

STATE OF NEW YORK

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SENATE - ASSEMBLY

January 19, 2010

39

PART MM

40 Section 1. The economic development law is amended by adding a new
41 article 17 to read as follows:

42

ARTICLE 17

43

EXCELSIOR JOBS PROGRAM ACT

44

Section 350. Short title.

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351. Statement of legislative findings and declaration.

46

352. Definitions.

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353. Eligibility criteria.

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354. Application and approval process.

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355. Excelsior jobs program credit.

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356. Powers and duties of the commissioner.

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357. Maintenance of records.

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358. Reporting.

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359. Cap on tax credit.

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§ 350. Short title. This article shall be known and may be cited as
5 the "excelsior jobs program act".

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§ 351. Statement of legislative findings and declaration. It is here-
7 by found and declared that New York state needs, as a matter of public
8 policy, to create competitive financial incentives for businesses to
9 create jobs and invest in the new economy. The excelsior jobs program
10 act is created to support the growth of the state's traditional economic
11 pillars including the manufacturing and financial industries and to
12 ensure that New York emerges as the leader in the knowledge, technology
13 and innovation based economy. The program will encourage the expansion
14 in and relocation to New York of businesses in growth industries such as
15 clean-tech, broadband, information systems, renewable energy and
16 biotechnology.

17

This legislation creates the excelsior jobs program, which has four
18 components: the excelsior jobs tax credit, the excelsior investment tax
19 credit, the excelsior research and development tax credit and the
20 excelsior real property tax credit. These credits are designed to
21 promote business expansion in New York state and increase jobs in the
22 new economy. At the same time, the program protects state taxpayers'
23 dollars by ensuring that New York provides tax benefits only to busi-
24 nesses that have created the promised jobs and made the promised invest-
25 ments.

26

§ 352. Definitions. For the purposes of this article:

27

1. "Agriculture" means both agricultural production (establishments
28 performing the complete farm or ranch operation, such as farm owner-op-
29 erators, tenant farm operators, and sharecroppers) and agricultural

30 support (establishments that perform one or more activities associated
31 with farm operation, such as soil preparation, planting, harvesting, and
32 management, on a contract or fee basis).

33 2. "Back office operations" means a business function that may include
34 one or more of the following activities: customer service, information
35 technology and data processing, human resources, accounting and related
36 administrative functions.

37 3. "Benefit-cost ratio" means the following calculation: the numerator
38 is the sum of (i) the value of all remuneration projected to be paid for
39 all net new jobs during the period of participation in the program, and
40 (ii) the value of capital investments to be made by the business enter-
41 prise during the period of participation in the program, and the denomi-
42 nator is the amount of total tax benefits under this article that will
43 be used and refunded.

44 4. "Certificate of eligibility" means the document issued by the
45 department to an applicant that has completed an application to be
46 admitted into the excelsior jobs program and has been accepted into the
47 program by the department. Possession of a certificate of eligibility
48 does not by itself guarantee the eligibility to claim the tax credit.

49 5. "Certificate of tax credit" means the document issued to a partic-
50 ipant by the department, after the department has verified that the
51 participant has met all applicable eligibility criteria in this article.
52 The certificate shall be issued annually if such criteria are satisfied
53 and shall specify the exact amount of each of the tax credit components
54 under this article that a participant may claim, pursuant to section
55 three hundred fifty-five of this article, and shall specify the taxable
56 year in which such credit may be claimed.

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1 6. "Distribution center" means a large scale facility involving proc-
2 essing, repackaging and/or movement of finished or semi-finished goods
3 to retail locations across a multi-state area.

4 7. "Financial services data centers or financial services customer
5 back office operations" means operations that manage the data or
6 accounts of existing customers or provide product or service information
7 and support to customers of financial services companies, including
8 banks, other lenders, securities and commodities brokers and dealers,
9 investment banks, portfolio managers, trust offices, and insurance
10 companies.

