



Empire State Development

Incubators and START-UP NY – Frequently Asked Questions

Article 21 of the NYS Economic Development Law (EDL) and Part 220 of Title 5 of the NY Codes, Rules and Regulations outline the eligibility and participation criteria for the START-UP NY Program. As a general rule, schools are permitted to seek designation of vacant space or land as a Tax-Free NY Area for use by an eligible START-UP NY business. However, the START-UP NY law specifically permits a New York State Incubator (as defined by Section 16-v of the Urban Development Corporation Act) affiliated with a sponsoring school to be included in that school's Plan for Designation as a Tax-Free NY Area, even where that space is occupied. In addition, a business that graduates from a NYS Incubator may also participate in START-UP NY, subject to ESD approval.

With this unique framework in mind, the following Q & A is provided to guide colleges, universities, incubators and businesses.

WHAT IS A 16-V INCUBATOR?

A 16-v Incubator is an incubator certified by ESD under the New York State Business Incubator and Innovation Hot Spot Act. The NYS Certified Business Incubator and Innovation Hot Spot Program requires the provision of certain services and reporting to ensure and improve the quantity and quality of incubator services in NYS. In exchange, these incubators receive state certification and funding to support young companies through their start-up phase.

In order to be certified as a 16-v Incubator, the incubator must be physically located in New York State and have been in existence and providing business incubation for a minimum of three (3) years.

An incubator may apply for certification as a 16-v Incubator through the State's Consolidated Funding Application ("CFA") process. Once certified, 16-v Incubators may receive financial assistance and other resources from New York State.

For more information about the program and currently certified 16-v Incubators, please visit:

<http://esd.ny.gov/nystar/TechnologyIncubators.asp>.

WHAT IS THE ADDED BENEFIT OF BEING A 16-V INCUBATOR IN THE START-UP PROGRAM?

The 16-v Incubator does not need to be vacant at the time the sponsoring school's Plan is submitted to ESD.

Any business graduating from a 16-v Incubator is treated as a "new business" to New York State for purposes of determining START-UP NY participation eligibility. The new business status impacts, among other things, job creation requirements.

OUR COLLEGE OR UNIVERSITY (SPONSOR) IS PREPARING A PLAN TO DESIGNATE A TAX-FREE NY AREA THROUGH START-UP NY. WE WOULD LIKE TO INCLUDE INCUBATOR SPACE IN THE PLAN. WHAT SHOULD WE CONSIDER BEFORE DOING SO?

If an incubator is already a certified 16-v Incubator, the sponsor may submit a plan applying to designate the incubator as a Tax-Free NY Area. A certified New York State Incubator does not need to be vacant in order to be eligible for designation as a Tax-Free NY Area. However, the sponsor of a 16-v Incubator must provide to ESD a list of the existing businesses located in the incubator at the time of its plan submission. All other incubators will be subject to the standard START-UP NY requirements and considerations for designation (e.g. whether the university is public or private, located upstate or downstate, is presently occupied or vacant).

OUR COLLEGE OR UNIVERSITY (SPONSOR) HAS A RELATIONSHIP WITH A 16-V INCUBATOR AND WOULD LIKE TO SPONSOR BUSINESSES TO PARTICIPATE IN START-UP NY IN THAT SPACE. IS THE 16-V INCUBATOR AUTOMATICALLY A TAX-FREE NY AREA?

No. While a 16-v designation makes the incubator eligible for consideration as a Tax-Free NY Area, it is not automatically approved as such. Any space intended for use by the sponsoring school as a Tax-Free NY Area must be included in the school's Plan for Designation and approved by ESD or the START-UP NY Approval Board before it is designated as a Tax-Free NY Area.

Businesses located within a Tax-Free NY Area designated 16-v Incubator that are interested in participating in START-UP NY must apply directly to the sponsoring school.

Please keep in mind that the law requires a "bona fide affiliation" between the sponsoring school and 16-v Incubator in order for it to be designated a Tax-Free NY Area. ESD has defined "bona fide affiliation" in its regulations (see §220.02(d)).

WHAT DOES IT MEAN TO BE A 16-V "GRADUATE"?

A 16-v "graduate" is a business that has successfully completed residency, either physically or virtually, in a 16-v Incubator. Like every college or university, every 16-v Incubator will have its own requirements before a business is considered to have successfully "graduated." For

example, graduation may be triggered by criteria such as a minimum number of years of residency or based on incoming revenue goals. The NYS Incubator Program requires that the incubator's graduation plan and requirements be stated on the application.

Once a business has graduated from a 16-v Incubator, it may apply to move into a Tax-Free NY Area without being required to commit to creating any net new jobs. If you are an incubating business interested in START-UP NY, contact your 16-v Incubator for graduation requirements.

HOW DOES START-UP NY WORK FOR BUSINESSES PRESENTLY INCUBATING IN A 16-V INCUBATOR THAT IS PHYSICALLY OPERATING IN A DESIGNATED TAX-FREE NY AREA?

There are several scenarios in which a START-UP-NY-eligible incubating business can be impacted by START-UP NY¹:

The business is presently in the incubator but not part of the 16-v Incubator's incubation program.

With the support of the relevant incubator, the business can opt to stay in the space and continue to grow there. Alternatively, it can apply to a sponsor with space in a Tax-Free NY Area outside of the 16-v Incubator and seek START-UP NY benefits. In that case, the business may need to meet the program requirements for expanding businesses, instead of new businesses.

