



## **Summary of Budget Bill Corporation Tax Changes Enacted in 2011**

This memorandum contains a summary of the corporation tax legislative changes that are part of the fiscal 2011-2012 New York State budget bills (Chapters 60, 61, and 62 of the Laws of 2011). The following legislative changes are summarized in this memo:

- [Definitions relating to certified capital companies](#)
- [Electronic communications for \*Online Services\* account holders](#)
- [Electronic filing and electronic payment mandate](#)
- [Excelsior Jobs Program Act](#)
- [Extension of the investment tax credit for the financial services industry](#)
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### **Definitions relating to certified capital companies (Article 33)**

Chapter 62 of the Laws of 2011 amended references to the Insurance Department within section 11 of the Tax Law in relation to certified capital companies. These changes were made to reflect the consolidation of the Department of Banking and the Department of Insurance into the Department of Financial Services.

- In general, the term *department* now means the department of financial services. However, the term department will mean the department of economic development with regard to any application, certification, report, submission, filing, or other action required or governed by section 11 of the Tax Law occurring on or after August 1, 2011.
- In general, the term *superintendent* now means the superintendent of financial services. However, the term superintendent will mean the commissioner of economic development with regard to any application, certification, report, submission, filing, or other action required or governed by section 11 of the Tax Law occurring on or after August 1, 2011.

(Tax Law section 11)

### **Electronic communications for *Online Services* account holders**

Chapter 61 of the Laws of 2011 added new section 35<sup>1</sup> to the Tax Law. This section provides that the Tax Department may use electronic means of communication to deliver certain documents to *Online Services* account holders who have authorized the department to do so. Upon receiving authorization, the department may electronically transmit to the account holder any document it is required by law or regulation to mail. This includes any document required to be sent by certified mail and/or registered mail. The department's record of an electronic transmission of a document to the account holder will constitute appropriate and sufficient proof of delivery, and the record will be admissible in any action or proceeding.

This provision took effect March 31, 2011.

*Online Services* account holders must authorize the use of electronic communications to receive certain documents. The ability to receive these documents electronically will be rolled out for different types of notices and taxes at different times. For more information on *Online Services*, including how to create an account, visit the Tax Department Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

(Tax Law section 35)

### **Electronic filing and electronic payment mandate**

Chapter 61 of the Laws of 2011 made several changes to the requirements for electronic filing of tax returns.

**New penalty and interest provisions for taxpayers other than personal income taxpayers.** The following penalty and interest provisions apply to taxpayers for taxes **other than personal income tax**:

- Under current law a taxpayer who is required to electronically pay any liability is assessed a penalty of \$50 for each failure to electronically pay the liability. The penalty is imposed unless the taxpayer can show that the failure was due to reasonable cause and not willful neglect. Under the new law, the following additional penalties also apply to a taxpayer who is required to e-file any authorized document that fails to e-file the authorized tax document:
  - a penalty of \$50 for each failure to e-file unless the taxpayer can show that the failure was due to reasonable cause and not willful neglect, and
  - a penalty under the applicable article for the failure to file a return or report, whether a paper return or report has been filed or not.

These new penalties are effective May 30, 2011.

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<sup>1</sup> Note: There are two Sections 35 of the Tax Law. The other section 35 contains provisions for the *Economic transformation and facility redevelopment program tax credit*.

- If a taxpayer who is required to e-file any authorized document fails to e-file the authorized tax document the taxpayer will not be eligible to receive interest on any overpayment until the document is filed electronically. This provision is effective May 30, 2011.

**Requirements for tax return preparers.** The following requirements will apply to tax return preparers:

- If a tax return preparer prepares more than five original tax documents during any calendar year beginning on or after January 1, 2011, and in a succeeding year prepares one or more authorized returns using tax software, that preparer must file all authorized tax documents electronically in that succeeding tax year as well as each year thereafter. This requirement will first apply in determining whether any authorized tax document will need to be e-filed on or after January 1, 2012.
- If a tax return preparer who is required to e-file any authorized tax document fails to e-file the authorized tax document the taxpayer will not be eligible to receive interest on any overpayment until the document is filed electronically. This provision is effective May 30, 2011.

