



**ECONOMIC  
& PROJECT  
DEVELOPMENT**

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## Excelsior Jobs Program Act

Governor Paterson's proposed budget bill includes the Excelsior Jobs Program Act (the "Excelsior Program"), which is the Governor's proposed replacement for the Empire Zones Program (which currently expires on June 30, 2010). Below is an outline of the parameters of the Excelsior Program, as proposed by the Governor. The Excelsior Program currently gives broad discretion to the Commissioner of Economic Development (the "Commissioner"). Keep in mind that, while this legislation has been proposed, it will likely be changed before it is finalized, and may ultimately not be enacted by the Legislature.

If the Excelsior Program is passed into law as drafted, it will take effect July 1, 2010. The Excelsior Program is only available to specific categories of businesses, including: financial services data centers, manufacturers, software development, scientific research and development, and industries showing great potential for private-sector economic development. The three refundable tax credits involved in the Excelsior Program are:

1. Excelsior Jobs Tax Credit - a credit equal to at least \$2,500, but not more than \$10,000, for each net new job created. The amount of the credit will be determined by the Commissioner based on criteria such as salary, benefit levels, and location.
2. Excelsior Investment Tax Credit - a credit equal to 2% of the cost or other basis for federal income tax purposes of the qualified investment made.
3. Excelsior Research & Development Tax Credit - a credit equal to 10% of the portion of the participant's federal research and development tax credit that relates to the participant's research and development expenditures during the taxable year.

The Excelsior credits are each allowed for up to five consecutive tax years in which a business entity meets all eligibility requirements under the Excelsior Program.

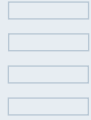
### Requirements to Becoming a Participant in the Excelsior Program

The Excelsior Program, as proposed, requires the applicant to:

- Allow the New York State Department of Taxation and Finance to share the entity's tax information with the New York State Department of Economic Development (the "Department"), which information would not be subject to the Freedom of Information Law ("FOIL").

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- Allow access to all books and records the Department may request to monitor compliance.
- Provide the last three years of federal and state income or franchise tax returns and unemployment insurance quarterly returns to the Department.
- Provide a job creation plan exhibiting that the business entity will create **at least 50 net new jobs in New York within 24 months** of issuance of a Certificate of Eligibility and retain those jobs for at least five years during the entity's participation in the Excelsior Program.
- Project qualified investment information up to and including the last year the business would be eligible to claim the Excelsior Investment Tax Credit.
- Estimate the Excelsior Research & Development Tax Credits the business anticipates claiming throughout the eligible period.
- Provide information on all related persons, including EIN/social security numbers.
- Certify that the business is in substantial compliance with all environmental, worker protection, local, state, and federal tax laws.

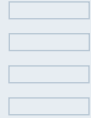
**Once an Application for the Excelsior Program is Approved**

- The participant will receive a Certificate of Eligibility from the Department stating that the entity has been accepted into the Excelsior Program.
- The participant will receive a Preliminary Schedule of Benefits, which states the maximum possible benefits an applicant may receive in each of its five years of eligibility.
- The participant must meet the projected net new jobs within 24 months of the date of the issuance of its Certificate of Eligibility, and retain those jobs for at least five years while participating in the Excelsior Program.
- The participant must submit proof of job creation and investment expenditures.
- If the proof is acceptable, the Department will issue a Certificate of Tax Credit for one taxable year. The Certificate of Tax Credit must be submitted with the participant's New York State tax return.
- In each subsequent year, a Performance Report must be submitted to the Department within thirty days of the end of the participant's taxable year, together with proof that it has **created and retained** the net new jobs, proof of actual expenditures, and other information the Commissioner may request. As long as the participant achieves the requirements, it will receive a Certificate of Tax Credit.

**Excelsior Program Tax Credit Cap Limitations**

The State's fiscal commitment to the Excelsior Program is capped at a pre-determined limitation amount ranging from \$50 million to \$250 million in a given tax year. This cap applies to the State's **cumulative** commitment to all participants in the Excelsior Program.

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### Recapture

If the Department revokes a participant's Certificate of Eligibility or Certificate of Tax Credit, the amount of all Excelsior credits claimed by the participant prior to the revocation will be added to the participant's income in the taxable year in which any such revocation becomes final. The taxpayer would then have to pay tax on the amount of the credits previously received.

### Important to Note

- A participant who is also a qualified empire zone enterprise must agree to be **permanently** decertified from the Empire Zones Program if it is admitted to the Excelsior Program, effective for the first taxable year that the business can claim the Excelsior Program credits.
- Failure to create the projected net new jobs in the first 24 months after admission to the Excelsior Program ends the participant's participation in the program and no benefits will be received.
- A participant may claim either an Excelsior Investment Tax Credit or the standard 5% investment tax credit on one piece of property, but not both.
- A participant may claim either an Excelsior Investment Tax Credit or a Brownfield tangible property credit on one piece of property, but not both.
- If the participant's employment, qualified investment or federal research and development credits **increase** beyond the projections at the time of the application, **the tax benefits do not increase** beyond the benefits estimated in the Preliminary Schedule of Benefits.
- If the participant's expenditures are **less than** the projections at the time of the application, **the tax benefits will be less** than the benefits estimated in the Preliminary Schedule of Benefits. It is unclear from the Governor's bill which expenditures are included in this provision.
- If a participant fails to meet the eligibility criteria in any one given year, it will lose the ability to claim credits for that year.
- The Excelsior Program tax credits will be fully refundable.

Again, the Excelsior Program is the Governor's proposed replacement to the Empire Zones Program, and has not yet been voted on by the Legislature. Please keep in mind that changes will be made by the Legislature over the coming months, and if a version of the Excelsior Program is ultimately enacted, it may be markedly different from the Governor's proposal. We will keep you apprised of the changes and notify you of any final legislation that is passed. ■

*If you require further information on this proposed rule and its impact on your organization, please contact any of the Economic & Project Development Practice Area members listed on the front of this Alert.*