

Article 17 of the Economic Development Law

§ 350. Short title

This article shall be known and may be cited as the “excelsior jobs program act”.

§ 351. Statement of legislative findings and declaration

It is hereby found and declared that New York state needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The excelsior jobs program act is created to support the growth of the state's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

This legislation creates the excelsior jobs program, which has four components: the excelsior jobs tax credit, the excelsior investment tax credit, the excelsior research and development tax credit and the excelsior real property tax credit. These credits are designed to promote business expansion in New York state and increase jobs in the new economy. At the same time, the program protects state taxpayers' dollars by ensuring that New York provides tax benefits only to businesses that have created the promised jobs and made the promised investments.

§ 352. Definitions

For the purposes of this article:

1. “Agriculture” means both agricultural production (establishments performing the complete farm or ranch operation, such as farm owner-operators, tenant farm operators, and sharecroppers) and agricultural support (establishments that perform one or more activities associated with farm operation, such as soil preparation, planting, harvesting, and management, on a contract or fee basis).
2. “Back office operations” means a business function that may include one or more of the following activities: customer service, information technology and data processing, human resources, accounting and related administrative functions.
3. “Benefit-cost ratio” means the following calculation: the numerator is the sum of (i) the value of all remuneration projected to be paid for all net new jobs during the period of participation in the program, and (ii) the value of capital investments to be made by the business enterprise during the period of participation in the program, and the denominator is the amount of total tax benefits under this article that will be used and refunded.
4. “Certificate of eligibility” means the document issued by the department to an applicant that has completed an application to be admitted into the excelsior jobs program and has been

accepted into the program by the department. Possession of a certificate of eligibility does not by itself guarantee the eligibility to claim the tax credit.

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

6. "Distribution center" means a large scale facility involving processing, repackaging and/or movement of finished or semifinished goods to retail locations across a multi-state area.

7. "Entertainment company" means a corporation, partnership, limited partnership, or other entity principally engaged in the production or post production of (i) motion pictures, which shall include feature-length films and television films, (ii) instructional videos, (iii) televised commercial advertisements, (iv) animated films or cartoons, (v) music videos, (vi) television programs, which shall include, but not be limited to, television series, television pilots, and single television episodes, or (vii) programs primarily intended for radio broadcast. "Entertainment company" shall not include an entity (i) principally engaged in the live performance of events, including, but not limited to, theatrical productions, concerts, circuses, and sporting events, (ii) principally engaged in the production of content intended primarily for industrial, corporate or institutional end-users, (iii) principally engaged in the production of fundraising films or programs, or (iv) engaged in the production of content for which records are required under section 2257 of title 18, United States code, to be maintained with respect to any performer in such production.

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

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

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

11. "Music production" means the process of creating sound recordings of at least eight minutes, recorded in professional sound studios, intended for commercial release. "Music production" does not include recording of live concerts, or recordings that are primarily spoken word or wildlife or nature sounds, or produced for instructional use or advertising or promotional purposes.

12. "Net new jobs" means :

(a) jobs created in this state that

(i) are new to the state,

(ii) have not been transferred from employment with another business located in this state including from a related person in this state,

(iii) are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week, and

(iv) are filled for more than six months; or

(b) jobs obtained by an entertainment company in this state (i) as a result of the termination of a licensing agreement with another entertainment company, (ii) that the commissioner determines to be at risk of leaving the state as a direct result of the termination, (iii) that are either full-time wage-paying jobs or equivalent to a full-time wage-paying job requiring at least thirty-five hours per week, and (iv) that are filled for more than six months.

13. "Participant" means a business entity that:

(a) has completed an application prescribed by the department to be admitted into the program;

(b) has been issued a certificate of eligibility by the department;

(c) has demonstrated that it meets the eligibility criteria in section three hundred fifty-three and subdivision two of section three hundred fifty-four of this article; and

(d) has been certified as a participant by the commissioner.

14. "Preliminary schedule of benefits" means the maximum aggregate amount of each component of the tax credit that a participant in the excelsior jobs program is eligible to receive pursuant to this article. The schedule shall indicate the annual amount of each component of the credit a participant may claim in each of its ten years of eligibility. The preliminary schedule of benefits shall be issued by the department when the department approves the application for admission into the program. The commissioner may amend that schedule, provided that the commissioner complies with the credit caps in section three hundred fifty-nine of this article.