The new provisions outlined above for taxpayers other than personal income taxpayers and tax return preparers are due to sunset on December 31, 2012. The e-file mandate rules that were in effect prior to the new provisions will be restored as of January 1, 2013. Additional information about these provisions will be available on the Department Web site ([www.tax.ny.gov](http://www.tax.ny.gov)).

(Tax Law sections 29, 658(g)(10), and 685(u)(5))

### **Excelsior Jobs Program Act (Articles 9, 9-A, 32, and 33)**

Chapter 61 of the Laws of 2011 extended the benefit period of the Excelsior Jobs Program from five to ten years. Several other administrative changes were made to the program, as well as changes to how the credit is computed.

The administrative changes are summarized below:

- A business must operate predominantly in certain named industries in order to be admitted into the Excelsior Jobs Program. The law has been amended to provide that the determination of whether a business is operating predominantly in a named industry will be made solely on the activity at the project location without regard to operations at other locations in New York State.
- A business that is certified to receive Empire Zone credits will only be required to give up its Empire Zone certification at the location where it will claim Excelsior benefits rather than at all its locations.

- A participant in the Excelsior Jobs Program will be allowed to receive tax credits based on interim job, investment, or research and development milestones, provided that the other criteria in the Tax Law are met.
- The tax credit recapture provision is now limited to instances where the Empire State Development Corporation revokes a taxpayer's certification for violating worker protection or environmental laws or for failing to pay state and local taxes.
- Utilities are authorized to offer discounted gas or electric rates to Excelsior participants under section 66.12-d of the Public Service Law.

The changes to the calculation of the credit are summarized below:

- The jobs tax credit component formula was revised to be the product of the gross wages paid and 6.85% for each net new job created.
- The research and development (R&D) credit component was increased from 10% to 50% of the taxpayer's federal R&D credit that relates to the participant's New York R&D expenditures. A limit was added to provide that the amount of the credit may not exceed 3% of the qualified New York expenditures.
- Costs and expenses included in the basis of the Excelsior R&D credit component are allowed to be used for the qualified emerging technology company facilities, operations, and training credit.
- A participant in the Excelsior Jobs Program may claim both the Excelsior investment tax credit component and the investment tax credit for research and development property, based on expenditures on the same property.
- The real property tax credit (RPTC) component schedule was amended to phase down from 50% to 5% over 10 years (5% each year) instead of five years (10% each year), reflecting the lengthening of the benefit period.
- Property improvements that increase the value of real property will be factored into the amount of the RPTC component. Before this change, the credit base was fixed at the amount of taxes assessed and paid in the year prior to application.
- The credit was extended to eligible agricultural cooperatives subject to tax under Article 9, Section 185 of the Tax Law.

The changes to the Excelsior Jobs Program are effective as of March 31, 2011. For more information on the Excelsior Jobs Program, visit the Empire State Development Web site at [www.esd.ny.gov](http://www.esd.ny.gov).

(Tax Law sections 31(a), 31(b), 31(f), 31(g), and 187-q)

**Extension of the investment tax credit for the financial services industry (Articles 9-A, 32, and 33)**

Chapter 61 of the Laws of 2011 amended the Tax Law to extend the availability of the investment tax credit (ITC) for the financial services industry to property placed in service before October 1, 2015. Before the amendment, the credit was only available for property placed in service before October 1, 2011.

**Note:** The period of eligibility to claim the Empire Zone (EZ) ITC for the financial services industry is only available until April 1, 2014, because the EZs are deemed to be expired as of that date. However, a financial services business that places property in service between April 1, 2014, and October 1, 2015, may claim the regular ITC for the financial services industry instead.

**Extension of the tax shelter disclosure and penalty provisions (Articles 9, 9-A, 13, 32, and 33)**

The law has been amended to extend the expiration date of the reporting requirements and related administrative provisions concerning the disclosure of certain federal and New York State reportable transactions and related information regarding tax shelters. The expiration date has been extended to July 1, 2015. The provisions were due to expire on July 1, 2011.

