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Analysis of Article 9-A General Business Corporation Franchise Tax Credits for 2009

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Introduction

This report provides an accounting of credit activity under the General Business Corporation Franchise Tax (Article 9-A), as mandated by Section 109 (a) of the Business Tax Reform and Rate Reduction Act of 1987. The data used to generate this report come from an annual study conducted by the Office of Tax Policy Analysis (OTPA). The study is based on the latest available data drawn from New York State corporation tax returns. These data pertain to corporations whose taxable year began during the 2009 calendar year (hereinafter referred to as the 2009 tax liability year).

The narrative section of the report contains the legislative mandate for the report as well as comprehensive information on corporate tax credits available in New York State during the 2009 liability year and subsequent periods, respectively. Appendix A lists the form numbers for each credit and the ordering rules applicable when claiming multiple credits. Appendix B recounts legislative actions since 2000 that impacted Article 9-A credits.

There are two notable limitations to this report. First, it only contains data for corporate franchise taxpayers filing under Article 9-A. It does not include statistics for taxpayers filing as banks under Article 32, insurance companies filing under Article 33, or taxpayers filing under any of the various sections of Article 9. Nor does it provide data for taxpayers claiming credits under Article 22, the Personal Income Tax. These taxpayers claim credit by virtue of being sole proprietors or as recipients of credit that originated with flow-through entities (i.e., S corporations, limited liability companies, or partnerships).

In addition, as noted above, the data is from the 2009 tax year. Due to the use of fiscal (as opposed to calendar) year periods and statutorily-permitted filing extensions, the Tax Department does not have complete data for a tax year until several years later. Accordingly, the data in this report may not accurately portray the magnitude of the fiscal impact of these credits in the current fiscal year. In particular, rapid increases in credit utilization that occur in years after the report year will not be reflected in the data. The

Department, in conjunction with the Division of the Budget, publishes another report, the annual *Tax Expenditure Report*, which provides estimates of the costs of every tax credit under all tax articles for the current tax year.

Legislative Mandate

Section 109(a) of the Business Tax Reform and Rate Reduction Act of 1987 (Chapter 817 of the Laws of 1987) requires the Commissioner of Taxation and Finance to conduct a study regarding corporate tax credits. The legislative mandate follows.

> On or before December first, nineteen hundred eighty-eight and on or before December first of each year thereafter, the commissioner of taxation and finance shall submit a written report and such data and supporting documentation as are available and meaningful regarding the number of taxpayers claiming, using, and carrying forward tax credits and the total amount of such credits claimed, used and carried forward and the median, mean and distribution of such credits for taxable years beginning during nineteen hundred eighty-four, and each subsequent year, to the extent that such information is available. Such reports shall present the latest information available reflecting amended returns filed by taxpayers and adjustments upon audit by taxpayer liability period as well as the impact of such credits upon state fiscal year revenues.
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> Copies of these reports shall be submitted by the commissioner of taxation and finance to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such reports shall contain, but need not be limited to, information by industrial classification, by basis of taxation, by size of credit and taxpayer income ranges. In preparing such reports, the commissioner of taxation and finance shall ensure that the statistics are classified in a manner consistent with the secrecy requirements of tax law.

Analysis of Statistical Data

Description of Tables

The tables contain data on the number of taxpayers taking the credit, the total amount of credit, the mean amount of credit, and the median amount of credit[1] for the following components:

Credit Earned	The amount of credit generated in the current tax year.
Credit Claimed	The amount of credit that taxpayers have available to use and refund during the taxable year. The amount of credit claimed is the amount earned in the current year plus the amount of unused credit from the prior year less any applicable credit recapture. It also reflects the imposition of any statutory limitations on the amount of credit allowed.[2]
Credit Used	The amount of credit that taxpayers actually apply to their tax liability.[3]
Credit Refunded	Unused credit amounts requested as a refund or applied against the next period's liability. These are requested amounts from the tax return, not necessarily amounts actually paid. Refund requests are subject to audit and adjustment by the Tax Department and the Office of the State Comptroller.
Credit Carried Forward	Any unused amount of credit that is allowed to offset tax liability in future years. The amount of credit carried forward is determined by subtracting the amount of credit used and/or refunded in the current year from the amount of credit claimed.[4]

A series of tables presents profiles of the credits distributed by different subgroupings. These include: basis of taxation after credits; major industry group; size of entire net income; and size of credit used. Secrecy provisions preclude providing all subgroupings for all credits and also generally require the omission of credit refund tables.

