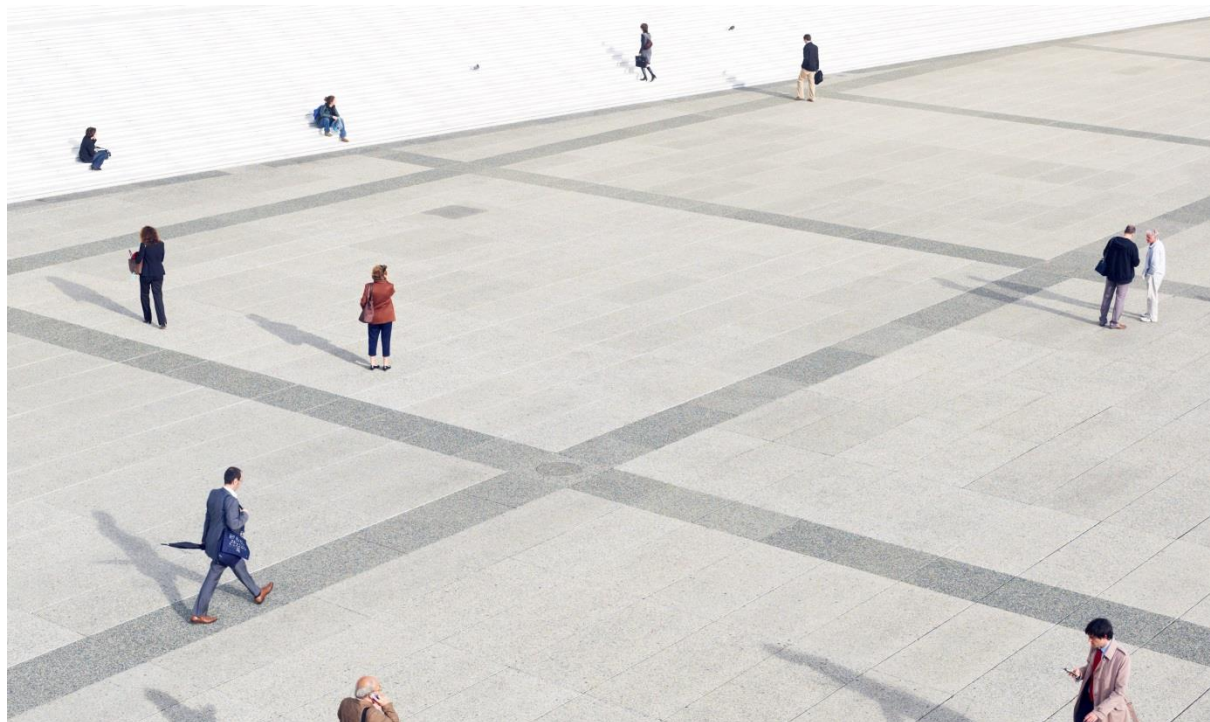


New jobs tax credits: New York



In this issue, we concentrate our state tax credits and incentives review to a single state – New York. Our authors, **Rob Calafell** and **James Pomponi** provide an in-depth exploration of the new and expanded provisions of the following credits: (1) START-UP, (2) Minimum Wage Reimbursement, (3) Hire a Veteran, and (4) New York Youth Works Program.

As always, we also include highlights of state tax credits and incentives developments that occurred over the last quarter.

We continue to welcome your thoughts and input on any area that may be of interest to you or your company.

Regards,

Michael A. Harris
National Leader - Global and Domestic Credits and Incentives Network



Rob Calafell
Principal, New York

+1 (646) 313-7529
robert.calafell@us.dwc.com



James Pomponi
Director, New York

+1 (646) 471-7801
james.pomponi@us.dwc.com

New York enacts new job tax credits and extends/expands existing programs in 2013

New York State has been very active in continuing its initiative of attracting new companies. In 2013, three new credits and incentives programs were enacted with the aim of attracting new investment and spurring job growth in New York while several existing programs were extended and/or expanded. These programs include the START-UP NY Program, the Minimum Wage Reimbursement Credit, the Hire a Veteran Credit, and the New York Youth Works Tax Credit Program. The programs are summarized below with highlights of their respective benefits and requirements.