15. “Qualified investment” means an investment in tangible property (including a building or a structural component of a building) owned by a business enterprise which:

(a) is depreciable pursuant to section one hundred sixty-seven of the internal revenue code;

(b) has a useful life of four years or more;

(c) is acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code;

(d) has a situs in this state; and

(e) is placed in service in the state on or after the date the certificate of eligibility is issued to the business enterprise.

16. “Regionally significant project” means (a) a manufacturer creating at least fifty net new jobs in the state and making significant capital investment in the state; (b) a business creating at least twenty net new jobs in agriculture in the state and making significant capital investment in the state, (c) a financial services firm, distribution center, or back office operation creating at least three hundred net new jobs in the state and making significant capital investment in the state, (d) a scientific research and development firm creating at least twenty net new jobs in the state, and making significant capital investment in the state or (e) an entertainment company creating or obtaining at least two hundred net new jobs in the state and making significant capital investment in the state. Other businesses creating three hundred or more net new jobs in the state and making significant capital investment in the state may be considered eligible as a regionally significant project by the commissioner as well. The commissioner shall promulgate regulations pursuant to section three hundred fifty-six of this article to determine what constitutes significant capital investment for each of the project categories indicated in this subdivision and what additional criteria a business must meet to be eligible as a regionally significant project, including, but not limited to, whether a business exports a substantial portion of its products or services outside of the state or outside of a metropolitan statistical area or county within the state.

17. “Related person” means a “related person” pursuant to subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

18. “Remuneration” means wages and benefits paid to an employee by a participant in the excelsior jobs program.

19. “Research and development expenditures” mean the expenses of the business enterprise that are qualified research expenses under the federal research and development credit under section forty-one of the internal revenue code and are attributable to activities conducted in the state. If the federal research and development credit has expired, then the research and development expenditures shall be calculated as if the federal research and development credit structure and definition in effect in federal tax year two thousand nine were still in effect.

20. “Scientific research and development” means conducting research and experimental development in the physical, engineering, and life sciences, including but not limited to agriculture, electronics, environmental, biology, botany, biotechnology, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, veterinary, and other allied subjects. For the purposes of this article, scientific research and development does not include medical or veterinary laboratory testing facilities.

21. “Software development” means the creation of coded computer instructions or production or post-production of video games, as defined in subdivision one-a of section six hundred eleven of the general business law, other than those embedded and used exclusively in advertising, promotional websites or microsites, and also includes new media as defined by the commissioner in regulations.

§ 353. Eligibility criteria

1. To be a participant in the excelsior jobs program, a business entity shall operate in New York state predominantly:

- (a) as a financial services data center or a financial services back office operation;
- (b) in manufacturing;
- (c) in software development and new media;
- (d) in scientific research and development;
- (e) in agriculture;
- (f) in the creation or expansion of back office operations in the state;
- (g) in a distribution center;
- (h) in an industry with significant potential for private-sector economic growth and development in this state as established by the commissioner in regulations promulgated pursuant to this article. In promulgating such regulations the commissioner shall include job and investment criteria;
- (i) as an entertainment company; or
- (j) in music production.

2. When determining whether an applicant is operating predominately in one of the industries listed in subdivision one of this section, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity.

3. For the purposes of this article, in order to participate in the excelsior jobs program, a business entity operating predominantly in manufacturing must create at least ten net new jobs; a business entity operating predominately in agriculture must create at least five net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least fifty net new jobs; a business entity operating predominantly in scientific research and development must create at least five net new jobs; a business entity operating predominantly in software development must create at least five net new jobs; a business entity creating or expanding back office operations must create at least fifty net new jobs; a business entity operating predominately in music production must create at least five net new jobs; a business entity operating predominantly as an entertainment company must create or obtain at least one hundred net new jobs; or a business entity operating predominantly as a distribution center in the state must create at least seventy-five net new jobs, notwithstanding subdivision five of this section; or a business entity must be a regionally significant project as defined in this article; or

4. A business entity operating predominantly in one of the industries referenced in paragraphs (a) through (h) of subdivision one of this section but which does not meet the job requirements of subdivision three of this section must have at least twenty-five full-time job equivalents unless such business is a business entity operating predominantly in manufacturing then it must have at least ten full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one.