11 8. "Investment zone" shall mean an area within the state that had been
12 designated under paragraph (i) of subdivision (a) and subdivision (d) of
13 section nine hundred fifty-eight of the general municipal law that was
14 wholly contained within up to four distinct and separate contiguous
15 areas as of the date immediately preceding the date the designation of
16 such area expired pursuant to section nine hundred sixty-nine of the
17 general municipal law.

18 9. "Manufacturing" means the process of working raw materials into
19 products suitable for use or which gives new shapes, new quality or new
20 combinations to matter which has already gone through some artificial
21 process by the use of machinery, tools, appliances, or other similar
22 equipment. "Manufacturing" does not include an operation that involves
23 only the assembly of components, provided, however, the assembly of
24 motor vehicles or other high value-added products shall be considered
25 manufacturing.

26 10. "Net new jobs" means jobs created in this state that:
27 (a) are new to the state;
28 (b) have not been transferred from employment with another business
29 located in this state including from a related person in this state;
30 (c) are either full-time wage-paying jobs or equivalent to a full-time
31 wage-paying job requiring at least thirty-five hours per week; and
32 (d) are filled for more than six months.
33 11. "Participant" means a business entity that:
34 (a) has completed an application prescribed by the department to be
35 admitted into the program;
36 (b) has been issued a certificate of eligibility by the department;
37 (c) has demonstrated that it meets the eligibility criteria in section
38 three hundred fifty-three and subdivision two of section three hundred
39 fifty-four of this article; and
40 (d) has been certified as a participant by the commissioner.
41 12. "Preliminary schedule of benefits" means the maximum aggregate
42 amount of each component of the tax credit that a participant in the
43 excelsior jobs program is eligible to receive pursuant to this article.
44 The schedule shall indicate the annual amount of each component of the
45 credit a participant may claim in each of its five years of eligibility.
46 The preliminary schedule of benefits shall be issued by the department
47 when the department approves the application for admission into the
48 program. The commissioner may amend that schedule, provided that the
49 commissioner complies with the credit caps in section three hundred
50 fifty-nine of this article.
51 13. "Qualified investment" means an investment in tangible property
52 (including a building or a structural component of a building) owned by
53 a business enterprise which:
54 (a) is depreciable pursuant to section one hundred sixty-seven of the
55 internal revenue code;
56 (b) has a useful life of four years or more;
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1 (c) is acquired by purchase as defined in section one hundred seven-
2 ty-nine (d) of the internal revenue code;
3 (d) has a situs in this state; and
4 (e) is placed in service in the state on or after the date the certif-
5 icate of eligibility is issued to the business enterprise.
6 14. "Regionally significant project" means (a) a manufacturer creating
7 at least fifty net new jobs in the state and making significant capital
8 investment in the state; (b) a business creating at least twenty net new
9 jobs in agriculture in the state and making significant capital invest-
10 ment in the state, (c) a financial services firm, distribution center,
11 or back office operation creating at least three hundred net new jobs in
12 the state and making significant capital investment in the state, or (d)
13 a scientific research and development firm creating at least twenty net
14 new jobs in the state, and making significant capital investment in the
15 state. Other businesses creating three hundred or more net new jobs in
16 the state and making significant capital investment in the state may be
17 considered eligible as a regionally significant project by the commis-
18 sioner as well. The commissioner shall promulgate regulations pursuant
19 to section three hundred fifty-six of this article to determine what
20 constitutes significant capital investment for each of the project cate-
21 gories indicated in this subdivision and what additional criteria a

22 business must meet to be eligible as a regionally significant project,
23 including, but not limited to, whether a business exports a substantial
24 portion of its products or services outside of the state or outside of a
25 metropolitan statistical area or county within the state.

26 15. "Related person" means a "related person" pursuant to subparagraph
27 (c) of paragraph three of subsection (b) of section four hundred sixty-
28 five of the internal revenue code.

29 16. "Remuneration" means wages and benefits paid to an employee by a
30 participant in the excelsior jobs program.