For more information regarding the reporting requirements and related administrative provisions concerning the disclosure of certain transactions and related information, see [TSB-M-11\(5\)C, \(5\)I](#), *Extension of Tax Shelter Disclosure and Penalty Provisions*.

(Tax Law sections 25, 1083(c)(11), and 1085, and Department Regulations Part 2500 (20NYCRR Part 2500))

**Federal conformity to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Article 33-A)**

Chapter 61 of the Laws of 2011 makes amendments to the excess line provisions in the Insurance Law and the tax on independently procured insurance under the Tax Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act. The amendments limit the imposition of the tax on independently procured insurance under Article 33-A to persons whose home state is New York.

These changes go into effect for taxable insurance contracts that have an effective date on or after July 21, 2011, the date on which the federal law takes effect.

Additional information on these amendments will be provided in a future guidance document.

(Tax Law sections 1550(c), 1550(d), 1551, and 1552)

### **Franchise tax on banking corporations (Article 32)**

The provisions of the bank tax relating to the taxation of commercial banks that were scheduled to expire for tax years beginning on or after January 1, 2011, have been made permanent.

(Chapter 67 of the Laws of 2010)

### **Lottery prizes that exceed \$600 can be applied against tax liabilities owed to New York State**

Chapter 61 of the Laws of 2011 added section 1613-c to the Tax Law to allow the Director of Lottery and the Commissioner of Taxation and Finance to enter into an agreement to permit a match of the names of those owing tax liabilities to New York against the names of those winning lottery prizes in excess of \$600. Only the names of those owing tax liabilities that are warranted (a legal judgment filed with the County Clerk's office or Department of State), subject to a judgment, or legally fixed, final, and not subject to further administrative or judicial review, will be submitted to the Director of the Lottery. If a lottery prize winner owes New York State taxes, the prize money can be applied against the tax liability. This new law takes effect on August 1, 2011.

(Tax Law section 1613-c)

### **Low-income housing credit (Articles 9-A, 32, and 33)**

The New York State low-income housing tax credit program was established in 2000 to promote the construction and rehabilitation of low-income housing in New York State. The credit is similar to the federal low-income housing credit and is administered by the New York State Division of Housing and Community Renewal.

Chapter 61 of the Laws of 2011 amended the Public Housing Law to increase the statewide aggregate dollar amount of low-income housing tax credits that may be used for qualifying low-income housing projects from \$28 million to \$32 million.

This provision took effect March 31, 2011.

(Public Housing Law section 22(4))

### **Power for Jobs Program (Article 9)**

Chapter 60 of the Laws of 2011 extended the power for jobs credit under Article 9 of the Tax Law through calendar year 2012.

The credit is available to qualified electric corporations that are local distribution companies and is equal to net lost revenues from power delivered under the Power for Jobs Program through June 30, 2012. To claim the power for jobs tax credit, eligible taxpayers must obtain a certificate from the Department of Public Service to verify the correctness of the

calculation of the tax credit. The credit is claimed on Forms CT-186-P, *Utility Services Tax Return - Gross Income*, and CT-186-E, *Telecommunications Tax Return and Utility Services Tax Return*.

(Tax Law section 186-a(9))

### **Transitional provisions for the federal Gramm-Leach-Bliley Act (Articles 9-A and 32)**

Chapter 61 of the Laws of 2011 extended the transitional provisions for financial holding companies contained in section 1452(m) of the Tax Law for two years. The provisions were scheduled to expire for tax years beginning on or after January 1, 2011.

The combined reporting requirements of the transitional provisions contained in section 1462(f)(2)(iv) of the Tax Law were also extended for two years.

For more information on the provisions that were extended, see page 6 of [TSB-M-02\(1\)C](#), *Summary of Legislative Changes Enacted in 2001*, and page 7 of [TSB-M-08\(1\)C](#), *Summary of Corporation Tax Legislative Changes Enacted in 2007 and Expiring Tax Law Provisions*.

