



## **Supplemental Summary of Corporation Tax Legislation Enacted in 2013**

This memorandum contains a summary of enacted legislation applicable to corporation tax that is in addition to the corporation tax legislation described in [TSB-M-13\(6\)C](#), *Summary of Budget Bill Corporation Tax Changes Enacted in 2013 – Effective for Tax Years 2013 and After*, and [TSB-M-14\(2\)C](#), *Summary of Budget Bill Corporation Tax Changes Enacted in 2013 – Effective for Tax Years After 2013*.

The following legislative changes are summarized in this memo:

- [Amendment to the farmers' school tax credit](#)
- [Disclosure of certain information to New York City Department of Finance](#)
- [Excelsior Jobs Program](#)
- [New York City income tax credit for general corporation taxes paid](#)
- [New York State Commercial Goods Transportation Industry Fair Play Act](#)
- [START-UP NY program](#)

### **Amendment to the farmers' school tax credit**

Chapter 384 of the Laws of 2013 amended the Alcoholic Beverage Control Law (ABCL), the Agriculture and Markets Law, and the Tax Law to allow for the establishment and licensure of farm cideries. The amendments to the ABCL include definitions of *cidery* and *farm cidery* and describe the authorized activities of a farm cidery.

The legislation included an amendment to the farmers' school tax credit provided for in the corporate franchise tax law and the personal income tax law. The definition of *federal gross income from farming*, used for purposes of the farmers' school tax credit, now includes the gross income from the sale of cider from a licensed farm cidery.

(Tax Law sections 210.22(i) and 606(n)(8))

### **Disclosure of certain information to New York City Department of Finance**

Section 1703 of the Tax Law requires the filing of annual information returns (reports) with the Tax Department relating to credit and debit card payments to payees who have a New York State address or who are New York State taxpayers (see [TSB-M-12\(2\)C](#), [\(2\)I](#), [\(2\)S](#),

*New Information Regarding Due Dates and Other Requirements for Filing Information Returns Relating to Credit Card and Debit Card Payments).*

Chapter 235 of the Laws of 2013 amended section 1703.1(c) of the Tax Law to allow the Tax Department to disclose certain information from these annual reports to the New York City Department of Finance (DOF) for the purpose of the administration of laws relating to taxes or charges collected by DOF. Prior to the amendment, the Tax Law prohibited the department from disclosing any information received in these reports.

The amendment allows the Tax Department to disclose information to DOF for any payee (individual or entity) that:

- has a New York City address,
- is a New York City taxpayer,
- is required to pay New York City taxes and/or charges, or
- is subject to any reporting requirements under New York City tax laws.

This provision took effect on July 31, 2013.

(Tax Law section 1703.1(c))

### **Excelsior Jobs Program**

Chapter 68 of the Laws of 2013 (Part C) enacted changes to the Excelsior Jobs Program Act. Sections 353, 354, and 359 of the Economic Development Law were amended as follows:

- Section 353 was amended to reduce the minimum number of net new jobs that a business entity must create in order to participate in the program.
- Section 354 was amended to allow Empire State Development (ESD) to adjust the amount of the excelsior jobs tax credit allowed for participants who fail to create the estimated net new jobs as stated in the participant's formal agreement with ESD. The amount of credit allowed to a participant is computed by ESD each year and is stated on the participant's certificate of tax credit issued for the tax year. Any adjustment of credit will be reflected in the annual certificate.
- Section 359 was amended to allow 50% of the amount of tax credits not awarded by ESD in a tax year to be carried forward and awarded by ESD in a subsequent tax year. Prior to this amendment, any amount of tax credits not awarded by ESD in a tax year could not be carried forward to be awarded in a subsequent tax year.

The provisions took effect on August 23, 2013.

For more information, visit the ESD Web site ([www.esd.ny.gov](http://www.esd.ny.gov)).

(Economic Development Law sections 353, 354, and 359)

### **New York City income tax credit for general corporation taxes paid**

Chapter 4 of the Laws of 2013 added subdivision (f) to section 11-1706 of the Administrative Code of the City of New York. The new law provides for a tax credit for certain New York City resident individuals, estates, and trusts whose city adjusted gross income includes a pro rata share of income, gain, loss, or deductions from one or more New York S corporations or exempt qualified subchapter S subsidiaries (QSSS). The credit is allowed for tax years beginning on or after January 1, 2014, and before July 1, 2015.