31 17. "Research and development expenditures" mean the expenses of the
32 business enterprise that are qualified research expenses under the
33 federal research and development credit under section forty-one of the
34 internal revenue code and are attributable to activities conducted in
35 the state. If the federal research and development credit has expired,
36 then the research and development expenditures shall be calculated as if
37 the federal research and development credit structure and definition in
38 effect in federal tax year two thousand nine were still in effect.

39 18. "Scientific research and development" means conducting research
40 and experimental development in the physical, engineering, and life
41 sciences, including but not limited to agriculture, electronics, envi-
42 ronmental, biology, botany, biotechnology, computers, chemistry, food,
43 fisheries, forests, geology, health, mathematics, medicine, oceanogra-
44 phy, pharmacy, physics, veterinary, and other allied subjects. For the
45 purposes of this article, scientific research and development does not
46 include medical or veterinary laboratory testing facilities.

47 19. "Software development" means the creation of coded computer
48 instructions and includes new media as defined by the commissioner in
49 regulations.

50 § 353. Eligibility criteria. 1. To be a participant in the excelsior
51 jobs program, a business entity shall operate in New York state predomi-
52 nantly:

53 (a) as a financial services data center or a financial services back
54 office operation;

55 (b) in manufacturing;

56 (c) in software development and new media;

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1 (d) in scientific research and development;

2 (e) in agriculture;

3 (f) in the creation or expansion of back office operations in the
4 state;

5 (g) in a distribution center; or

6 (h) in an industry with significant potential for private-sector
7 economic growth and development in this state as established by the
8 commissioner in regulations promulgated pursuant to this article. In
9 promulgating such regulations the commissioner shall include job and
10 investment criteria.

11 2. For the purposes of this article, in order to participate in the
12 excelsior jobs program, a business entity operating predominantly in
13 manufacturing must create at least twenty-five net new jobs; a business
14 entity operating predominately in agriculture must create at least ten
15 net new jobs; a business entity operating predominantly as a financial
16 service data center or financial services customer back office operation
17 must create at least one hundred net new jobs; a business entity operat-

18 ing predominantly in scientific research and development must create at
19 least ten net new jobs; a business entity operating predominantly in
20 software development must create at least ten net new jobs; a business
21 entity creating or expanding back office operations or a distribution
22 center in the state must create at least one hundred fifty net new jobs,
23 notwithstanding subdivision four of this section; or a business entity
24 must be a regionally significant project as defined in this article; or

25 3. A business entity operating predominantly in one of the industries
26 referenced in paragraphs (a) through (h) of subdivision one of this
27 section but which does not meet the job requirements of subdivision two
28 of this section must have at least fifty full-time job equivalents and
29 must demonstrate that its benefit-cost ratio is at least ten to one.

30 4. A not-for-profit business entity, a business entity whose primary
31 function is the provision of services including personal services, busi-
32 ness services, or the provision of utilities, and a business entity
33 engaged predominantly in the retail or entertainment industry, and a
34 company engaged in the generation or distribution of electricity, the
35 distribution of natural gas, or the production of steam associated with
36 the generation of electricity are not eligible to receive the tax credit
37 described in this article.

38 5. A business entity must be in compliance with all worker protection
39 and environmental laws and regulations. In addition, a business entity
40 may not owe past due state taxes or local property taxes.

41 § 354. Application and approval process. 1. A business enterprise
42 must submit a completed application as prescribed by the commissioner.
43 An application may be recommended by entities, including but not limited
44 to, those created pursuant to subdivision (e) of section nine hundred
45 fifty-seven of the general municipal law.

46 2. As part of such application, each business enterprise must:

47 (a) Agree to allow the department of taxation and finance to share its
48 tax information with the department. However, any information shared as
49 a result of this agreement shall not be available for disclosure or
50 inspection under the state freedom of information law.

51 (b) Agree to allow the department of labor to share its tax and
52 employer information with the department. However, any information
53 shared as a result of this agreement shall not be available for disclo-
54 sure or inspection under the state freedom of information law.

55 (c) Allow the department and its agents access to any and all books
56 and records the department may require to monitor compliance.

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1 (d) Agree to be permanently decertified from the empire zones program
2 if admitted into the excelsior jobs program, effective for the first
3 taxable year that the business enterprise may claim the excelsior jobs
4 program credit and for all subsequent taxable years.

