



Business Application Instructions

Section 2: Business Information

New (or “Eligible”) business: means a business that satisfies all of the following tests:

- a) the business must not be operating or located within the state at the time it submits its application to participate in the START-UP NY program;
- b) the business must not be moving existing jobs into the Tax-Free NY Area from another area in the state;
- c) the business is not substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable within the last five taxable years, under section 186 of the tax law, article 9-A, 32 or 33 of the tax law, article 23 of the tax law or which would have been subject to tax under such article 23 (as such article was in effect on January 1, 1980) or the income (or losses) of which is (or was) includable under article 22 of the tax law, and
- d) the business must not have caused individuals to transfer from existing employment with a related person located in the state to similar employment with the business, unless such business has received approval for such transfers from the Commissioner of the NYS Department of Economic Development (“commissioner”) after demonstrating that the related person has not eliminated those existing positions.
- e) The business must not be engaged in a line of business that is currently or was previously conducted by the business or a related person in the last five years in NYS.

Not a new business?

If a business seeks to **expand** its current operations in New York state into a Tax-Free NY Area but the business does not qualify as a new business because it does not satisfy the criteria above, the commissioner may grant the business permission to apply to participate in the START-UP NY program if the commissioner determines that the business has demonstrated that it will create net new jobs in the Tax-Free NY Area and that it or any related person has not eliminated any jobs in the state in connection with this expansion.

If a business does not satisfy the eligibility criteria because at one point in time it operated in New York state but **moved** its operations out of New York state on or before June 1, 2013, the commissioner may grant that business permission to apply to participate in the START-UP NY program if the commissioner determines that the business has demonstrated that it will substantially restore the jobs in New York state that it previously had moved out of the state.

Any business that has successfully completed residency in a New York state incubator pursuant to section sixteen-v of section one of chapter one hundred seventy-four of the laws of nineteen hundred sixty-eight constituting the urban development corporation act, subject to approval of the commissioner, may apply to participate in the START-UP NY program provided that such business locates in a tax-free NY area, notwithstanding the fact that the business may not constitute a new business.

Businesses Prohibited from participating in the START-UP NY program:

- a) Retail and wholesale businesses;
Retail and wholesale businesses shall include establishments engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise.
Wholesale businesses shall include establishments engaged in wholesaling merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. Merchandise includes the outputs of agriculture, mining, manufacturing, and certain information industries, such as publishing.
- b) Restaurants;
Restaurants shall include establishments that prepare meals, snacks, and beverages to customer order for immediate on-premises and off-premises consumption. This includes establishments that provide food and drink only, or various combinations of seating space, waiter/waitress services and incidental amenities, such as limited entertainment.
- c) Real estate brokers;
Real estate brokers shall include establishments that are engaged in renting or leasing real estate to others; selling, buying, or renting real estate to others; and providing other real estate related services, such as appraisal services.
- d) Law firms;
Law Firms or businesses providing legal services shall include establishments or offices of legal practitioners known as lawyers or attorneys (i.e., counselors-at-law) primarily engaged in the practice of law. Establishments in this industry may provide expertise in a range or in specific areas of law, such as criminal law, corporate law, family and estate law, patent law, real estate law, or tax law.
- e) Medical or dental practices;
Medical or Dental Practices shall include establishments that provide health care services, directly or indirectly, to patients.
- f) Real estate management companies.
Real estate management companies shall include establishments that are engaged in managing real estate for others and providing other real estate related services, such as appraisal services.
- g) Hospitality;
Hospitality-related businesses shall include establishments that provide lodging or short-term accommodations for travelers, vacationers, and others. Some provide lodging only; while others provide meals, laundry services, and recreational facilities, as well as lodging.
- h) Finance and financial services;
Finance and financial services businesses shall include establishments that are primarily engaged in financial transactions, that is, transactions involving the creation, liquidation, or change or ownership of financial assets, and/or in facilitating financial transactions.