5. A not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, other than a business operating as an entertainment company as defined in this article and other than a business entity engaged in music production, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity are not eligible to receive the tax credit described in this article.

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

§ 354. Application and approval process

1. A business enterprise must submit a completed application as prescribed by the commissioner. An application made by an entertainment company must be submitted by June first, two thousand fifteen, except for an application made by an entertainment company that is eligible to participate in the excelsior jobs program based upon creating net new jobs pursuant to paragraph (a) of subdivision twelve of section three hundred fifty-two of this article. An application may be recommended by entities, including but not limited to, those created pursuant to subdivision (e) of section nine hundred fifty-seven of the general municipal law.

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

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

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

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

(d) Agree to be permanently disqualified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the excelsior jobs program.

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

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

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

(iii) the amount and description of projected qualified investments for which it plans to claim the excelsior investment tax credit;

(iv) an estimate of the portion of any federal research and development tax credits, attributable to research and development activities conducted in New York state, that it anticipates claiming for the years it expects to claim the excelsior research and development credit; and

(v) the employer identification or social security numbers for all related persons to the applicant, including those of any members of a limited liability company or partners in a partnership.

(f) Provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the state.

(g) Certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, state, and federal tax laws.

3. After reviewing a business enterprise's completed application and determining that the business enterprise will meet the conditions set forth in subdivisions three and four of section three hundred fifty-three of this article, the department may admit the applicant into the program

and provide the applicant with a certificate of eligibility and a preliminary schedule of benefits by year based on the applicant's projections as set forth in its application. This preliminary schedule of benefits delineates the maximum possible benefits an applicant may receive.

4. In order to become a participant in the program, an applicant must submit evidence that it satisfies the eligibility criteria specified in section three hundred fifty-three of this article and subdivision two of this section in such form as the commissioner may prescribe. After reviewing such evidence and finding it sufficient, the department shall certify the applicant as a participant and issue to that participant a certificate of tax credit for one taxable year. To receive a certificate of tax credit for subsequent taxable years, the participant must submit to the department a performance report demonstrating that the participant continues to satisfy the eligibility criteria specified in section three hundred fifty-three of this article and subdivision two of this section. If such eligibility criteria is met, a participant can receive tax credits based on interim job, investment or research and development milestones. A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

5. A participant may claim tax benefits commencing in the first taxable year that the business enterprise receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later. A participant may claim such benefits for the next nine consecutive taxable years, provided that the participant demonstrates to the department that it continues to satisfy the eligibility criteria specified in section three hundred fifty-three of this article and subdivision two of this section in each of those taxable years. If, in any given year, a participant who has satisfied the eligibility criteria specified in section three hundred fifty-three of this article realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

§ 355. Excelsior jobs program credit

1. Excelsior jobs tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit for each net new job it creates in New York state. The amount of such credit per job shall be equal to the product of the gross wages paid and 6.85 percent.

2. Excelsior investment tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit on qualified investments. The credit shall be equal to two percent of the cost or other basis for federal income tax purposes of the qualified investment. A participant may not claim both the excelsior investment tax credit component and the investment tax credit set forth in subdivision twelve of section two hundred ten, subsection (a) of section six hundred six, subsection (i) of section fourteen hundred fifty-six, or subdivision (q) of section fifteen hundred eleven of the tax law for the same property in any taxable year, except that a participant may claim both the excelsior investment tax credit component and the investment tax credit for

research and development property. In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of the tax law may claim either the excelsior investment tax credit component or such tangible property credit component, but not both with regard to a particular piece of property. A credit may not be claimed until a business enterprise has received a certificate of tax credit, provided that qualified investments made on or after the issuance of the certificate of eligibility but before the issuance of the certificate of tax credit to the business enterprise, may be claimed in the first taxable year for which the business enterprise is allowed to claim the credit. Expenses incurred prior to the date the certificate of eligibility is issued are not eligible to be included in the calculation of the credit.

