



**ECONOMIC  
& PROJECT  
DEVELOPMENT**

Kevin R. McAuliffe, Chair  
315-425-2875  
[kmcauliffe@hblaw.com](mailto:kmcauliffe@hblaw.com)

David G. Burch  
315-425-2788  
[dburch@hblaw.com](mailto:dburch@hblaw.com)

Angela M. Barry  
Project Development Specialist  
315-425-2874  
[abarry@hblaw.com](mailto:abarry@hblaw.com)

Karen S. D'Antonio  
Special Projects Coordinator  
315-425-2889  
[kdantonio@hblaw.com](mailto:kdantonio@hblaw.com)

## Excelsior Jobs Program

On June 23, 2010, the Excelsior Jobs Program Act was enacted into law as Chapter 59 of the Laws of 2010. The Excelsior Jobs Program is Governor Paterson's replacement for the Empire Zones Program, which will sunset on June 30, 2010.

Set forth below is a description of the Excelsior Jobs Program's benefits and requirements for participation.

### Program Restricted To Certain Business Types

The Excelsior Jobs Program will take effect July 1, 2010. As enacted, the Excelsior Jobs Program is only available to specific categories of businesses, including: financial services data centers or back office operations, manufacturers, software development and new media, scientific research and development, agriculture, any business creating or expanding back office operations in the State, distribution centers, and industries showing great potential for private-sector economic development (as further defined by the Commissioner of Economic Development).

To participate in the Excelsior Jobs Program, the following categories of business must create the number of net new jobs listed below: manufacturing - 25 net new jobs; agriculture - 10 net new jobs; financial services data center or back office operations - 100 net new jobs; scientific research and development - 10 net new jobs; software development - 10 net new jobs; and back office operations or distribution centers - 150 net new jobs. A "net new job" is defined as a job which is new to the State, has not been transferred from employment with another business located in the State, is equivalent to a full-time job requiring at least 35 hours per week, and is filled for more than six months.

Alternatively, any of the above-listed types of businesses can participate (even if they do not meet the job creation targets) if it has at least 50 full-time job equivalents and can demonstrate that its benefit-cost ratio is at least ten to one. Furthermore, certain businesses, even if not specifically within one of the categories described above, can participate in the Excelsior Jobs Program as long as they create 300 or more net new jobs and make a "significant capital investment" (a term to be further defined by regulations) in the State.

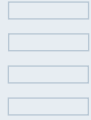
### Components of Credit

The four components of the refundable tax credit involved in the Excelsior Jobs Program are:

1. Excelsior Jobs Tax Credit Component - a credit equal to the sum of: 5% of the amount of remuneration equal to or less than \$50,000; 4% of the amount of remuneration in excess of \$50,000 and equal

*(Continued on next page)*

Hiscock & Barclay is a full service, 200-attorney law firm, with offices throughout the major cities of New York State, as well as in Boston, Washington, D.C. and Toronto. We provide comprehensive legal and business counsel to a diverse client base in 30 specialized practice areas with statewide and regional expertise as well as with national and international capabilities.



- Branding, Trademarks & Copyrights
- Commercial Litigation
- Construction & Surety
- Corporate
- Creditors' Rights
- Economic & Project Development
- Energy & Utilities
- Environmental
- Financial Institutions & Lending
- Health Care & Human Services
- Immigration
- Indian Law
- Insurance Coverage & Regulation
- Intellectual Property Litigation
- International Business
- Labor & Employment
- Lobbying & Election Law Compliance
- Media & First Amendment Law
- Municipal & Land Use
- Patents & Prosecution
- Professional Liability
- Public Finance
- Real Estate
- Real Property Tax & Condemnation
- Regulatory
- Sports & Entertainment
- Tax
- Telecommunications
- Torts & Products Liability Defense
- Trusts & Estates

to or less than \$75,000; and 1.33% of the amount of remuneration in excess of \$75,000. This component is capped at \$5,000 for each net new job.

