

START-UP NY FAQs

Q: When do the START-UP 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 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 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: Is an employee of an approved START-UP 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 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 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 tax-free NY area 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 Business. Furthermore, employees of the approved START-UP 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 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 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 because no suitable space exists within a 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 in a 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: Are independent contractors considered employees for purposes of counting existing and net new jobs?

A: No, only jobs filled by employees on a business's payroll, or employees leased from a registered Professional Employment Organization, can be considered net new jobs. Independent contractors are similarly ineligible for the wage exclusion benefit.

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 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.