

START-UP NY FAQs

Q: When do the START-UP NY Program benefit periods actually start?

A: Businesses will receive an approval date from ESD when ESD accepts the business into the Program. No benefits can start earlier than this date.

Businesses will receive a locate date when they physically locate and commence operations in the tax-free NY area (TFA). This date will be listed on the certificate of eligibility issued by the sponsor and marks the start of the 10-year benefit period for the tax credits and personal income tax wage exclusion benefit.

Businesses may also have a separate start date for sales tax and real property transfer tax benefits. This date can occur on or after the approval date but before the date the business locates in the TFA. Form STR-1, which is completed by the TFA sponsor, contains the start date of these benefit periods as agreed to by the approved START-UP NY business. The end date of the period is 10 years after the date on the STR-1, provided no subsequent decertification occurs. For example, for a benefit period start date of October 17th, 2015, the corresponding end date would be October 16th, 2025.

Q: The tax factor of the START-UP NY tax elimination credit excludes income from a line of business or intangible property, like a royalty, that was previously conducted, created or developed by the approved business or a related person before being accepted into the START-UP NY program. How does an approved START-UP NY business determine the amount of this income?

A: The approved business must recompute its tax factor so that it reflects the tax on income from solely new activity. (Tax Law §40(d) (4)) The approved business may use any reasonable method to segregate its income between new and previously existing activity, provided, however, it maintains sufficient books and records to demonstrate how the income was categorized.

Employees

Q: Is an employee of an approved START-UP NY business entitled to a full 10-year benefit period for the personal income tax wage exclusion benefit?

A: The 10-year benefit period is linked to the START-UP NY business, not individual employees. Therefore, an eligible employee will only receive 10 years of the wage exclusion benefit if he or she is hired prior to July 1st in the START-UP NY business's first year of participation in the program and remains employed for the entire 10-year duration. Employees hired in subsequent years can receive the wage exclusion benefit only for the remainder of the business's benefit period.

Furthermore, the wage exclusion benefit for all eligible employees in years 6 through 10 of a business's benefit period is capped at the first \$200,000 in wages for a single filer, \$250,000 in wages for a head of household filer, and \$300,000 in wages for joint return filers.

Q: How much work is an employee allowed to perform outside a TFA and still remain eligible for the personal income tax wage exclusion benefit?

A: To be eligible for the personal income tax wage exclusion benefit, the Tax Law requires that the employee must be “engaged in work performed exclusively at the location within the TFA during the taxable year.” This means an employee, to be considered an eligible employee, must perform his or her work within the TFA and that any work performed by the employee outside the TFA must be minimal, and merely incidental to the main purpose of the approved START-UP NY business. Furthermore, employees of the approved START-UP NY business are allowed to perform some of their work in academic facilities owned by the TFA sponsor, but not designated as such area, if such work is integral to the main purpose of the approved START-UP NY business.

Q: Will an employee hired after June 30th of a given year be eligible for the wage exclusion benefit for that year?

A: No, an employee hired for a net new job must be on the payroll for at least six months of the calendar year at the TFA location before being eligible for the wage exclusion benefit. He or she will be eligible for the wage exclusion benefit in the following calendar year provided he or she is employed in the TFA for at least six months during that calendar year.

Q: If a business fails to meet its job performance goals, will an employee receiving the wage exclusion benefit retain this benefit for the year?

A: Yes. As long as the employee was employed for at least six months in the calendar year, he or she may retain the wage exclusion benefit for the year. However, he or she will not be eligible for the benefit in subsequent years unless the business returns to compliance.

Q: Does an employee of a business certified to participate in the START-UP NY Program have to reside in New York State for a certain period of time to qualify for the wage exclusion benefit?

A: No, an employee is not required to reside in New York to be eligible for the wage exclusion benefit.

Q: Is a certified business *required* to offer the wage exclusion benefit to its eligible employees in the net new jobs?

A: Yes.

Q: Will positions created after approval by ESD but prior to a business locating in a TFA, due to the designated space in the TFA not being ready, be considered net new jobs?

A: In addition to other criteria, the Economic Development Law defines a net new job as one “created in a tax-free NY area” and “new to the state.” Jobs created pursuant to an application approved by ESD but not yet located in a TFA will be considered net new jobs only under the following circumstances:

- It is the business’s initial year in the program;
- The jobs reside outside the TFA into which the business will be locating because no suitable space exists within such TFA;
- The jobs are moved into the TFA within 180 days after the business’s application is approved; and
- The jobs are created after the business’s application is approved by ESD.