5 (e) Provide the following information to the department upon request:

6 (i) a plan outlining the schedule for meeting the job and investment
7 requirements as set forth in subdivisions two and three of section three
8 hundred fifty-three of this article. Such plan must include details on
9 job titles and expected salaries;

10 (ii) the prior three years of federal and state income or franchise
11 tax returns, unemployment insurance quarterly returns, real property tax
12 bills and audited financial statements;

13 (iii) the amount and description of projected qualified investments

14 for which it plans to claim the excelsior investment tax credit;
15 (iv) an estimate of the portion of any federal research and develop-
16 ment tax credits, attributable to research and development activities
17 conducted in New York state, that it anticipates claiming for the years
18 it expects to claim the excelsior research and development credit; and
19 (v) the employer identification or social security numbers for all
20 related persons to the applicant, including those of any members of a
21 limited liability company or partners in a partnership.
22 (f) Provide a clear and detailed presentation of all related persons
23 to the applicant to assure the department that jobs are not being shift-
24 ed within the state.
25 (g) Certify, under penalty of perjury, that it is in substantial
26 compliance with all environmental, worker protection, and local, state,
27 and federal tax laws.
28 3. After reviewing a business enterprise's completed application and
29 determining that the business enterprise will meet the conditions set
30 forth in subdivisions two and three of section three hundred fifty-three
31 of this article, the department may admit the applicant into the program
32 and provide the applicant with a certificate of eligibility and a
33 preliminary schedule of benefits by year based on the applicant's
34 projections as set forth in its application. This preliminary schedule
35 of benefits delineates the maximum possible benefits an applicant may
36 receive.
37 4. In order to become a participant in the program, an applicant must
38 submit evidence of achieving job and investment requirements in such
39 form as the commissioner may prescribe. After reviewing such evidence
40 and finding it sufficient, the department shall certify the applicant as
41 a participant and issue to that participant a certificate of tax credit
42 for one taxable year. To receive a certificate of tax credit for subse-
43 quent taxable years, the participant must submit to the department a
44 performance report. A participant's increase in employment, qualified
45 investment, or federal research and development tax credit attributable
46 to research and development activities in New York state above its
47 projections listed in its application shall not result in an increase in
48 tax benefits under this article. However, if the participant's expendi-
49 tures are less than the estimated amounts, the credit shall be less than
50 the estimate.
51 5. A participant may claim tax benefits commencing in the first taxa-
52 ble year that the business enterprise receives a certificate of tax
53 credit or the first taxable year listed on its preliminary schedule of
54 benefits, whichever is later. A participant may claim such benefits for
55 the next four consecutive taxable years, provided that the participant
56 demonstrates to the department that it continues to satisfy the eligi-
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1 bility criteria specified in section three hundred fifty-three of this
2 article and subdivision two of this section in each of those taxable
3 years.

4 § 355. Excelsior jobs program credit. 1. Excelsior jobs tax credit
5 component. A participant in the excelsior jobs program shall be eligible
6 to claim a credit for each net new job it creates in New York state. The
7 amount of such credit per job shall be equal to the sum of the follow-
8 ing: five percent of the amount of remuneration equal to or less than
9 fifty thousand dollars; four percent of the amount of remuneration in

10 excess of fifty thousand dollars and equal to or less than seventy-five
11 thousand dollars; and 1.33 percent of the amount of remuneration in
12 excess of seventy-five thousand dollars. However, the amount of the
13 credit for each net new job shall not exceed five thousand dollars.