START-UP NY Program

The START-UP NY Program was formally launched on October 22, 2013. The program creates multiple tax-free zones to attract and grow new businesses, and to incentivize existing New York businesses. Through teaming with its resident colleges and universities, the START-UP NY Program is aimed at developing designated targeted areas located on various university and college campuses around the state. Under the START-UP NY Program, participating businesses, including their owners and employees, will be exempt from certain New York State tax liabilities (including sales, property, and income taxes for businesses and personal income taxes for eligible employees). The exemptions apply for as long as the business qualifies under the program, generally ten years.

Program benefits

Introduced by Senate Bill S5903, the START-UP NY Program provides an exemption from all New York State taxes for qualified businesses and their employees that locate around a participating state college, university, or other designated area of the state.

Companies that are approved to participate in the START-UP NY Program will not pay any taxes in New York (no income tax; no business, corporate state or local taxes; no sales tax; no property tax; and no franchise fees) for 10 years. The specific credits and exemptions include:

- 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 Tax Law §180 or the license and maintenance fees imposed under Tax Law §181, whichever is applicable, if the business is located exclusively in the tax-free NY area
- an exemption from the Metropolitan Commuter Transportation Mobility Tax (MCTMT) for the payroll expense of all covered employees attributable to an approved business located in a tax-free NY area within the Metropolitan Commuter Transportation District (MCTD)
- an exemption from the MCTMT for the net earnings from self-employment of an individual attributable to an approved business owned by the 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 Tax Law §1105(c) when provided or consumed by the qualified business within the tax free zone in which the business is located
- 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.

Employees who work for participating companies at qualifying locations will pay no state income taxes for the first five years of their employment. For the second five years, employees will pay no state taxes on income up to \$200,000 of wages for

individuals, \$250,000 for a head of household, and \$300,000 for taxpayers filing a joint return.

The state has limited the number of net new jobs eligible for personal income tax benefits to 10,000 new jobs per year.

Program eligibility

An initiative of the START-UP NY Program is to better align businesses with qualifying campuses, colleges, or universities, with the intent of furthering the academic mission of the school and yielding positive community and economic benefits. Every business must (1) create and maintain net new jobs in order to participate and (2) satisfy the following criteria:

- be a new start-up company;
- be a company from out-of-state that is relocating to New York State; or
- be the expansion of an existing New York State company that is creating net new jobs.

The START-UP NY Program is open to all two- and four-year, not-for-profit educational institutions chartered in the State of New York. Eligibility rules differ based on the type of institution, the location of the tax-free area (e.g., within New York City and its neighboring counties vs. upstate New York) and the type of eligibility granted (e.g., on-campus space, off-campus space, a designated state incubator, or a designated state asset). In addition, New York State start-ups that 'hatch' from New York State incubators will be eligible to enter tax-free communities and be eligible for benefits under the program.

Certain types of businesses are excluded from the program, including retail and wholesale businesses, restaurants and hospitality, professional practices like law firms and medical practices, and energy production and distribution companies.

Program administration

Companies will be eligible to enter into the program until December 31, 2020. Eligible academic institutions are first required to develop a plan that will include, among other items, a description of the proposed tax-free area to be designated along with a description of the institution's academic mission and the type of companies it will be seeking to attract. Once an institution's plan is approved, the institution will be eligible to begin accepting applications from companies. Once an application is approved by a participating institution, Empire State Development (ESD) will have sixty days to review and approve a company's application. Upon approval, a company may begin operating on the tax-free space.

Under the START-UP NY Program, businesses that compete unfairly with other local existing businesses outside the tax-free area would be ineligible to participate.