2. Excelsior Investment Tax Credit Component - a credit equal to 2% of the cost or other basis for federal income tax purposes of a qualified investment. A participant may not, however, claim both the Excelsior Investment Tax Credit component and certain other New York State investment tax credits.
3. Excelsior Research & Development Tax Credit Component - 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 in New York State during the taxable year.
4. Excelsior Real Property Tax Credit Component - a credit of a portion of real property taxes paid by a participant for property located in certain designated areas known as investment zones (certain former empire zones) or for certain regionally significant projects (as will be further defined by regulations). This credit component is equal to 50% of the eligible real property taxes that were assessed and paid in the year immediately prior to the application date, and are reduced by 10% each subsequent year until exhausted in the 5th year.

The Excelsior Jobs Program credits (comprised of the four components set forth above) are allowed for each year for up to five consecutive taxable years so long as the participant meets all eligibility requirements under the Excelsior Jobs Program.

**Requirements to Becoming a Participant in the Excelsior Jobs Program**

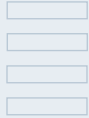
The Excelsior Jobs Program, as proposed, requires the applicant to:

- Submit an application to the Commissioner of Economic Development.
- Project qualified investment information up to and including the last year the participant would be eligible to claim the Excelsior Investment Tax Credit component.
- Estimate the Excelsior Research & Development Tax Credit component the participant anticipates claiming throughout the eligibility period.
- Allow the New York State Department of Taxation and Finance to share the participant's tax information with the New York State Department of Economic Development (the "Department"). Any submitted information will not be subject to the Freedom of Information Law.
- Provide information on all related persons, including EIN/social security numbers.
- Certify that the participant is in substantial compliance with all environmental, worker protection, local, state, and federal tax laws.

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

- The participant will receive a Certificate of Eligibility from the Department stating that it has been accepted into the Excelsior Jobs Program.
- The participant will receive a Preliminary Schedule of Benefits, which states the maximum possible benefits the participant may receive in each of its five years of eligibility.

Hiscock & Barclay is a full service, 200-attorney law firm, with offices throughout the major cities of New York State, as well as in Boston, Washington, D.C. and Toronto. We provide comprehensive legal and business counsel to a diverse client base in 30 specialized practice areas with statewide and regional expertise as well as with national and international capabilities.



- Branding, Trademarks & Copyrights
- Commercial Litigation
- Construction & Surety
- Corporate
- Creditors' Rights
- Economic & Project Development
- Energy & Utilities
- Environmental
- Financial Institutions & Lending
- Health Care & Human Services
- Immigration
- Indian Law
- Insurance Coverage & Regulation
- Intellectual Property Litigation
- International Business
- Labor & Employment
- Lobbying & Election Law Compliance
- Media & First Amendment Law
- Municipal & Land Use
- Patents & Prosecution
- Professional Liability
- Public Finance
- Real Estate
- Real Property Tax & Condemnation
- Regulatory
- Sports & Entertainment
- Tax
- Telecommunications
- Torts & Products Liability Defense
- Trusts & Estates

- 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 with proof that the participant has **created and retained** the net new jobs, proof of actual expenditures, and other information the Commissioner of Taxation and Finance may request. As long as the participant achieves the requirements, it will receive a Certificate of Tax Credit, subject to credit cap limitations.

**Excelsior Jobs Program Tax Credit Cap Limitations**

The State's fiscal commitment to the Excelsior Jobs Program is capped at a pre-determined annual limitation 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 Jobs Program.

**Recapture**

If the Department revokes a participant's Certificate of Eligibility or Certificate of Tax Credit, the amount of all Excelsior Jobs Program Credit components 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.

**Important Notes**

- The Commissioner of Economic Development must promulgate regulations which will set forth many additional details for participation in the Excelsior Jobs Program.
- A business which 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 Jobs Program, such decertification being effective as of the first taxable year that the participant can claim the Excelsior Jobs Program credits.
- A participant may claim either an Excelsior Investment Tax Credit **or** the standard 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.
- 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, but this will not extend the 5 year benefit period.
- The Excelsior Jobs Program tax credits will be fully refundable. ■

*If you have any questions regarding the Excelsior Jobs Program, or would like to discuss it in more detail, please contact any of the Economic & Project Development Practice Area members listed on the front of this Alert.*