14 2. Excelsior investment tax credit component. A participant in the
15 excelsior jobs program shall be eligible to claim a credit on qualified
16 investments. The credit shall be equal to two percent of the cost or
17 other basis for federal income tax purposes of the qualified investment.
18 A participant may not claim both the excelsior investment tax credit
19 component and the investment tax credit set forth in subdivision twelve
20 of section two hundred ten, subsection (a) of section six hundred six,
21 or subsection (i) of section fourteen hundred fifty-six of the tax law
22 for the same property in any taxable year. In addition, a taxpayer who
23 or which is qualified to claim the excelsior investment tax credit
24 component and is also qualified to claim the brownfield tangible proper-
25 ty credit component under section twenty-one of the tax law may claim
26 either the excelsior investment tax credit component or such tangible
27 property credit component, but not both with regard to a particular
28 piece of property. A credit may not be claimed until a business enter-
29 prise has received a certificate of tax credit, provided that qualified
30 investments made on or after the issuance of the certificate of eligi-
31 bility but before the issuance of the certificate of tax credit to the
32 business enterprise, may be claimed in the first taxable year for which
33 the business enterprise is allowed to claim the credit. Expenses
34 incurred prior to the date the certificate of eligibility is issued are
35 not eligible to be included in the calculation of the credit.

36 3. Excelsior research and development tax credit component. A partic-
37 ipant in the excelsior jobs program shall be eligible to claim a credit
38 equal to ten percent of the portion of the participant's federal
39 research and development tax credit that relates to the participant's
40 research and development expenditures in New York state during the taxa-
41 ble year. If the federal research and development credit has expired,
42 then the research and development expenditures relating to the federal
43 research and development credit shall be calculated as if the federal
44 research and development credit structure and definition in effect in
45 two thousand nine were still in effect.

46 4. Excelsior real property tax credit. A participant in the excelsior
47 jobs program who either qualified as a regionally significant project or
48 is located in an investment zone shall be eligible to claim a credit for
49 a period of five years. The credit shall be equal to fifty percent of
50 the eligible real property taxes on the real property comprising the
51 regionally significant project or located in the investment zone that
52 were assessed and paid in the year immediately prior to application. In
53 the remaining years the credit shall be computed according to the
54 following schedule:

55 Year two: forty percent of eligible real property taxes on the real
56 property comprising the regionally significant project or located in the

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1 investment zone that were assessed and paid in the year immediately
2 prior to application;

3 Year three: thirty percent of eligible real property taxes on the real
4 property comprising the regionally significant project or located in the
5 investment zone that were assessed and paid in the year immediately

6 prior to application;

7 Year four: twenty percent of eligible real property taxes on real
8 property comprising the regionally significant project or located in the
9 investment zone that were assessed and paid in the year immediately
10 prior to application; and

11 Year five: ten percent of eligible real property taxes on the real
12 property comprising the regionally significant project or located in the
13 investment zone that were assessed and paid in the year immediately
14 prior to application.

15 For purposes of this credit, the term "eligible real property taxes"
16 shall have the same meaning as in subdivision (e) of section fifteen of
17 the tax law, provided that such subdivision (e) shall be read as if it
18 specifically referenced the excelsior jobs program and participants in
19 that program.

20 5. Refundability of credits. The tax credit components established in
21 this section shall be refundable as provided in the tax law. If a
22 participant fails to satisfy the eligibility criteria in any one year,
23 it will lose the ability to claim credit for that year. The event of
24 such failure shall not extend the original five-year eligibility period.

25 6. Claim of tax credit. The business enterprise shall be allowed to
26 claim the credit as prescribed in section thirty-one of the tax law.

27 § 356. Powers and duties of the commissioner. 1. The commissioner
28 shall promulgate regulations establishing an application process and
29 eligibility criteria, that will be applied consistent with the purposes
30 of this article, so as not to exceed the annual cap on tax credits set
31 forth in section three hundred fifty-nine of this article which,
32 notwithstanding any provisions to the contrary in the state administra-
33 tive procedure act, may be adopted on an emergency basis.

34 2. The commissioner shall, in consultation with the department of
35 taxation and finance, develop a certificate of tax credit that shall be
36 issued by the commissioner to participants. Participants must include
37 the certificate of tax credit with their tax return to receive any tax
38 benefits under this article.