Minimum Wage Reimbursement Credit

Effective January 1, 2014, qualifying employers are eligible for the Minimum Wage Reimbursement Credit, which provides a refundable tax benefit to employers required to compensate employees at the state minimum wage of \$9 an hour rather than the federal minimum wage of \$7.25. Chapter 59 of the Laws of 2013.

Program benefits

Taxpayers who are eligible employers or owners of eligible employers are allowed a refundable credit based on a portion of the incremental increase in the minimum wage and the amount of hours worked by eligible employees for which they are paid the New York minimum wage. The tax credit rate is graduated until the minimum wage reaches \$9 an hour in 2016. Should the federal minimum wage increase to more than 85% of New York's minimum wage, the prescribed tax credit rates will be reduced to an amount equal to such difference between the two rates.

Program eligibility

- An eligible employer is defined as a corporation (including a New York S Corporation), a sole proprietorship, a limited liability company, or a partnership. An eligible employee includes an employee who is:
 - employed by an eligible employer in New York State;
 - paid at the minimum wage rate, as defined in Article 19 of the Labor Law, during some part of the taxable year by the eligible employer;
 - at least 16 but not yet 20 years of age; and
 - a student during the period he or she is paid at the New York minimum wage rate by the eligible employer.

A student must be currently enrolled on a full-time or part-time basis in an eligible educational institution located inside or outside New York State. Hours worked by a student during scheduled school breaks that has completed or discontinued his or her education will not qualify for the credit.

Program administration

An employer is responsible to obtain documentation to verify that the student is currently enrolled at an eligible educational institution, and must retain such documentation which could be requested by the New York State Department of Economic Development. An employer is also precluded from discharging an employee in order to hire an eligible employee solely for the purpose of qualifying for this credit.

Hire a Veteran Credit

Effective for tax years beginning on or after January 1, 2015, New York State has created the Hire a Veteran Credit, which applies to taxpayers that hire a qualified veteran who begins his or her employment on or after January 1, 2014, but before January 1, 2016. The qualified veteran must be employed for at least one year. Generally, the credits can be up to \$5,000 per eligible veteran. The program also provides an enhanced credit of up to \$15,000 for a disabled veteran.

Program benefits

Taxpayers who hire a qualified veteran who begins his or her employment on or after January 1, 2014 but before January 1, 2016, and employ the qualified veteran for at least one year for at least 35 hours per week are allowed a non-refundable tax credit against New York state tax imposed under Article 9-A, Article 32, and Article 33 of the Tax Law. Eligible taxpayers include a corporation that is a partner in a partnership (or member of a limited liability company that is treated as a partnership for federal purposes). Also eligible are individuals, estates and trusts who are taxable under Article 22 of the Tax Law.

The amount of the credit is equal to 10% of the total wages paid to the qualified veteran during his or her first full year of employment, up to \$5,000. However, if the qualified veteran is disabled, the amount of the credit is increased to 15% of the total wages paid to the veteran during his or her first year of employment, up to \$15,000. Any amount of credit not used in the current tax year may be carried forward for the following three years.

Program eligibility

A qualified veteran is one who served on active duty or who served in active military service, and who is released from active duty by general or honorable discharge after September 11, 2001. He or she must be hired in New York State by a qualified taxpayer and begin employment on or after January 1, 2014, but before January 1, 2016, and must certify by penalty of perjury that he or she has not been employed for more than 35 or more hours within 180 days immediately prior to employment with the taxpayer.

A qualified disabled veteran must meet the above mentioned criteria and also meet various qualifications of a disabled veteran as defined by in the New York State Civil Service Law section 85.1(b). A qualified disabled veteran must be certified by the

United States Department of Veterans Affairs or military department as entitled to receive disability payments upon certification by such department.

Program administration

An employee must complete an affidavit, Form DTF-75, Employee Affidavit for the Hire a Veteran Credit, to be eligible for the credit. The employee must complete and sign this form on or before the date he or she begins employment. An employee will have the opportunity to certify on Form DTF-75 whether he or she is a disabled veteran, and will also be provided with what documentation the veteran must provide the employer. The employer is required to maintain the completed form and supplemental documentation which may be requested by the Tax Department.