- i) Businesses providing personal services;
Businesses providing personal services shall include businesses that provide personal and laundry services to individuals, households, and businesses. Services performed include: personal care services; death care services; laundry and dry cleaning services; and a wide range of other personal services, such as pet care services, photofinishing services, temporary parking services, and dating services.
- j) Businesses providing administrative or support services;
Businesses providing business administrative or support services unless such business has received permission from the Commissioner to apply to participate in the START-UP NY Program upon demonstration that the business would create no fewer than one hundred net new jobs in the Tax-Free NY Area. Business providing business administrative support services shall include businesses that are engaged in activities that support the day-to-day operations of other organizations. These activities include general management, personnel administration, clerical activities, or cleaning activities.
- k) Accounting firms;
Accounting firms or businesses providing accounting services shall include establishments primarily engaged in providing services, such as auditing of accounting records, designing accounting systems, preparing financial statements, developing budgets, preparing tax returns, processing payrolls, bookkeeping, and billing.
- l) Businesses providing utilities;
Businesses that provide utilities shall include businesses that provide electric power, natural gas, steam supply, water supply, and sewage removal through a permanent infrastructure of lines, mains, and pipes.
- m) Businesses engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity;
Businesses engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity shall include businesses that generate or distribute electric power, natural gas, or steam supply through a permanent infrastructure of lines, mains and pipes.

Section 3: Employment

Average Number of Employees:

Employment numbers of the business and its related persons in the state should be calculated by adding together the total number of employees of the business and its related persons in the state on each of the four quarters ending on March 31st, June 30th, September 30th, and December 31st and dividing the total by the number of such dates occurring within such year.

There are three categories of employment data that must be provided (include leased employees in your calculations – a leased employee must be an employee with a leasing organization that is a professional employment organization (PEO) registered with the NYS Department of Labor).

Full-Time Jobs: the number of actual employees that work at least 35 hours per week.

Part-Time Jobs: the number of actual employees that work less than 35 hours per week.

Full-Time Equivalents FTEs:

- Any combination of two or more part-time jobs that, when combined together, constitute the equivalent of a job of at least 35 hours per week.
 - Example 1: two part-time workers each work 20 hours per week. Combined, they work a total of 40 hours per week. Since 40 hours per week is greater than 35 hours per week, this equals 1 FTE.
 - Example 2: three part-time workers each work 10, 10 and 15 hours per week respectively. Combined, they work a total of 35 hours per week, which equals 1 FTE.
 - Example 3: three part-time workers each work 10 hours per week. Combined, they work a total of 30 hours per week. Since 30 hours are less than 35 hours per week, there is no FTE. *(However, these would be counted as 3 jobs in the Part-Time Jobs category.)*

Net New Job means a job created in a Tax-Free NY Area that satisfies all of the following criteria:

- a) is new to the state;
- b) has not been transferred from employment with another business located in this state, through an acquisition, merger, consolidation or other reorganization of businesses or the acquisition of assets of another business, or has not been transferred from employment with a related person;
- c) is not filled by an individual employed within the state within the immediately preceding sixty months by a related person;
- d) has not been transferred from employment with another business located in this state, through an acquisition, merger, consolidation or other reorganization of businesses or the acquisition of assets of another business, or has not been transferred from employment with a related person;
- e) is not filled by an individual employed within the state within the immediately preceding sixty months by a related person; is either a full-time wage-paying job or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week; and
- f) is filled for more than six months.

Section 4: Investment

List any investment to be made in the Tax-Free NY Area including any plans for construction, rehabilitation or renovation; purchase or lease of equipment and the estimated schedule for the completion of any investment.

Only capital investments should be included. Capital investment means investments in tangible personal property or other tangible property which is depreciable pursuant to section 179 (d) of the United States Internal Revenue Code. Capital investments do not include operating expenses such as office supplies, utilities, rent, and other recurring expenses.

Section 5: Business Competitors

“Competitor” means a business that produces, manufactures, or sells the same or substantially similar product or provides the same services, and competes for the same customers or clients as an applicant for the START-UP NY program.

The application must describe whether or not the business competes with other businesses in the same community but outside the Tax-Free NY Area.

“Community” means the census tract or tracts containing an approved Tax-Free NY Area and the census tracts immediately contiguous to such census tract or tracts.

Section 6: Related Persons

Related person - The purpose of this question is to identify business entity(ies) that are related to the applicant in order to determine whether jobs have been transferred from a “related person” in this State. The definition for a related person can be found in section 465(B)(3)(C) of the Internal Revenue Code (see attached).

Section 7: Agreement

Statement of Consequence

Include a statement of consequences for the failure to meet performance benchmarks, as determined by the business applicant and the Sponsor, that includes: (i) suspension of such business’s participation in the START-UP NY Program for one or more tax years as specified in such application; (ii) termination of such business’s participation in the START-UP NY Program; and/or (iii) proportional recovery of tax benefits awarded under the START-UP NY Program as specified in Section 39 of the New York State Tax Law.