39 3. The commissioner shall solely determine the eligibility of any
40 applicant applying for entry into the program and shall remove any
41 participant from the program for failing to meet any of the requirements
42 set forth in subdivision two of section three hundred fifty-four of this
43 article, or for failing to meet the minimum job or investment require-
44 ments set forth in subdivisions two and three of section three hundred
45 fifty-three of this article.

46 § 357. Maintenance of records. Each participant shall keep all rele-
47 vant records for their duration of program participation plus three
48 years.

49 § 358. Reporting. 1. Each participant must submit a performance
50 report annually, in such form as the commissioner may require, within
51 thirty days of the end of their taxable year.

52 2. The commissioner shall prepare on a quarterly basis a program
53 report for posting on the department's website. The first report will
54 be due June thirtieth, two thousand eleven, and every three months ther-
55 eafter. Such report shall include, but not be limited to, the follow-
56 ing: number of applicants; number of participants approved; names of

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1 participants; total amount of benefits certified; benefits received per

2 participant; total number of net new jobs created; number of net new
3 jobs created per participant; aggregate new investment in the state; new
4 investment per participant; and such other information as the commis-
5 sioner determines.

6 § 359. Cap on tax credit. The total amount of tax credits listed on
7 certificates of tax credit issued by the commissioner for any taxable
8 year may not exceed the limitations set forth in this section. Any
9 amount of tax credits not awarded for a particular taxable year may not
10 be used by the commissioner to award tax credits in another taxable
11 year.

12 <u>Credit components in the aggregate</u>	<u>With respect to</u>
13 <u>shall not exceed:</u>	<u>taxable years</u>
14	<u>beginning in:</u>

15 <u>\$ 50 million</u>	<u>2011</u>
16 <u>\$ 100 million</u>	<u>2012</u>
17 <u>\$ 150 million</u>	<u>2013</u>
18 <u>\$ 200 million</u>	<u>2014</u>
19 <u>\$ 250 million</u>	<u>2015</u>
20 <u>\$ 200 million</u>	<u>2016</u>
21 <u>\$ 150 million</u>	<u>2017</u>
22 <u>\$ 100 million</u>	<u>2018</u>
23 <u>\$ 50 million</u>	<u>2019</u>

24 Twenty-five percent of tax credits shall be allocated to businesses
25 accepted into the program under subdivision three of section three
26 hundred fifty-three of this article and seventy-five percent of tax
27 credits shall be allocated to businesses accepted into the program under
28 subdivision two of section three hundred fifty-three of this article.

29 Provided, however, if by September thirtieth of a calendar year, the
30 department has not allocated the full amount of credits available in
31 that year to either: (i) businesses accepted into the program under
32 subdivision three of section three hundred fifty-three of this article
33 or (ii) businesses accepted into the program under subdivision two of
34 section three hundred fifty-three of this article, the commissioner may
35 allocate any remaining tax credits to businesses referenced in para-
36 graphs (i) and (ii) of this section as needed; provided, however, that
37 under no circumstances may the statutory cap be exceeded.

38 § 2. The tax law is amended by adding a new section 31 to read as
39 follows:

40 § 31. Excelsior jobs program credit. (a) General. A taxpayer subject
41 to tax under article nine-A, twenty-two, thirty-two or thirty-three of
42 this chapter shall be allowed a credit against such tax, pursuant to the
43 provisions referenced in subdivision (g) of this section. The amount of
44 the credit, allowable for up to five consecutive taxable years, is the
45 sum of the following four credit components:

- 46 (1) the excelsior jobs tax credit;
- 47 (2) the excelsior investment tax credit;
- 48 (3) the excelsior research and development tax credit; and
- 49 (4) the excelsior real property tax credit.

50 (b) To be eligible for the excelsior jobs program credit, the taxpayer
51 shall have been issued a "certificate of tax credit" by the department
52 of economic development pursuant to subdivision four of section three
53 hundred fifty-four of the economic development law, which certificate

1 for the taxable year. A taxpayer may claim such credit for five consec-
2 utive taxable years commencing in the first taxable year that the
3 taxpayer receives a certificate of tax credit or the first taxable year
4 listed on its preliminary schedule of benefits, whichever is later. The
5 taxpayer shall be allowed to claim only the amount listed on the certifi-
6 cate of tax credit for that taxable year. Such certificate should be
7 attached to the taxpayer's return. No cost or expense paid or incurred
8 by the taxpayer shall be the basis for more than one component of this
9 credit or any other tax credit.