New York Youth Works Program

New York State recently extended and expanded its Youth Works Program. Part DD of Chapter 59 of the Laws of 2013 effectively extend the Youth Works Program through 2017, and expanded the applicability of the credit by reducing the city population threshold residence requirement for a qualified employee.

Program benefits

On December 9, 2011, New York created the New York Youth Works Program. The program provides taxpayers a maximum \$4,000 credit for each unemployed, disadvantaged youth originally hired between January 1, 2012, and December 31, 2012, with corresponding credits being claimed in tax years 2012 and 2013. However, the 2013 legislation extends the credit through 2017 by way of introducing four additional independent annual credit programs, with a cap of \$24 million for these new programs. The Youth Works Program is capped at \$25 million for tax years 2012 and 2013.

If the eligible youth is employed for a full year, the maximum credit is \$4,000 for a full-time position and \$2,000 for a part-time position. A part-time employee must work at least 20 hours per week. However, under Governor Cuomo's 2014-2015 proposed budget, part-time employees will include employees who work at least 10 hours per week who are also enrolled full time in high school. Under the proposed new law, there will also be an additional \$1,000 tax credit for employers that retain youth in full-time status for one additional year, and an additional \$500 for employers that retain youth in a part-time status for one additional year.

The credit is applicable to a taxpayer's New York Franchise Tax on Business Corporations. For-profit businesses not subject to the Corporate Franchise tax, including partnerships, and Limited Liability Companies (LLCs), are also eligible for tax credits, which are claimed as part of their annual NYS tax filing. If the amount of the credit exceeds a taxpayer's tax liability, the excess may be refunded to the taxpayer.

Program eligibility

Eligibility requirements include that the applicant is:

- compliant with state and federal laws and regulations;
- located within a reasonable commuting distance for eligible youth residing in the target areas; and
- filling a job openings that is:
 - considered an in-demand occupation
 - in a regional growth sector deemed a priority by the area's Regional Economic Development Council (e.g. clean energy, healthcare, advanced manufacturing and conservation); or
 - determined to be a priority by the corresponding Regional Economic Development Council for that region of the state.

Eligible employees include those who are ages 16 to 24 and who live in: (1) the cities of New York, Buffalo, Rochester, Syracuse, New Rochelle, Mount Vernon, Yonkers, Schenectady, Albany, and Utica; and (2) the towns of Hempstead and Brookhaven.

The tax credit only applies to taxpayers that hire employees, ages 16 to 24, who are certified to participate in the program. The New York State Department of Labor will refer certified youth to businesses and assist with getting youth certified. Targeted youth must be deemed low income or at-risk and hired between the specified dates for each Youth Work Program. Part-time, seasonal, and temporary jobs are eligible under certain conditions.

Program administration

To qualify for tax credits, businesses must be certified by the Department of Labor. An application must be filed by an employer with the Department of Labor between January 1 and November 30 of that program year. The Department of Labor must also certify employees to be claimed by the employer under the program.

State developments

While not fully inclusive of all state tax credits and incentives developments, the following provides highlights of some notable items from September 2013 through December 2013.

Arizona

Treatment of leases and power purchase agreements for solar credits

On September 16, 2013, the Arizona Department of revenue issued Corporate Tax [Ruling 13-2](#), which addresses how leases and power purchase agreements impact the commercial solar energy device credit.

California

Enterprise zone changes

A.B. 106 and S.B. 100 clarify certain issues that were left open by California's recent changes to its Enterprise Zone program. The law (1) authorizes vouchering through January 1, 2015; (2) clarifies that all qualified hiring ends on December 31, 2013; (3) clarifies that the 10-year credit carryover period for existing credits generally begins on January 1, 2014; and (4) allows property purchased by December 31, 2013, and placed in service as late as December 31, 2014, to qualify for the sales tax credit. [Click here](#) for our insight into this law change.

