);
- two corporations that are members of the same controlled group of corporations determined by applying a 10% ownership test;
- the fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts;
- a tax-exempt educational or charitable organization and a person who directly or indirectly controls it (or a member of whose family controls it);
- a corporation and an individual who owns directly or indirectly more than 10% of the value of the outstanding stock of the corporation;
- a trust fiduciary and a corporation of which more than 10% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust;
- the grantor and fiduciary, or the fiduciary and beneficiary, of any trust;
- a corporation and a partnership if the same persons own over 10% in value of the outstanding stock of the corporation and more than 10% of the capital interest or the profits interest in the partnership;
- two S corporations if the same persons own more than 10% in value of the outstanding stock of each corporation;
- an S corporation and a regular corporation if the same persons own more than 10% in value of the outstanding stock of each corporation;
- a partnership and a person who owns directly or indirectly more than 10% of the capital or profits of the partnership;
- two partnerships if the same persons directly or indirectly own more than 10% of the capital or profits of each;
- two persons who are engaged in business under common control; and
- an executor of an estate and a beneficiary of that estate.

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To determine the direct or indirect ownership of the outstanding stock of a corporation, apply the following rules:

1. Stock owned directly or indirectly by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries.
2. Stock owned directly or indirectly by or for an individual's family is considered owned by the individual. The family of an individual includes only brothers and sisters, half-brothers and half-sisters, a spouse, ancestors, and lineal descendants.
3. Any stock in a corporation owned by an individual (other than by applying rule 2) is considered owned directly or indirectly by the individual's partner.

When applying rule 1, 2, or 3, stock considered owned by a person under rule 1 is treated as actually owned by that person. However, if a person constructively owns stock because of rule 2 or 3, he or she does not own the stock for purposes of applying either rule 2 or 3 to make another person the constructive owner of the same stock.