10 (c) Election of credit. A taxpayer who or which is qualified to claim
11 the excelsior investment tax credit component and is also qualified to
12 claim the investment tax credit provided for under subdivision twelve of
13 section two hundred ten, subsection (a) of section six hundred six, or
14 subsection (i) of section fourteen hundred fifty-six of this chapter,
15 may claim either the excelsior investment tax credit component or the
16 investment tax credit, but not both with regard to a particular piece of
17 property. In addition, a taxpayer who or which is qualified to claim the
18 excelsior investment tax credit component and is also qualified to claim
19 the brownfield tangible property credit component under section twenty-
20 one of this article, as added by chapter one of the laws of two thousand
21 three, may claim either the excelsior investment tax credit component or
22 such tangible property credit component, but not both with regard to a
23 particular piece of property. The election to claim the excelsior
24 investment tax credit component, the investment tax credit or the brown-
25 field tangible property credit component, with regard to the same prop-
26 erty, is irrevocable.

27 (d) Information sharing. Notwithstanding any provision of this chap-
28 ter, employees and officers of the department of economic development
29 and the department shall be allowed and are directed to share and
30 exchange:

31 (1) information derived from tax returns or reports that is relevant
32 to a taxpayer's eligibility to participate in the excelsior jobs
33 program;

34 (2) information regarding the component or components of the credit
35 applied for, allowed, or claimed pursuant to this section and taxpayers
36 who are applying for the credit or who are claiming the credit; and

37 (3) information contained in or derived from credit claim forms
38 submitted to the department and applications for admission into the
39 excelsior jobs program.

40 Other than the information required to be contained in the report
41 issued pursuant to subdivision (e) of this section, all information
42 exchanged between the department of economic development and the depart-
43 ment shall not be subject to disclosure or inspection under the state's
44 freedom of information law.

45 (e) Excelsior jobs program credit report. (1) The commissioner must
46 publish an excelsior jobs program tax credit report annually by June
47 thirtieth. The first report must be published by June thirtieth, two
48 thousand twelve.

49 (2) The credit report must contain the following information about the
50 excelsior jobs program tax credit claimed under this chapter during the
51 previous calendar year:

52 (i) the name of each taxpayer claiming a credit; provided however, if
53 the taxpayer claims a credit because the taxpayer is a member of a
54 limited liability company, a partner in a partnership or a shareholder
55 in a subchapter S corporation, the name of each limited liability compa-
56 ny, partnership or subchapter S corporation earning any of the credit
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1 must be included in the report instead of information about the taxpayer
2 claiming the credit; and

3 (ii) the amount of each credit component earned by each taxpayer;
4 provided however, if the taxpayer claims a credit because the taxpayer
5 is a member of a limited liability company, a partner in a partnership
6 or a shareholder in a subchapter S corporation, the amount of credit
7 earned by each entity must be included in the report instead of informa-
8 tion about the taxpayer claiming the credit.

9 (3) The credit report may also contain any other information received
10 by the commissioner with regard to the excelsior jobs program credit
11 that the commissioner deems to be useful in evaluating the use of the
12 credit. The information included in the credit report will be based on
13 the information filed with the department during the previous calendar
14 year, to the extent that it is practicable to use that information.

15 (f) Credit recapture. If a certificate of eligibility or a certificate
16 of tax credit issued by the department of economic development under
17 article seventeen of the economic development law is revoked by such
18 department, the amount of credit described in this section and claimed
19 by the taxpayer prior to that revocation shall be added back to income
20 in the taxable year in which any such revocation becomes final.

21 (g) Cross-references. For application of the credit provided for in
22 this section, see the following provisions of this chapter:

- 23 (1) article 9-A: section 210: subdivision 41.
24 (2) article 22: section 606: subsection (qq).
25 (3) article 32: section 1456: subsection (u).
26 (4) article 33: section 1511: subdivision (y).