Film credit may reduce tentative minimum tax

Applicable to tax years beginning after 2010, [A.B. 1173](#), allows the film credit to reduce a taxpayer's tentative minimum tax.

Louisiana

Tax Credit Registry

Revenue Information Bulletin No. 13-021, issued September 11, 2013, notifies taxpayers that the Louisiana Department of Revenue established a central tax credit registry for the registration and recordation of transferable tax credits granted, issued, and authorized by the state.

Solar energy systems guidance

Revenue Information Bulletin No. [13-026](#), issued September 24, 2013, provides guidance regarding several law changes regarding the Solar Energy Systems tax credit.

Massachusetts

Guidance for brownfields and community investment credit

[Technical Information Release](#) 13-15, issued October 18, 2013, provides guidance regarding the state's brownfield clean-up credit and the community investment credit.

New Jersey

Significant expansion and repeal of incentive programs

Effective September 18, 2013, New Jersey expands two incentive programs, creates a new 'zone entity' benefit, and phases out three programs. The changes generally increase qualified geographic boundaries and lower eligibility thresholds for certain incentives. Taxpayers under consideration for one of the expiring programs should consider the expanded programs. Companies relocating into or expanding in New Jersey should consider applying for the expanded programs as soon as possible to secure benefits. Click [here](#) for our insight into this development.

New York

Excelsior Jobs Program regulations

Effective November 13, 2013, The New York Department of Economic Development adopted emergency regulations regarding the Excelsior Jobs Program.

North Carolina

Carryforward of expiring credits

A September 18, 2013, Important [Notice](#) reminds taxpayers that, beginning with tax year 2014, various tax credits are scheduled to be repealed. Taxpayers that qualified for these tax credits may continue to take any remaining installments and carryforwards of those tax credits after the sunset date if the taxpayer continues to meet the statutory eligibility requirements for each particular tax credit.

Oregon

Alternative fuel credit auction

Effective October 7, 2013, [S.B. 583](#) creates a corporate tax credit for taxpayer contributions to a newly created Alternative Fuel Vehicle Revolving Fund. The credit applies to contributions made for tax years beginning on or after January 1, 2013, and before January 1, 2015. The Oregon Department of Revenue is authorized to conduct an auction of up to \$3 million in tax credits. Taxpayer may carry forward unused tax credits to succeeding tax years, up to the third succeeding tax year.

Oregon Industrial Site Readiness Program established

Effective October 7, 2013, [S.B. 246](#) established the Oregon Industrial Site Readiness Program allows the state to enter into tax reimbursement arrangements with, or make loans to, qualified project sponsors for developments of certified regionally significant industrial sites.

Rhode Island

Draft film credit regulation proposed

On September 18, 2013, the Division of Taxation issued [proposed amendments](#) to regulations regarding the certification of motion picture production tax credits. The regulations generally regard changes made by H.B. 7323.



Michael Harris
National Leader - Global
and Domestic Credits and
Incentives Network

+1 (816) 218-1667
michael.a.harris@us.pwc.com

1100 Walnut Street
Kansas City, MO

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

Michael Harris
Partner, *Kansas City*
+1 (816) 218-1667
michael.a.harris@us.pwc.com

Thomas Henry
Principal, *Stamford*
+1 (203) 979-0371
thomas.e.henry@us.pwc.com

Melanie McDaniel
Partner, *Los Angeles*
+1 (213) 356-6609
melanie.mcdaniel@us.pwc.com

Robert Calafell
Principal, *New York*
+1 (646) 313-7529
robert.calafell@us.pwc.com

Kenneth Hunter
Principal, *Tampa*
+1 (813) 351-2399
kenneth.hunter@us.pwc.com

James Pomponi
Director, *New York*
+1 (646) 471-7801
james.pomponi@us.pwc.com

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