Q: Will a job filled after June 30th of a given year be counted as a “net new job”?

A: Yes, a new job located at a TFA location that is filled on or after the date a business is certified to participate in the Program will be counted as a net new job for purposes of meeting its job performance goals as long as that job remains filled for at least six months of the 12-month period beginning on the date that the business locates to a TFA and/or six months out of each subsequent 12-month period, and it meets all the other net new job criteria.

Q: Is a new employee who replaces a departing employee in a net new job eligible for the wage exclusion benefit?

A: Yes, provided the replacement employee works for the certified business at the TFA location for at least six months of the calendar year in a net new job. The net new job would simply be occupied by a different person.

Q: Can an individual that is performing services for the START-UP NY business as an independent contractor and who receives an IRS Form 1099-Misc for the amount paid by the business to the individual be hired as an employee and count as a net new job?

A: To determine whether a job created by a business participating in the START-UP NY Program in a TFA can be considered a “net new job”, the business must look to the job (not the individual) and the function of the job to see if it qualifies as a “net new job”. If an independent contractor was hired to temporarily assist a business in its formative stage, and was then hired into a new position (new duties of the job) at the business, then the independent contractor can be counted as a net new job. However, if an independent contractor was hired to perform a job function for the START-UP NY business and performed the job solely for the business full-time (that is, did not offer these services to the general public) and was then hired by the business into the same position performing the same job functions, the position filled by the independent contractor would not be counted as a net new job as the position would be construed as having been previously been performed in the state and thus not new. Conversely, if an independent contractor performed the job function for the START-UP NY business on a limited basis, in addition to working for other clients, and was subsequently hired by the business into a new position to perform the same task full-time, such position would be considered a net new job.

Q: Are members of an LLC/partnership considered net new employees?

A: Members of an LLC/partnership are not considered employees and do not qualify as net new jobs, nor are they eligible for the Personal Income Tax (PIT).

Q: Can net new jobs be filled through an employee leasing agency, and are the leased employees eligible for the wage exclusion benefit?

A: Yes, net new jobs of the START-UP NY company can be filled through a registered Professional Employment Organization, and the employees in those positions may be eligible for the wage exclusion benefit, provided they meet all other eligibility criteria.

Transfer of Certification

Q: Can a START-UP NY certificate of eligibility be revised or transferred to another business?

A: The specific facts of a case that give rise to the need for a revision or transfer of a certificate of eligibility will be considered by the commissioner of economic development when making a final

determination. In all of these cases, the business must contact ESD to obtain the appropriate form to request the revision or transfer of its certificate of eligibility.

Q: If a certified business is changing the name of the certified entity, can the certificate of eligibility be revised to reflect the name change?

A: If the certified business is only changing the name of the certified entity, it may request a revised certificate of eligibility to reflect this change.

Q: If a certified business is changing its Federal Employer Identification Number (FEIN), can the certificate of eligibility be revised to reflect the FEIN change?

A: If the certified business is *only* changing the FEIN of the certified entity, it may request a revised certificate of eligibility to reflect this change.

Q: Change of Structure or Ownership— if a certified business is changing its structure, for example, from an LLC to a C-Corp, or a sole-proprietorship to an LLC, or reorganizing and changing its form of organization or ownership through a merger, acquisition or sale, can the certificate be transferred?

A: The business *may* request that the certificate of eligibility be transferred from the previous entity to the newly reorganized entity or from the previous owners to the new owners.

When making a request to ESD to transfer a certificate of eligibility, the business must be prepared to describe the reasons for the reorganization and the circumstances leading up to the change in ownership. When reviewing a request to transfer a certification based on a business' reorganization or restructuring, or change in ownership, ESD will look to determine if the change is simply a matter of form and not a substantive change that would impact the newly organized entity's eligibility to participate in the START-UP NY Program. Considerations such as the type of business, consistency with the sponsor's plan and campus mission and the type of jobs to be created will all be considered as part of the final determination. If the request to transfer certification is granted, the newly organized entity would continue the initial 10-year benefit-period of the previous certified business. ***The transfer of certification would not re-start the benefit period.***