3. Excelsior research and development tax credit component. A participant in the excelsior jobs program shall be eligible to claim a credit equal to fifty percent of the portion of the participant's federal research and development tax credit that relates to the participant's research and development expenditures in New York state during the taxable year; provided however, the excelsior research and development tax credit shall not exceed three percent of the qualified research and development expenditures attributable to activities conducted in New York state. If the federal research and development credit has expired, then the research and development expenditures relating to the federal research and development credit shall be calculated as if the federal research and development credit structure and definition in effect in two thousand nine were still in effect. Notwithstanding any other provision of this chapter to the contrary, research and development expenditures in this state, including salary or wage expenses for jobs related to research and development activities in this state, may be used as the basis for the excelsior research and development tax credit component and the qualified emerging technology company facilities, operations and training credit under the tax law.

4. Excelsior real property tax credit component.

(a) A participant in the excelsior jobs program who either qualified as a regionally significant project or is located in an investment zone shall be eligible to claim a credit for a period of ten years.

(b) The credit in year one shall be equal to fifty percent of the eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone. In the remaining years the credit shall be computed according to the following schedule:

Year two: forty-five percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year three: forty percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year four: thirty-five percent of eligible real property taxes on real property comprising the regionally significant project or located in the investment zone;

Year five: thirty percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year six: twenty-five percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year seven: twenty percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year eight: fifteen percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone;

Year nine: ten percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone; and

Year ten: five percent of eligible real property taxes on the real property comprising the regionally significant project or located in the investment zone.

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

(d) In calculating the excelsior real property tax credit and determining the maximum aggregate amount of such credit component in the preliminary schedule of benefits, the commissioner shall include any improvements projected to be made by the taxpayer to the property comprising the regionally significant project or located in the investment zone as listed in its application for participation in the excelsior jobs program.

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

6. Claim of tax credit. The business enterprise shall be allowed to claim the credit as prescribed in section thirty-one of the tax law. No costs used by an entertainment company as the basis for the allowance of a tax credit described in this section shall be used by such entertainment company to claim any other credit allowed pursuant to the tax law.

7. For availability of special excelsior jobs program rates governing the provision of gas or electric service, see subdivision twelve-d of section sixty-six of the public service law. Such special excelsior jobs program rates may remain available to participants as defined in this article for a period of up to ten years commencing in the first taxable year that the participant receives a certificate of tax credit, or the first taxable year listed on its preliminary schedule of benefits, whichever is later. Provided however, if a participant is removed from the excelsior jobs program pursuant to this article, the excelsior jobs program rates may be denied.

§ 356. Powers and duties of the commissioner

1. The commissioner shall promulgate regulations establishing an application process and eligibility criteria, that will be applied consistent with the purposes of this article, so as not to exceed the annual cap on tax credits set forth in section three hundred fifty-nine of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.
2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to participants. Participants must include the certificate of tax credit with their tax return to receive any tax benefits under this article.
3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements set forth in subdivision two of section three hundred fifty-four of this article, or for failing to meet the minimum job or investment requirements set forth in subdivisions three and four of section three hundred fifty-three of this article.

§ 357. Maintenance of records

Each participant shall keep all relevant records for their duration of program participation plus three years.

§ 358. Reporting

1. Each participant must submit a performance report annually, in such form as the commissioner may require, within thirty days of the end of their taxable year.
2. The commissioner shall prepare on a quarterly basis a program report for posting on the department's website. The first report will be due June thirtieth, two thousand eleven, and every three months thereafter. Such report shall include, but not be limited to, the following: number of applicants; number of participants approved; names of participants; total amount of benefits certified; benefits received per participant; total number of net new jobs created; number of net new jobs created per participant; aggregate new investment in the state; new investment per participant; and such other information as the commissioner determines.

§ 359. Cap on tax credit

The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed the limitations set forth in this section. One-half of any amount of tax credits not awarded for a particular taxable year may be used by the commissioner to award tax credits in another taxable year.