The basis of taxation tables reflect credits used by taxpayers whose tax is based on either the entire net income (ENI) base, the capital base, the alternative minimum tax (AMT) base, or the fixed dollar minimum tax. The ENI and capital bases represent taxpayers who began under these bases, used credits, and remained under these bases (despite the use of credits). The fixed dollar minimum and AMT bases represent two different classes of taxpayers. The bases could include taxpayers who started under one of the other bases such as ENI, but because of credits, ended up paying either the fixed dollar minimum tax or the AMT. These bases could also include taxpayers who used credits strictly to offset their subsidiary capital tax.

The major industry group category is based on the North American Industry Classification System (NAICS). Taxpayers report their principal business activity using NAICS codes from their federal tax returns. Therefore, the NAICS code may not be indicative of the type of activities actually being undertaken in New York.

Data Considerations

The data contained in these tables come directly from the returns of corporations claiming the credits.[5] For credits where a limited number of claims triggers disclosure provisions, only credit component totals are displayed. In some cases, even this level of aggregation is not sufficient. For this reason, in this report there are no individual tables for the following credits:

- qualified emerging technology company capital credit,
- green building credit,
- low-income housing credit,
- security officer training credit,
- clean heating fuel credit,
- biofuel production credit, and
- credit for the rehabilitation of historic properties.

In 2009, the brownfield remediation insurance credit was not utilized by taxpayers. Therefore, there are no individual tables for this credit.

The Tax Law limits some credits to a percentage of tax due or only allows a percentage of the credit to be used and refunded. The Empire Zone/Zone Equivalent Area (EZ/ZEA) wage tax credit and the EZ capital tax credit individually cannot exceed 50 percent of corporation franchise tax before any credits. The Empire State commercial production credit only allows 50 percent of excess credit to be refunded, with the remainder being fully refunded in the following year. The Empire State film credit was fully refundable in 2008, but had different usage rules prior to and after 2008, respectively.[6]

Taxpayers permitted to take the investment tax credit (ITC), the employment incentive credit (EIC), the rehabilitation credit for historic barns, the retail enterprises tax credit, and the credit on research and development property report amounts earned during the tax year on separate lines on tax form CT-46-*Claim for Investment Tax Credit*. However, when computing the credit claimed, used, refunded, and carried forward, taxpayers report combined amounts. For consistency, this study presents the combined amount of credit earned. Similarly, all data for the EZ-ITC and the EZ-EIC are presented as combined amounts.

Several credits allow a refund of excess credit to new businesses only. The ITC and the ITC for the financial services industry allow a full refund to new businesses. The EZ wage tax credit, the EZ-ITC, and the EZ-ITC for the financial services industry allow 50 percent of excess credit to be refunded by new businesses.

The computation for credit carried forward does not apply to some credits. Fully refundable credits are not carried forward. The QEZE tax reduction credit, the mortgage servicing tax credit, and the credit for purchase of an automated external defibrillator do not allow any carryforward. The alternative fuels credit allows for a transfer of excess credits to affiliates of the taxpayer in addition to a credit carryforward. Carry forwards for the Empire State film production credit are explained in Endnote 4.

Summary of Credit Activity

Tables in this report summarize tax credit activity by credit and component. The totals in the summary tables may not match the detail tables due to rounding and disclosure requirements.

In all tables, '--' indicates that the component does not apply to the credit or that the data for that component are not available.

A '0' means that the credit was available but not utilized by any taxpayers, or that the amount was less than $100,000.

The letter 'd' indicates that the data cannot be presented due to the confidentiality restrictions of the Tax Law.

Total values for number of taxpayers, amount of credit, and mean and median credit were computed using all taxpayers in the study file.

The available data for all tables do not reflect changes made on audit or amended filings.

Endnotes

1. As used in this report, “mean amount of credit” is defined as the average amount of credit in a given category. “Median amount of credit” is defined as the central value representing an equal number of credit values above and below it.

2. For the Empire State film production credit, the amount of credit claimed only reflects amounts that will be used and refunded during the tax year.

3. Taxpayers may use credits to reduce their tax liabilities computed under the entire net income base, capital base, or subsidiary capital base. Generally, credits may not be used to reduce tax liability below the amount computed under the alternative minimum tax base or the fixed dollar minimum base, whichever is higher. However, the law does allow some credits to be applied against those bases. Where applicable, this is noted in the description of the particular credit.

4. The computation for credit carried forward does not apply to some credits. Fully refundable credits are not carried forward. The QEZE tax reduction credit, the mortgage servicing tax credit, and the credit for purchase of an automated external defibrillator do not allow any carryforward. The alternative fuels credit allows for a transfer of excess credits to affiliates of the taxpayer in addition to a credit carryforward.