(Administrative Code of the City of New York section 11-1706(f))

### **New York State Commercial Goods Transportation Industry Fair Play Act**

Chapter 558 of the Laws of 2013 added new Article 25-C to the Labor Law to create the New York State Commercial Goods Transportation Industry Fair Play Act (the Act). The purpose of the Act is to prevent the misclassification of commercial goods transportation services employees. Employee misclassification occurs when an employer either fails to report its employees to the state or improperly classifies its workers as independent contractors.

***Violations and penalties.*** The Act provides that any commercial goods transportation contractor (contractor) who willfully violates the law by failing to properly classify an individual as an employee as provided under section 862-b of the Labor Law will be subject to civil and criminal penalties. If the contractor is a corporation, any officer of the corporation or shareholder who owns or controls at least 10% of the outstanding stock of the corporation who knowingly permits the corporation to willfully violate the provisions of the Act will also be in violation of the law and subject to the civil and criminal penalties provided for in the Act.

Civil penalties provided for under new section 862-d of the Labor Law may be imposed by:

- the Commissioner of Labor based on a violation under the Act,
- the chair of the Workers' Compensation Board based on a violation of the Workers' Compensation Law, and
- the Commissioner of Taxation and Finance based on a violation of the Tax Law.

A contractor who willfully violates the provisions of the Act by misclassifying an employee will be subject to a civil penalty of up to \$2,500 per misclassified employee for the first violation. Subsequent violations within a five-year period may result in a penalty of up to \$5,000 per misclassified employee. In addition, any contractor subject to a civil penalty under the Act will be subject to any other applicable penalties or remedies provided by law for failure

to pay any other statutory payment or coverage obligation, including but not limited to penalties imposed under:

- the unemployment insurance law (under section 570 of the Labor Law),
- workers' compensation insurance law (under sections 52(1)(d) and 131 of the Workers' Compensation Law), or
- business, corporation, or personal income tax law (under sections 685 and 1085 of the Tax Law).

Criminal penalties may be imposed in addition to civil penalties. The criminal penalties imposed on a contractor who willfully violates the provisions of the Act will be a misdemeanor. Upon conviction, a first offense may result in imprisonment for not more than 30 days or a fine not to exceed \$25,000. Subsequent convictions may result in imprisonment for not more than 60 days or a fine not to exceed \$50,000.

Any contractor (or officer of a corporation or shareholder who owns at least 10% of the outstanding stock of a corporation that is a contractor) that has been convicted of a misdemeanor will be subject to debarment and be ineligible to submit a bid or be awarded any public works contract with the state, any municipal corporation, public benefit corporation, public authority, or public body for a period of up to one year from the date of the conviction or final determination, or up to five years in the event of any subsequent violation.

***Sharing of information.*** The Act requires the Department of Labor and the Workers' Compensation Board to provide the Department of Taxation and Finance (Tax Department) with a copy of any employee misclassification violation no later than seven days after the issuance of an order. In addition, the Act requires the Tax Department to provide a copy of any assessment for failure to pay business, corporate, or personal income tax (including withholding tax) by an employer in the commercial goods transportation industry arising out of the misclassification of an employee to the Commissioner of Labor and to the Workers' Compensation Board no later than seven days after the issuance of the assessment.

This provision took effect on March 11, 2014.

(Labor Law Article 25-C and section 511.1(b); Workers' Compensation Law section 2(4))

### **START-UP NY program**

Chapter 68 of the Laws of 2013 (Part A) amended the Economic Development Law, the Tax Law, the Administrative Code of the City of New York, the Real Property Tax Law, and the Education Law to create the START-UP NY program. The START-UP NY program provides tax benefits to approved businesses that locate in vacant space or land of approved New York State public and private colleges and universities, approved strategic state assets, and New York State incubators affiliated with private universities or colleges that are designated as tax-free NY areas. The program is administered by Empire State Development. Approved

businesses will be issued a certificate of eligibility by the sponsoring campus, university, or college.

For more information, see [TSB-M-13\(7\)C, \(6\)L, \(11\)M, \(1\)MCTMT, \(7\)S](#), *SUNY Tax-Free Areas to Revitalize and Transform Upstate New York Program (START-UP NY program)* or visit the Web site for the START-UP NY program ([www.startup-ny.com](http://www.startup-ny.com)).

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.