Credit components in the aggregate shall not exceed:

With respect to taxable years beginning in:

\$ 50 million	2011
\$ 100 million	2012
\$ 150 million	2013
\$ 200 million	2014
\$ 250 million	2015
\$ 200 million	2016
\$ 200 million	2017
\$ 200 million	2018
\$ 200 million	2019
\$ 200 million	2020
\$ 200 million	2021
\$ 150 million	2022
\$ 100 million	2023
\$ 50 million	2024

Twenty-five percent of tax credits shall be allocated to businesses accepted into the program under subdivision four of section three hundred fifty-three of this article and seventy-five percent of tax credits shall be allocated to businesses accepted into the program under subdivision three of section three hundred fifty-three of this article.

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

Tax Law Provisions

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

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

****** NB Effective until January 1, 2018

****** (a) General. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (g) of this section. The amount of the credit, allowable for up to ten consecutive taxable years, is the sum of the following four credit components:

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

* NB Effective January 1, 2018

(b) To be eligible for the excelsior jobs program credit, the taxpayer shall have been issued a “certificate of tax credit” by the department of economic development pursuant to subdivision four of section three hundred fifty-four of the economic development law, which certificate shall set forth the amount of each credit component that may be claimed for the taxable year. A taxpayer may claim such credit for ten consecutive taxable years commencing in the first taxable year that the taxpayer receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later, provided that no tax credits may be allowed for taxable years beginning on or after January first, two thousand twenty-seven. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. Such certificate must be attached to the taxpayer's return. No cost or expense paid or incurred by the taxpayer shall be the basis for more than one component of this credit or any other tax credit, except as provided in section three hundred fifty-five of the economic development law.

(c) Election of credit. A taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the investment tax credit provided for under subdivision one of section two hundred ten-B or subsection (a) of section six hundred six of this chapter, may claim either the excelsior investment tax credit component or the investment tax credit, but not both with regard to a particular piece of property. In addition, a taxpayer who or which is qualified to claim the excelsior investment tax credit component and is also qualified to claim the brownfield tangible property credit component under section twenty-one of this article, as added by chapter one of the laws of two thousand three, may claim either the excelsior investment tax credit component or such tangible property credit component, but

not both with regard to a particular piece of property. The election to claim the excelsior investment tax credit component, the investment tax credit or the brownfield tangible property credit component, with regard to the same property, is irrevocable.

(d) Information sharing. Notwithstanding any provision of this chapter, employees and officers of the department of economic development and the department shall be allowed and are directed to share and exchange:

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

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

(3) information contained in or derived from credit claim forms submitted to the department and applications for admission into the excelsior jobs program. Other than the information required to be contained in the report issued pursuant to subdivision (e) of this section, all information exchanged between the department of economic development and the department shall not be subject to disclosure or inspection under the state's freedom of information law.

(e) Excelsior jobs program credit report.

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

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

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

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

(3) The credit report may also contain any other information received by the commissioner with regard to the excelsior jobs program credit that the commissioner

deems to be useful in evaluating the use of the credit. The information included in the credit report will be based on the information filed with the department during the previous calendar year, to the extent that it is practicable to use that information.

(f) Credit recapture. If a certificate of eligibility or a certificate of tax credit issued by the department of economic development under article seventeen of the economic development law is revoked by such department because the taxpayer does not meet the eligibility requirement set forth in subdivision six of section three hundred fifty-three of the economic development law, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(f-1) Credit recapture for unrealized job creation. If, in any given year, a taxpayer who has satisfied the eligibility criteria specified in section three hundred fifty-three of the economic development law realizes job creation less than the estimated amount, the credit described in this section allowed in that year shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

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

** (1) article 9: section 187-q.

** NB Repealed January 1, 2018

(2) article 9-A: section 210-B: subdivision 31.

(3) article 22: section 606: subsection (qq).

(4) article 33: section 1511: subdivision (y).

* **§ 187-q. Excelsior jobs program credit.** (a) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section thirty-one of this chapter, against the tax imposed by section one hundred eighty-five of this article.

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

* NB Repealed January 1, 2018

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

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

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

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

§ 1511(y) Excelsior jobs program tax credit. (1) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section thirty-one of this chapter, against the taxes imposed by this article.

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