   Amounts carried forward from one year may not match amounts reported as carried in for the following year for several reasons. Audit adjustments in one year will change the utilization of credit in future years. Changes in the filing composition of a taxpayer due to mergers, acquisitions, or divestitures may impact the amount of credit reported. Some taxpayers may go out of business altogether. Finally, on the study file, credit carry forwards are not perpetuated in the absence of a credit form. If a taxpayer fails to file a credit form, the amount of credit carried forward is eliminated from the file. For the Empire State film production credit, the amount of credit carried forward is the amount that was deferred due to the bi/trifurcation rules of the credit. It will be utilized in the following year or two years depending on the size of the respective credit amount earned.

5. Historical data presented in this report may differ from that presented in previous reports. This can occur as a result of changes made to the data collection process and minor adjustments made to the original data files. In certain limited instances, errors made on either prior or current year credit claim forms may also result in discrepancies.

6. Prior to tax years beginning on or after January 1, 2008, the credit was fully refundable across two years. For tax years beginning on or after January 1, 2009, credit usage was allowed over one, two, or three years, depending on the size of the credit claimed.

Credit Provisions Effective During the 2009 Tax Liability Year

Investment Tax Credit

For tax years beginning on or after December 31, 1968, the investment tax credit (ITC) equaled 1 percent of the cost of new or expanded manufacturing production facilities located in New York State. By 1982, the rate had grown to 6 percent. Since 1982, the rate has dropped gradually and presently stands at 5 percent of the first $350 million in investment and 4 percent for investment over that amount.

Unused ITC can be carried forward for fifteen years. If a taxpayer qualifies as a new business, it can elect to receive a refund of unused ITC during its first five taxable years. A new business is defined as any corporation except:

- A corporation in which over 50 percent of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned or controlled, directly or indirectly, by a taxpayer subject to the tax under: Article 9-A; sections 183, 184, 185, or 186 of Article 9; Article 32; or Article 33 of the Tax Law.
- A corporation that is substantially similar in operation and in ownership to a business entity or entities taxable or previously taxable under: Article 9-A; section 183, 184, 185, or 186 of Article 9; Article 32; or Article 33; or that would have been subject to the tax under Article 23 as it 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.
- A corporation that has been subject to tax under Article 9-A for more than five taxable years (excluding short periods).

In addition, taxpayers who met certain employment tests could qualify for the employment incentive credit (EIC). Prior to 1987, this credit equaled one-half of the ITC base and was available for up to three years. However, employment in such years must have equaled at least 101 percent of the employment in the year immediately before the ITC was first claimed.

Investment Tax Credit History of Tax Rates

Investment Year	Rate and Applicable Investment Tax Credit Base
1969 - 1973	1% Optional one-year depreciation write-off for research and development property. Industrial waste treatment and air pollution facilities qualify for elective deductions.
1974 - 1977	2% Optional one-year depreciation write-off for research and development property. Industrial waste treatment and air pollution facilities qualify for elective deductions.
1978	3% Optional one-year depreciation write-off for research and development property. Industrial waste treatment and air pollution facilities qualify for elective deductions.
1/1/79 - 5/31/81	4% Optional one-year depreciation write-off for research and development property. Industrial waste treatment and air pollution control facilities qualify for elective deductions.
6/1/81 - 6/30/82	5% 10% rate on research and development property acquired after 6/30/82. Industrial waste treatment and air pollution control facilities qualify for elective deductions.
7/1/82 - 1986	6% 10% rate on research and development property. Industrial waste treatment and air pollution control facilities qualify for elective deductions.
Beginning in 1987, 1988, and 1989	5% of the first $500 million. 4% of the amount above $500 million. 10% rate on research and development property repealed – An optional 9% rate on research and development property becomes effective in 1987 as a component of ITC. Investments in industrial waste treatment property, air pollution control facilities no longer qualify for elective deductions, but remain eligible for ITC. Credit carryforward limited to 7 years.
Beginning in 1990	5% of the first $425 million. 4% of the amount above $425 million. An optional 9% rate on research and development property. Credit carryforward remained limited to 7 years.
Beginning after 1990	5% of the first $350 million. 4% of the amount above $350 million. An optional 9% rate on research and development property. 1994 law increased carryforward from 7 to 10 years. 1994 law extended pre-1987 ITC cutoff date from 1994 to 1997. 1997 law extended credit carryforward from 10 to 15 years. 1997 law extended pre-1987 ITC cutoff date from 1997 to 2002. ITC extended to broker/dealers (Property placed in service on or after October 1, 1998 and before October 1, 2003).
Beginning after 2000	2002 law extended ITC for financial services to October 1, 2008. 2005 law extended ITC to certain film production facilities. SFY08-09 budget extended financial services ITC sunset to October 1, 2011. 2008 law codified financial services ITC employment tests and allowed certain property usage to be aggregated for purposes of the principal use test. SFY11-12 budget extended financial services ITC sunset to October 1, 2015.

