

EXCELSIOR PROGRAM REPLACES EMPIRE ZONES

Tax Credit Alert
July 1, 2010

Background

Last week, the New York State Legislature passed, and the governor signed into law, the Excelsior Jobs Program Act. The Excelsior Program was created to replace the Empire Zones program, which expired on June 30, 2010. However, for those of you who are used to dealing with Empire Zones, you'll likely recognize several provisions in the Excelsior Program. The program was specifically designed to encourage the expansion in and relocation to New York of businesses in growth industries such as clean tech, broadband, information systems, renewable energy, and biotechnology. The program essentially contains four components:

1. The Excelsior Jobs Tax Credit;
2. The Excelsior Investment Tax Credit;
3. The Excelsior Research and Development Tax Credit; and
4. The Excelsior Real Property Tax Credit.

Below is a brief overview of the program.

Criteria for Eligibility

In order to be eligible to participate in the Excelsior Program, a business must operate in New York State predominantly:

1. As a financial services data center or a financial services back office operation;
2. In manufacturing;
3. In software development and new media;
4. In scientific research and development;
5. In agriculture;
6. In the creation or expansion of back office operations; or
7. In a distribution center.

Each category listed above is defined by statute. The statute also contains a "catchall" provision that would allow a business to participate in the program if it operates "in an industry with significant potential for private-sector economic growth." Such industries are to be designated by the Commissioner of Economic Development in regulations.

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Each potential participant must then satisfy at least one of three separate requirements. The first requirement is a job-creation threshold. The job-creation threshold varies depending on the participant's industry. For example:

- Manufacturing – 25 net new jobs
- Agriculture – 10 net new jobs
- Financial services data center or a financial services back office operation – 100 net new jobs
- Scientific research and development – 10 net new jobs
- Software development – 10 net new jobs
- Back office operations – 150 net new jobs
- Distribution center – 150 net new jobs

In lieu of satisfying the job-creation requirement, a potential participant can seek to be deemed a “regionally significant project.” This requires even more jobs to be created and the participant must make a “significant capital investment” in the state. However, regionally significant projects do not appear to be limited to specific industries.

The third and final test for eligibility is essentially a cost-benefit analysis. A potential participant operating predominantly in one of the seven industries listed above, but which does not satisfy the job-creation requirement, must have at least 50 full-time job equivalents and must demonstrate that its benefit-cost ratio is 10 to one (i.e., the investment in the state in jobs or capital must be 10 times greater than the benefits received from the program).

The Tax Benefits

Below is a brief review of each of the four components of the tax credit.

1.) The Excelsior Jobs Tax Credit Component

This component is based on the salary paid for each net new job created in the state. The amount of the credit is equal to the sum of the following:

Percentage	Remuneration
5%	\$0 - \$50,000
4%	\$50,000.01 - \$75,000
1.33%	\$75,000.01 and higher

The amount of the credit is capped for each net new job at \$5,000.

2.) The Excelsior Investment Tax Credit Component

This component is equal to 2 percent of the cost or other basis for federal income tax purposes of a qualified investment. The term “qualified investment” means an investment in tangible property (including a building or structural component of a building) owned by a business enterprise which: (1) is depreciable, (2) has a useful life of four years or more, (3) is acquired by purchase, (4) is located in New York State, and (5) is placed in service on or after the date the certificate of eligibility is issued to the business enterprise.

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3.) The Excelsior Research and Development Tax Credit Component

This component is based on a participant's federal research and development tax credit. The component is equal to 10 percent of the portion of the participant's federal credit that relates to the participant's expenditures in New York State during the taxable year.

4.) The Excelsior Real Property Tax Credit Component

This component is based on a participant's real property taxes. In order to claim this credit, a participant must either be designated a regionally significant project or be located in an "investment zone." An "investment zone" is simply a zone that has been designated as an Empire Zone under sections 858(a)(i) or 858(d) of the General Municipal Law.

This component can be claimed for a period of five years, though the amount of the credit diminishes each year. The credit is equal to a percentage of the eligible real property taxes assessed and paid in the year immediately prior to the participant's application in the program. For the eligible years, the percentages are:

Year 1 50%

Year 2 40%

Year 3 30%

Year 4 20%

Year 5 10%

A general overview of the program is available on Empire State Development's website at: www.empire.state.ny.us/BusinessPrograms/Excelsior.html

Conclusion

The new Excelsior Program is similar in many respects to the expired Empire Zones program. However, due to statutorily imposed caps on the amount of benefits that can be paid out in a given year, the Excelsior Program will provide only a fraction of the incentives available under the Empire Zones program. It will be interesting to see if this supposedly improved program will spur a significant amount of economic development in the state.

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About Hodgson Russ's Tax Credits Practice Group

The attorneys in Hodgson Russ's Tax Credits Practice Group provide comprehensive legal counsel to developers, lenders, owners, investors, and municipalities on a wide range of tax credits involving historic rehabilitation, low income housing, renewable energy, new markets, and brownfields. Our multidisciplinary team guides clients through the requirements and intricacies of each tax credit available to help assure transactional efficiency and optimal project viability. Our attorneys are knowledgeable in all related regulatory processes and have close relationships with government agencies that oversee these programs at the federal, state, and local levels.

