TAX STRINGER

Tax Credits and Incentives to Benefit Growing Businesses Part 2

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In part one of this article, we provided an overview of common types of credits and incentives and discussed how these incentives could benefit businesses and business owners. In part two, we will look at common New York State credits and incentives, and some considerations for claiming them.

I. New York State Incentives

New York has many incentive programs that offer businesses a return on investment. To some extent, certain industries, such as manufacturing, high tech, and entertainment, seem to be the most targeted. However, within many industries, there could be opportunities to analyze investments and activities for potential New York incentives.

1. New York Investment Tax Credit (ITC)

The ITC encourages capital investment for a targeted purpose. The ITC, which is a statutory ("as of right") credit, is generally computed as a percentage[1] of qualified property that was placed into service during the year.[2] With certain limitations, the credit can be used to offset corporate income tax (under Article 9-A) or personal income tax (under Article 22). Flow-through entities that put qualifying assets into place may allocate the ITC to the owners for use against their income tax returns. The credit is only refundable to new businesses that are within the first five years of operation, and it can be carried forward for 10–15 years. The credit applies to a wide range of industry/asset classifications and uses, including manufacturing, research and development (R&D), industrial waste or air pollution facilities, and qualified film production.[3]

A company does not necessarily need to be in a particular industry for the asset to qualify. For example, a company that is not principally engaged in manufacturing may have a qualifying manufacturing asset. Alternatively, a company that is principally engaged in manufacturing may

[1] Percentages range from 4% - 9% based on the type/use of property, ITC base, and entity structure.
[2] N.Y. Tax Law §210-B.1; N.Y. Tax Law §606(a).
[3] ID.

have assets that do not qualify. Therefore, it is important for each business to analyze capital assets placed into service each year and determine if it qualifies for the credit.

Qualifying Property Characteristics

ITC qualifying property is tangible property, including buildings and structural components of buildings, that:

- Were acquired by the taxpayer by purchase under IRC Section 179(d);
- Are depreciable under IRC Section 167 or 168;
- Are located in New York State; and
- Are used in a "qualified activity" — e.g., manufacturing, R&D, etc.

Leased assets generally do not qualify for the ITC. However, if the lessee is the beneficial owner of the property and is entitled to take depreciation under IRC Section 167 or 168, then the lessee can claim the ITC for that property.

Qualifying property **excludes**:

- Retail equipment, office furniture, and office equipment;
- Excavating and road-building equipment;
- Public warehouses used to store the taxpayer's goods; and
- Electricity-generating equipment.

Companies claiming the ITC that increase employment may be eligible for the Employment Incentive Credit (EIC). This credit is in addition to the ITC base for the two years after the tax year the ITC is earned. The credit ranges from 1.5% to 2.5% of the investment and is determined based on the increased level of employment.

Taxpayers may elect an optional increased rate of up to 9% on qualified R&D property placed into service during the tax year. However, a business that elects this higher percentage cannot claim the EIC on the same property.

2. **Hiring Credits**

New York State offers several incentives for hiring and retaining employees within the state. Certain statutory incentives include tax credits for hiring people who may face barriers to entering the job market. Similar to the Federal Work Opportunity Tax Credit, these incentives are "point of hire" credits. Examples include the Workers with Disabilities Tax Credit, the Empire State Apprenticeship Tax Credit, and the Hire-A-Vet Tax Credit. Taxpayers need to be aware of each program early so they can apply prior to the hiring process. Other hiring credits focus on expansion within certain targeted markets or industries. The EIC is a good example of this type of incentive.

3. **Qualified Emerging Technology Companies (QETCs)**

There are two income tax credits with respect to QETCs: The QETC Employment Credit and the QETC Capital Tax Credit. QETCs may also be entitled to a reduced corporate tax rate.

The QETC Employment Credit is a refundable income tax credit claimed over three consecutive years. On an annual basis, the credit is equal to $1,000 multiplied by the number of people a company employs over a base level of employment.

The QETC Capital Tax Credit is a nonrefundable income tax credit available for investments in QETCs. The credit is computed as 10% or 20% of the capital investment, with certain dollar limitations, depending on the length of time the investment is held.

A QETC must be located in New York and have $10 million or less in product sales. In addition, its primary products or services must be classified as “emerging technologies” or it must have R&D activities in New York State, with a ratio of research and development funds to net sales equal to or exceeding a certain percentage.