For investments made on or after January 1, 1987, the EIC is a two-year credit described in the following table:

History of Tax Rates of the Employment Incentive Credit

Year Property is Placed in Service	Average Number of Employees During the Tax Year Expressed as a Percentage of Those in the Employment Base Year	Additional Credit as a Percentage of the Investment Credit Base
Tax Years Beginning in 1987, 1988 or 1989	At least 101%	2% of the first $500 million 2.5% in excess of $500 million
Tax Years Beginning in 1990	At least 101%, but less than 101.5%	2% of the applicable ITC base
	In excess of 101.5%	2.5% of the applicable ITC base
Tax Years Beginning After 1990	At least 101%, but less than 102%	1.5% of the applicable ITC base
	At least 102%, but less than 103%	2% of the applicable ITC base
	At least 103%	2.5% of the applicable ITC base

Rehabilitation Credit for Historic Barns

Taxpayers may claim a tax credit for the rehabilitation of historic barns in New York State. The credit equals 25 percent of qualified rehabilitation expenditures. The definition of a qualified rehabilitated barn has the same meaning as a "qualified rehabilitated building" for purposes of the federal rehabilitation credit under Section 47 of the Internal Revenue Code. In accordance with federal law for rehabilitation of historic buildings, the barn must have been placed in service before 1936 and would only qualify for the credit based on substantial rehabilitation. Generally, a building will have been considered substantially rehabilitated only if the expenditures exceed the greater of the adjusted basis of the barn or $5,000. A taxpayer may not claim both the regular investment tax credit on manufacturing property and the investment tax credit for rehabilitation of historic barns on the same property.

Rehabilitation Credit for Retail Enterprises

Taxpayers registered as vendors under Tax Law Article 28 and at least 50 percent engaged in retail sales can claim a credit for expenditures for retail enterprises that also qualify for the federal rehabilitation credit. The credit rate is the same as the traditional ITC. The credit is limited to expenditures attributable to property used in retail sales and located in New York.

Credit for Research and Development Property Under the ITC

Research and development (R&D) property acquired on or after January 1, 1987 qualifies for the ITC. Taxpayers may elect the regular ITC rate including the EIC, or an optional rate on R&D property of 9 percent for taxable years beginning in 1990. If taxpayers elect the higher rate, they cannot claim the EIC on the same investment.

ITC for the Financial Services Industry

An ITC is allowed for qualified property used in the financial services industry and placed in service prior to October 1, 2015. The rate of credit, maximum amounts, carryforward provisions, and recapture rules are generally the same as the regular ITC.

To be eligible, the property must be principally used in the course of the taxpayer's business: as a broker or dealer in connection with the purchase or sale of stocks, bonds, commodities, or other securities; as a provider of lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale of securities; or as a provider of investment advisory services for a regulated investment company. In addition, qualified property includes property used in a course of the taxpayer's business as an exchange registered as a national securities exchange or a board of trade, or an entity wholly owned by one or more national security exchanges or boards of trade that provides automation or technical services to the national security exchanges or boards of trade.

Property purchased or leased by a taxpayer affiliated with a regulated broker/dealer, national securities exchange, or board of trade is also eligible for credit if the property is principally used in the qualifying activities described above.

Starting in 2008, in determining whether the property is principally used in a qualifying activity, a taxpayer may aggregate it uses as a broker/dealer and a provider of investment advisory services. Furthermore, it may aggregate it uses with affiliated broker/dealers and registered investment advisors.

Finally, to be eligible for credit a taxpayer must satisfy an employment test. Prior to 2008, taxpayers could use either an 80% current year test or a 95% three-year back-office test that were created administratively. Starting in 2008, those two tests were codified and a third test was created - the 90% end-of-year test.

1. *80% current-year test* - 80 percent or more of the employees performing the administrative and support functions related to the qualified use of the property are located in New York State;

2. *95% three-year back-office test* - The average number of employees performing the administrative and support functions related to the qualified use of the property and

located in New York State during the year the credit is claimed is greater than or equal to 95 percent of the average number of such employees during the 36 months immediately preceding the tax year of the credit claim;

3. *90% end-of-year test* - the number of New York State employees in the current tax year is greater than or equal to 90 percent of such employees on:
   a) December 31, 1998 if the taxpayer was a calendar year filer taxable in New York State in 1998; or
   b) the last day of the first taxable year ending after December 31, 1998 if the taxpayer was a fiscal year filer or not subject to tax in 1998.