(Tax Law sections 1452(m) and 1462(f)(2)(iv))

### **Economic Transformation and Facility Redevelopment Program (Articles 9, 9-A, 32, and 33)**

Chapter 61 of the Laws of 2011 created the Economic Transformation and Facility Redevelopment Program. This new program provides tax incentives to businesses to stimulate redevelopment in targeted communities where certain correctional or juvenile facilities are closed (economic transformation areas). Elements of the program are in Article 18 of the Economic Development Law, section 35<sup>2</sup> of the Tax Law, and section 485-p of the Real Property Tax Law.

Generally, an *economic transformation area* means an area limited to the site of a closed facility or an area within a certain radius of a closed facility. The designation of the size of an economic transformation area will vary depending on factors including, but not limited to, the closed facility's location and the population density, poverty rate, unemployment rate, and the loss of jobs at that facility and in the region. Special rules apply for areas within the Metropolitan Commuter Transportation District and the Port Authority District.

A *closed facility* means a correctional facility as defined in section 2(4)(a) of the Correction Law that has been selected by the governor of New York State for closure after April 1, 2011, but before April 1, 2012; or a facility operated by the Office of Children and Family Services under Article 19-G of the Executive Law that is closed under the authority of that

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<sup>2</sup> Note: There are two Sections 35 of the Tax Law. The other section contains provisions for the *Use of electronic means of communication*.

office, provided the Commissioner of Economic Development has been properly notified of the closure.

A general description of the new program is outlined below.

**Article 18 of the Economic Development Law** – The economic transformation area(s) must be established by the Empire State Development Corporation (ESDC) before applications for the program can be accepted.

To be eligible for the tax benefits available under this program, a participant must:

- qualify as a *new business*;
- apply for and receive a *Certificate of Eligibility* from ESDC based on a projected creation of at least five net new full-time jobs and the making of certain qualified investments in an economic transformation area. The value of investments combined with wages and benefits paid to the net new jobs must be at least 10 times the amount of projected tax benefits (i.e., a benefit-cost ratio of 10:1);
- demonstrate that it has created at least five net new full-time jobs and met its benefit-cost ratio;
- be in compliance with all worker protection and environmental laws and regulations;
- not owe past-due federal or state taxes or local property taxes (unless those taxes are being paid through an executed payment plan); and
- have the location of its business for which it seeks tax benefits wholly located within the economic transformation area.

The following business entities are **not** eligible to participate in this new program:

- a retail business if the application is for any facility or business location that will be primarily used in making retail sales to customers who personally visit the facility;
- a business engaged in offering professional services licensed by the state or by the courts of this state; and
- a business that is or will be principally operated as a real estate holding company or as a landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state.

However, ESDC may determine that an ineligible business as described above may be allowed to participate in the program at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of the facility. Also, additional eligibility criteria may be developed, by regulation, by the commissioner for all participants in this program.



If admitted into the Economic Transformation and Facility Redevelopment Program, a participant is no longer eligible for the Excelsior Jobs Program, the Empire Zones Program, or any tax credits under the Brownfield Cleanup Program with regard to a business or facility located in an economic transformation area.

A participant must start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its *Certificate of Eligibility* to be eligible for the program tax credits. A participant may claim the economic transformation and facility redevelopment program tax credit beginning in the first tax year in which it creates five net new jobs.

**Section 35 of the Tax Law** – A participant subject to tax under Article 9 (Corporation Tax), 9-A (Business Corporations), 22 (Personal Income Tax), 32 (Franchise Tax on Banking Corporations), or 33 (Insurance Franchise Tax) of the Tax Law that has received a *Certificate of Eligibility*, creates at least five net new jobs, and demonstrates that the required benefit-cost ratio has been met, will be eligible to claim the economic transformation and facility redevelopment tax credit. The tax credit is comprised of the following four components:

- Jobs tax credit – an amount equal to 6.85% of the gross wages paid for each net new job.
- Investment tax credit – for qualified investments on the grounds of a closed facility, the amount of credit before limitation will be 10% of the cost or other federal basis of the qualified investments. However, the aggregate amount of credits allowed to all eligible participants at each facility cannot exceed \$8 million. For qualified investments outside the grounds of the facility, but within the economic transformation area, the amount of the credit before limitation is 6% of the cost or other federal basis of the qualified investments. However, the credit allowed to each participant cannot exceed \$4 million. If the participant is a partnership, a limited liability company, or an S corporation, the \$4 million limitation is applied at the entity level.
- Job training credit – an amount equal to 50% of the qualified training expenses paid during the tax year with a cap of \$4,000 per employee per tax year. This component only applies to training provided to employees who were hired after they lost their jobs at a closed facility and must relate directly to the duties that the employees will perform in the economic transformation area. The employees for whom the expenditures are made must be employed in a full-time, full-year position primarily located at the site in the economic transformation area during the training, and for 180 days after its completion.
- Real property tax credit – For property located entirely within the grounds of a closed facility, the credit in the first tax year of the benefit period is equal to 50% of the real property taxes assessed and paid. In subsequent years of the benefit period, the percentage decreases by 10% each tax year. For property located in an economic transformation area outside of the closed facility, the credit in the first year of the benefit period is 25% of the real property taxes assessed and paid. In subsequent years of the benefit period the percentage decreases by 5% each tax year.

The benefit period for the tax credit is five consecutive tax years, beginning with the first tax year in which the five net new jobs are created, but not later than two years after the *Certificate of Eligibility* is issued. If in any year of the benefit period the participant fails to maintain the required level of five net new jobs, the participant will not be allowed a credit for that year. (A failure to qualify for the credit in one tax year will not extend the benefit period.) Failure to meet the required benefit-cost ratio, measured at the completion of the benefit period, may result in a recapture of credit.

**Refund of sales and use tax.** In addition to the economic transformation and facility redevelopment tax credit mentioned above, a participant may also be eligible for a refund of New York State sales or use tax paid for certain purchases of tangible personal property. The tangible personal property must be used in construction, expansion, or rehabilitation of industrial or commercial real property and must become an integral part of the property that is located within an economic transformation area. To qualify, the tangible personal property must be purchased or contracted to be purchased after the participant receives its *Certificate of Eligibility*, and be incorporated into real property before a certificate of occupancy is issued for the real property.

A refund is also available for sales or use tax paid on certain purchases of tangible personal property used by contractors. The tangible personal property must be used in erecting a structure or building after the participant has received its *Certificate of Eligibility*, or in adding, altering, or improving a participant's real property, property, or land. To qualify, the tangible personal property must become an integral part of the property improvements, and the structure, building, real property, property, or land and must be located within an economic transformation area. The tangible personal property must be in the contractor's inventory on or after the day the participant receives its *Certificate of Eligibility*, or the contractor must purchase or be contracted to purchase the property after the participant receives its *Certificate of Eligibility*. The tangible personal property must be incorporated into the real property before a certificate of occupancy is issued. There is no refund available for tax paid on services that the contractor may provide in relation to the tangible personal property, including the services of installing the tangible personal property.

The refunds described above are applicable only to the 4% state portion of the sales tax paid. They do not apply to any local sales tax imposed by a county or city, and do not apply to the 3/8% sales tax imposed in the MCTD. The participant or contractor may only apply for a refund once per sales tax quarter, and the amount cannot be claimed as a credit on a sales tax return. Refunds must be claimed within three years after the tax was payable to the department.

**Section 485-p of the Real Property Tax Law** – Localities within an economic transformation area may elect to provide an exemption from local property taxes for participants in this program. Additional information will be made available on the Office of Real Property Tax Services Web site ([www.orps.state.ny.us](http://www.orps.state.ny.us)) as the Economic Transformation and Facility Redevelopment Program is developed.

These provisions took effect March 31, 2011, and will expire on December 31, 2021.

(Economic Development Law Article 18, Tax Law sections 35, 187-r, 210(43), 606(i), 606(ss), 1456(x), 1511(aa), and 1119(f), Real Property Tax Law section 485-p)

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.