To take advantage of the QETC employment credit, taxpayers need to compute a base period. The base period is generally the average full-time employment during the three taxable years preceding the first taxable year in which the credit is claimed. A taxpayer does not have to have a complete three years to compute the base period. As long as a taxpayer employed staff full-time in New York for at least one full taxable year, the employment average in the previous months will be the base period. Taxpayers that have hired or will be hiring may want to opt for the base period that gives them the most benefit for the increased headcount.

4. **Discretionary Programs**

New York, like many other jurisdictions, has funds allocated to attract investment and create and retain jobs within certain targeted industries in the state. The funds are dispersed by various government sectors in the form of incentives, including tax credits, exemptions, and monetary awards (e.g., grants), etc. These incentives are provided at the “discretion” of the administering agency, meaning the agency decides whether an applicant is entitled, and for how much. Often, incentives are negotiated between an applicant and the agency in a way that benefits both the applicant and the jurisdiction. To obtain the benefit, a company needs to be able to show that a project may not happen in the state “but for” the incentive; therefore, the company has to be approved for the incentive before making financial investments. Taxpayers should also be aware that the administering agency might report on the incentives awarded and the economic benefit created. The information from the discretionary incentives can be made public. Under certain scenarios, businesses could consider using project code names when applying for certain incentives.

In New York, several localized incentives are obtained through various industrial development agencies (IDAs). IDAs are public benefit corporations that exist to encourage local economic development projects with the goal of increasing job opportunities and overall economic welfare in the area. These provide a range of benefits, including property tax abatement (generally up to 25 years through payment in lieu of taxes), mortgage recording tax exemptions, and sales tax exemptions on purchases of construction materials and equipment. IDAs may take “ownership” of the property for the duration of the incentive program. Application fees may exist as well. Taxpayers should consider the cost (both financial and business) and potential value of applying for the incentives via the IDA versus some common statutory exemptions that may not be as tedious.

Excelsior Jobs Program

The Excelsior Jobs Program (EJP) is one of New York's primary job incentives. This program, administered by Empire State Development (ESD), provides refundable tax credits for certain growing businesses that commit to invest in, hire, and retain employees in New York.

ESD evaluates the entire project and commitment. To determine the economic need and benefit, ESD considers, among other things, the industry, location, probability that the project will move outside the state, amount of investment, and proposed job creation/retention. In addition, certain larger regional projects may have separate requirements with additional local approvals as part of the process.

Similar to many other incentive programs, only certain targeted industries can qualify for the EJP. The specific job requirements could vary by qualifying industry as well (see below). Businesses within certain industries can also qualify for enhanced benefits if they make products or develop technologies primarily aimed at reducing greenhouse gas emissions or supporting the use of clean energy. If a business qualifies, ESD provides the company with a commitment agreement and the amount of incentives they could earn.

Target industries and minimum jobs include the following:[4]

- Scientific research and development firms creating at least 5 net new jobs*;
- Software development firms creating at least 5 net new jobs*;
- Financial services (customer service) back-office operations creating at least 25 net new jobs*;
- Agriculture firms creating at least 5 net new jobs*;
- Manufacturing firms creating at least 5 net new jobs*;
- Back-office firms creating at least 25 net new jobs;
- Distribution firms creating at least 50 net new jobs;
- Music production firms creating at least 5 net new jobs;
- Entertainment companies creating at least 100 net new jobs;
- Life sciences companies creating at least 5 net new jobs;
- Other firms creating at least 150 net new jobs and investing at least $3 million;
- Firms in strategic industries, excluding music production and entertainment, that make significant capital investments and have at least 25 employees;
- Manufacturing firms that retain at least 5 employees are also eligible to apply for the program.

*Eligible strategic industry for enhanced green project tax credits.

Applicants that are approved for benefits can obtain five refundable tax credits:

[4] https://esd.ny.gov/excelsior-jobs-program

- Excelsior Jobs Tax Credit;
- Excelsior Investment Tax Credit;
- Excelsior Research & Development Tax Credit;
- Excelsior Real Property Tax Credit;
- Excelsior Childcare Services Tax Credit.

To claim a benefit in a given year, businesses need to apply for the benefit and submit proof of compliance with their committed obligation. If their commitment has been met, ESD will issue a certificate for the awarded benefit. Businesses may not be able to claim statutory incentives for the same investment and should compare the benefit of the EJP to the "as of right" incentives.