In the event that the business chooses proportional recovery of tax benefits as a consequence of realizing job creation less than the estimated amount, and the number of net new jobs created is at least 75% of the number of net new jobs promised, then the tax benefits shall be reduced by the percentage by which the business failed to meet its performance benchmark, calculated as the ratio of the difference between new net jobs promised and actual net new jobs created divided by the net new jobs promised.

Example: if the business promised to create 100 net new jobs but created only 90 net new jobs, the difference is 10 net new jobs. Dividing those 10 jobs not created by the 100 jobs promised shows that the number of jobs created is 10% less than the number of jobs promised. The business’s tax benefits would therefore be reduced by 10%.

In the event that the business chooses proportional recovery of tax benefits as a consequence of realizing job creation less than the estimated amount, and the number of net new jobs created is less than 75% of the number of net new jobs promised in any three years during the 10-year job creation schedule, then:

- in the first year that the business does not meet the 75% threshold, there shall be a proportional recovery of tax benefits;
- in the second year that the business does not meet the 75% threshold, such business's participation in the START-UP NY Program will be suspended; and
- in the third year that the business does not meet the 75% threshold, such business's participation in the START-UP NY Program may be terminated.

Freedom of Information Law

If you would like to request protection from Freedom of Information Law for any information your business deems confidential, please include a letter with your request identifying, with specificity, any content the business deems to be confidential, proprietary, or a trade secret as defined by Article 6 of the Public Officers Law.

Section 8: Signature

The authorized representative is the person with whom the SUNY officials and Department of Economic Development staff will communicate regarding all questions and matters relating to the application. If the authorized representative of the applicant is a consultant, accountant, or other agent of the applicant, then this representative must be given power of attorney to act on behalf of the applicant. A completed power of attorney form must be attached.

RELATED PERSONS

INTERNAL REVENUE CODE SECTION 465 (B) (3) (C) – Related Person

(C) Related person – For purposes of this subsection, a person (hereinafter in this paragraph referred to as the “related person”) is related to any person if:

- (i) the related person bears a relationship to such person specified in section 267 (b) or section 707 (b)(1), or
- (ii) the related person and such person are engaged in trades or business under common control (within the meaning of subsections (a) and (b) of section 52).

For purposes of clause (i), in applying section 267 (b) or 707 (b)(1), “10 percent” shall be substituted for “50 percent”.

Section 267 (b) Relationships

The persons referred to in subsection (a) are:

- (1) Members of a family, as defined in subsection (c)(4);
- (2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;
- (3) Two corporations which are members of the same controlled group (as defined in subsection (f));
- (4) A grantor and a fiduciary of any trust;
- (5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (6) A fiduciary of a trust and a beneficiary of such trust;
- (7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
- (8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual;
- (10) A corporation and a partnership if the same persons own—
 - (A) more than 50 percent in value of the outstanding stock of the corporation, and
 - (B) more than 50 percent of the capital interest, or the profits interest, in the partnership;
- (11) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation;
- (12) An S corporation and a C corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or
- (13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

OR

§ 707(b) Certain sales or exchanges of property with respect to controlled partnerships

(1) Losses disallowed

No deduction shall be allowed in respect of losses from sales or exchanges of property (other than an interest in the partnership), directly or indirectly, between:

- (A) a partnership and a person owning, directly or indirectly, more than 50 percent of the capital interest, or the profits interest, in such partnership, or
- (B) two partnerships in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

In the case of a subsequent sale or exchange by a transferee described in this paragraph, section 267 (d) shall be applicable as if the loss were disallowed under section 267 (a)(1). For purposes of section 267 (a)(2), partnerships described in subparagraph (B) of this paragraph shall be treated as persons specified in section 267(b)

§ 52. Special rules

(a) Controlled group of corporations

For purposes of this subpart, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) determined under section 51 (a) with respect to each such member shall be its proportionate share of the wages giving rise to such credit. For purposes of this subsection, the term “controlled group of corporations” has the meaning given to such term by section 1563 (a), except that—

- (1)** “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears in section 1563 (a)(1), and
- (2)** the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(b) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of this subpart, under regulations prescribed by the Secretary—

- (1)** all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and
- (2)** the credit (if any) determined under section 51 (a) with respect to each trade or business shall be its proportionate share of the wages giving rise to such credit.

The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (a).