The business is presently incubating and not yet a 16-v Graduate.

With the support of the relevant incubator, the business can opt to stay in the 16-v Incubator, continue to grow there and take advantage of the 16-v benefits, but is not eligible for START-UP until graduation or departure. Such business can apply to a sponsor with space in a Tax-Free NY Area outside of the 16-v Incubator and seek START-UP NY benefits. In that case, the business will be treated as an expanding business and not a new business.

The business has finished incubating and is a 16-v Graduate.

If the graduating business is in 16-v space that has already been designated as a Tax-Free NY Area and wishes to participate in START-UP NY, it must move out of the current incubator space to other non-incubator space that has been designated as a Tax-Free NY Area.

I AM A BUSINESS CURRENTLY OCCUPYING SPACE AND OPERATING WITHIN A 16-V INCUBATOR. AM I AUTOMATICALLY ELIGIBLE FOR START-UP NY BENEFITS?

No. A business must seek sponsorship with a school that has designated a Tax-Free NY Area and then must move into that space *after* acceptance into the program. If you are a 16-v graduate and are moving into a Tax-Free NY Area, your business will be treated as a new business.

¹ Information about business eligibility can be found in the STARTUP-NY regulations [5 NYCRR §220.6 (d)] http://startup.ny.gov/sites/default/files/STARTUPNY_20141224_REGS.pdf

Any business currently in an incubator must relocate to participate in the START-UP NY program.

START-UP NY REQUIRES NON-INCUBATOR TAX FREE AREAS TO BE VACANT, BUT ALLOWS 16-V INCUBATOR SPACE TO BE OCCUPIED. WHY IS THIS?

Incubator space is unique because it is constantly turning over businesses that are formative and exist there with the goal of eventually becoming a sustainable business and leaving the incubator. Therefore, the space is never permanently occupied. START-UP NY recognizes this by allowing the space to be designated as a Tax Free NY area despite having incubating businesses occupying the space at the time of designation.

The businesses that are incubating in the designated space must graduate and move out of the incubator and locate into other designated space in order to take advantage of the START-UP NY benefits.

MY BUSINESS IS LOCATED IN AN INCUBATOR, BUT IT IS NOT A NEW BUSINESS OR AN INCUBATOR GRADUATE. AM I ELIGIBLE FOR START-UP NY BENEFITS IF I REMAIN IN THIS SPACE?

No. The financial reality of some 16-v Incubators is that they have long-term tenants that are not incubator businesses. These businesses are not eligible for START-UP NY benefits if they remain in the designated space because they are neither a new business nor a business expanding into a Tax-Free NY Area.

IF I HAVE TO MOVE, WHAT IS THE ADDED BENEFIT TO BEING A 16-V INCUBATOR GRADUATE?

One benefit of being a 16-v Incubator graduate is that your business will be treated as a “new” business for the purpose of calculating net new jobs. That is, all existing jobs (at the time you are accepted into START-UP NY) can be counted towards your net new jobs requirement.

DOES THIS MEAN ALL OF THE EXISTING JOBS ALSO GET THE PERSONAL INCOME TAX BENEFIT?

No. Existing jobs in NYS cannot get the personal income tax benefit under START-UP NY. Only those employees who are in a job that is newly created *after* the business has been accepted into START-UP NY will be entitled to the personal income tax benefit. However, your business may be eligible for all of the other benefits under START-UP NY.

IS THERE OTHER ECONOMIC ASSISTANCE AVAILABLE FOR BUSINESSES THAT REMAIN IN A 16-V INCUBATOR AFTER GRADUATION OR FOR NON-INCUBATOR BUSINESSES WITH LONG-TERM ARRANGEMENTS TO REMAIN IN THE INCUBATOR?

Yes. First, if the 16-v incubator has also been designated as an Innovation Hot Spot, the incubator can certify certain businesses as “qualified entities” eligible for specific tax benefits. The benefits would allow a business to operate free of NYS income and sales tax for up to five

years and can be located anywhere in NYS. *Qualified entity* means a business enterprise (corporation, sole proprietorship, partnership, limited partnership, limited liability company (LLC), or New York State corporation) that is in the formative stages of development and is located in New York State.

The business must be certified by a New York State Innovation Hot Spot as being approved to locate in or be a part of a virtual incubation program operated by that Innovation Hot Spot. For further information about the program and currently certified Innovation Hot Spots, please visit: <http://esd.ny.gov/nystar/TechnologyIncubators.asp>.

For further information about the tax benefits for a qualified entity, please visit: http://www.tax.ny.gov/pdf/memos/multitax/m14_1c_1i_2s.pdf?_ga=1.17252537.1428518184.1420489628

Second, a 16-v incubator graduate or existing business in incubator space with a long-term arrangement to remain in the incubator may also qualify to participate in the Excelsior Jobs Program. This program is designed to help new and existing businesses create new jobs and make capital investments in their facilities. A business can be located anywhere in NYS provided it meets the definition of a strategic business and will be expanding. For further information about the Excelsior Jobs Program, please visit: <http://esd.ny.gov/BusinessPrograms/Excelsior.html>

There may be other forms of assistance available for businesses in an incubator as well. Businesses are encouraged to visit the Empire State Development website at <http://esd.ny.gov/RegionalOverviews.html> and reach out to the ESD regional office nearest you.