During the application process, businesses may be able to tap into other available programs (such as other grants or reduced utilities) and should begin the dialogue early in the process to obtain the best incentive package.

II. NYC Programs

Similar to New York State, New York City includes various incentives for companies that invest, hire, and are located in parts of New York City. Programs such as Food Retail Expansion to Support Health (FRESH) provide localized exemptions from sales and property taxes for establishing and expanding neighborhood grocery stores in underserved communities. Other programs include income tax credits and property tax abatements related to hiring and development in the city.

1. Relocation and Employment Assistance Program (REAP)

The REAP provides a 12-year annual business tax credit[5] for companies that previously operated outside New York City (or in Manhattan south of 96th Street) and agree to relocate to certain parts of New York City.

The intention of many New York City programs, including the REAP, is to provide economic benefits to certain parts of Manhattan and the outer boroughs. The REAP credit provides up to $3,000 for each qualified job that relocated into targeted areas within New York City and is refundable for the first five years of the program. Credits earned in subsequent years have a five-year carryforward period.

The REAP requires an application approval process, and certain industries (e.g., retail) may not qualify for the program. An annual certification process is required to recognize the tax credit.

2. Industrial & Commercial Abatement Program (ICAP)

The ICAP program provides property tax abatements for periods up to 25 years for significant renovation or construction projects associated with eligible New York City properties. Depending on the type of project and location, the property tax abated over the period can

[5] The REAP could offset NYC General Corporation Tax (GCT), Banking Corporation Tax (BCT), Business Corporation Tax, Unincorporated Business Tax (UBT), and/or Utility Tax.

fluctuate. Enhanced benefits could be provided for larger industrial projects and projects in certain targeted locations in New York City.

To enter into the ICAP, a preliminary application must be submitted before obtaining the first building permit (or before construction commences if no permit is required). A final application must be filed within one year after obtaining a building permit (or commencement of construction). The application includes information about the applicant, the project, and the site, and about various commitments that need to be made to benefit certain minorities or underrepresented groups of people. In addition to the information required for the application process, semi-annual and annual reporting of financial and construction information is required. Although the program carries heavy compliance, the benefits can be quite lucrative. In addition, properties that qualify for ICAP could qualify as eligible for other New York City incentives as well.[6]

III. Workforce Development

State and local jurisdictions also provide incentives for workforce development. These programs, such as the Employee Training Incentive Program in New York and the New York City Customized Training Grant, incentivize companies to train employees in new, valuable skillsets to increase potential salaries while expanding the business's services. If approved, the benefits are generally distributed based on the qualified employee's qualified training cost during a particular period. Companies may have to front the cost and be reimbursed as training occurs.

IV. Utilities Incentives

Often overlooked, utilities incentives provide businesses with substantial savings. Utility incentives could be in the form of reduced energy costs, energy credits or abatements, sales tax exemptions, or monetary awards. These incentives target certain industries that invest and expand in New York or achieve a targeted goal; for example, the Recharge NY program provides qualified businesses with lower energy costs, allocated by the New York Power Authority, to support economic development. NYS Energy Research and Development Authority (NYSERDA) administers and/or supports certain grants and incentives for companies achieving energy efficiency goals. Often, the application for energy incentives is completed in conjunction with or shortly after obtaining other state and/or local incentives. Certain companies that receive certain New York City incentives (e.g., ICAP) may be able to obtain a lower energy cost of delivery through the Con Edison Business Incentive Rate (BIR) program. The Energy Cost Savings Program provides energy discounts for eligible companies relocating and renovating in New York City's targeted areas, as well as for businesses that have obtained certain other incentives (e.g., ICAP). Some of these incentives must be completed within a designated timeframe. Companies should pay careful attention to the requirements and due dates of each program to maximize their potential benefit.

V. Conclusion

[6] Examples include New York City REAP and the Commercial Expansion Program.

Although governments create many incentive programs to accomplish a specific, targeted outcome, many of these incentives often go unclaimed. The compliance burden that some of the programs create could explain the lack of participation; however, many times it is purely a lack of knowledge about the incentive programs. By leaving dollars on the table, businesses lose the opportunity for a good project to move forward or to earn a better return on an existing project. Companies should familiarize themselves with New York's state and local incentives and the objectives of each program. Leaders should consider consulting with a reliable tax advisory that is well versed in state incentives programs and their complexities to maximize the potential benefit of state and local incentives.

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