27 § 3. Section 210 of the tax law is amended by adding a new subdivision
28 41 to read as follows:

29 41. Excelsior jobs program credit. (a) Allowance of credit. A taxpayer
30 will be allowed a credit, to be computed as provided in section thirty-
31 one of this chapter, against the tax imposed by this article.

32 (b) Application of credit. The credit allowed under this subdivision
33 for any taxable year may not reduce the tax due for such year to less
34 than the higher of the amounts prescribed in paragraphs (c) and (d) of
35 subdivision one of this section. However, if the amount of credit
36 allowed under this subdivision for any taxable year reduces the tax to
37 such amount, any amount of credit thus not deductible in such taxable
38 year will be treated as an overpayment of tax to be credited or refunded
39 in accordance with the provisions of section one thousand eighty-six of
40 this chapter. Provided, however, the provisions of subsection (c) of
41 section one thousand eighty-eight of this chapter notwithstanding, no
42 interest will be paid thereon.

43 § 4. Section 606 of the tax law is amended by adding a new subsection
44 (qq) to read as follows:

45 (qq) Excelsior jobs program credit. (1) A taxpayer will be allowed a
46 credit, to the extent allowed under section thirty-one of this chapter,
47 against the tax imposed by this article.

48 (2) Application of credit. If the amount of the credit allowed under
49 this subsection for any taxable year exceeds the taxpayer's tax for such
50 year, the excess will be treated as an overpayment of tax to be credited
51 or refunded in accordance with the provisions of section six hundred
52 eighty-six of this article, provided, however, that no interest will be
53 paid thereon.

54 § 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
55 of the tax law is amended by adding a new clause (xxxi) to read as
56 follows:

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1	<u>(xxxi) Excelsior jobs program tax</u>	<u>Amount of credit under subdivision</u>
2	<u>credit under subsection (qq)</u>	<u>forty-one of section two hundred ten</u>
3		<u>or under subdivision (u) of section</u>
4		<u>fourteen hundred fifty-six</u>

5 § 6. Section 1456 of the tax law is amended by adding a new subsection
6 (u) to read as follows:

7 (u) Excelsior jobs program tax credit. (1) Allowance of credit. A
8 taxpayer will be allowed a credit, to be computed as provided in section
9 thirty-one of this chapter, against the tax imposed by this article.

10 (2) The credit allowed under this subsection for any taxable year will
11 not reduce the tax due for such year to less than the minimum tax fixed
12 by paragraph three of subsection (b) of section fourteen hundred fifty-
13 five of this article. However, if the amount of credit allowed under
14 this subsection for any taxable year reduces the tax to such amount, any
15 amount of credit thus not deductible in such taxable year will be treat-
16 ed as an overpayment of tax to be credited or refunded in accordance
17 with the provisions of section one thousand eighty-six of this chapter.
18 Provided, however, the provisions of subsection (c) of section one thou-
19 sand eighty-eight of this chapter notwithstanding, no interest will be
20 paid thereon.

21 § 7. Section 1511 of the tax law is amended by adding a new subdivi-
22 sion (y) to read as follows:

23 (y) Excelsior jobs program tax credit. (1) Allowance of credit. A
24 taxpayer will be allowed a credit, to be computed as provided in section
25 thirty-one of this chapter, against the taxes imposed by this article.

26 (2) Application of credit. The credit allowed under this subdivision
27 for any taxable year will not reduce the tax due for such year to less
28 than the minimum tax fixed by this article. However, if the amount of
29 credit allowed under this subdivision for any taxable year reduces the
30 tax to such amount, any amount of credit thus not deductible in such
31 taxable year will be treated as an overpayment of tax to be credited or
32 refunded in accordance with the provisions of section one thousand
33 eighty-six of this chapter. Provided, however, the provisions of
34 subsection (c) of section one thousand eighty-eight of this chapter
35 notwithstanding, no interest will be paid thereon.

36 § 8. This act shall take effect July 1, 2010.