If a taxpayer is first subject to tax in New York State after the 1998 tax year, it is exempt from the employment tests for its first taxable year.

If aggregation is required to satisfy the "principally used" property test then either each affiliate must satisfy the employment test individually or the employees of the taxpayer may be aggregated with the employees of its affiliated broker/ dealer or registered investment advisor for purposes of the test.

Mortgage Servicing Tax Credit

Mortgage bankers, registered under Article 12-D of the Banking Law and meeting certain regulatory requirements established by the State of New York Mortgage Agency (SONYMA), may claim a credit against their franchise tax. The credit equals 2.93 percent of the total principal and interest collected by the bank for each SONYMA mortgage secured by a one-to-four family residence. In addition, mortgage bankers may receive an amount equal to the interest collected during their taxable year on each SONYMA mortgage, secured by a five or more family residence, multiplied by a fraction. The fraction depends on the types of properties which secure the serviced mortgage loans. The credit may be applied against the mortgage banker's liability to reduce their liability to zero. There is no carryforward of excess credit.

Special Additional Mortgage Recording Tax Credit

A credit is allowed equal to the State Special Additional Mortgage Recording Tax paid on mortgages recorded after December 31, 1978. The special additional mortgage recording tax is imposed at the rate of 25 cents per $100 on the indebtedness secured by a mortgage recorded on or after July 1, 1969. The credit is not allowed for such taxes paid on residential mortgages recorded after May 1, 1987, where the real property is located in Erie County or one or more of the counties comprising the Metropolitan Commuter Transportation District.

For periods beginning on or after January 1, 1994, taxpayers may elect to treat the unused portion of the special additional mortgage recording tax credit as an overpayment to be credited or refunded.

Empire Zone/ Zone Equivalent Area/ Qualified Empire Zone Enterprise Tax Credits[1]

In 1986, New York State enacted legislation to stimulate growth in economically distressed communities. The program provides a package of tax incentives for businesses that invest or provide jobs in designated areas called Empire Zones (EZs).

The program has been amended regularly since its enactment. Generally, the changes consisted of adjustments to the credit calculation formulas, increases in the credit amounts, and expansions in the number of EZs. For complete details on changes made since the program's inception, see Appendix B.

EZ Wage Tax Credit/ ZEA Wage Tax Credit

Eligible taxpayers may claim a wage tax credit for up to five years for doing business and creating jobs in an EZ. The credit amounts differ for targeted and nontargeted employees. A higher credit amount applies to targeted employees (i.e., those with low incomes or on public assistance).

As originally implemented, the credit equaled 25 percent of targeted eligible wages for the first tax year, declining by 5 percent per year for each of the following five years.

The corresponding credit for non-targeted employees equaled one-half of these amounts. The total credit could not exceed 50 percent of pre-credit tax liability.

To qualify for the credit, taxpayers must have filled 20 percent of new zone jobs with zone residents, or with residents of census tracts bordering the zone. In addition, the employer must have shown a statewide and zonewide net employment gain. Ceilings limited the credits.

Beginning on or after January 1, 1994, the wage tax credit was simplified and shortened. The two-year wage tax credit was based on the average number of newly hired employees. The credit equaled the product of the average number of newly hired targeted employees multiplied by $1,500 and nontargeted employees multiplied by $750.

Beginning on or after January 1, 2001, the credit amounts increased to $3,000 for each targeted employee and $1,500 for each nontargeted employee. Both credits became available for five years.

Starting with the 2005 tax year, taxpayers certified in EZ sub-zones called Investment Zones could claim an additional $500 for each employee receiving wages in excess of $40,000.

For tax years beginning on or after January 1, 1994, a similar credit was provided for eligible businesses located in zone equivalent areas (ZEAs) for wages paid to full-time employees in a ZEA. In year one, the credit equaled $1,000 multiplied by the average number of newly hired targeted employees and $500 multiplied by the average number of newly hired nontargeted employees. In year two, the credit decreased by one-half. Beginning on January 1, 2001, the ZEA credit amounts were changed to mirror the EZ wage tax credit amounts. The ZEA credit expired on June 13, 2004. Taxpayers could not earn new credit, but could use amounts carried forward from prior years.

The total EZ or ZEA wage tax credit cannot exceed 50 percent of tax due before credits. Taxpayers may carry forward unused credits indefinitely. In lieu of a carryforward, new business taxpayers may elect to have 50 percent of unused EZ wage tax credit refunded.

EZ Capital Tax Credit

Initially, a credit applied to the consideration paid for original issue stock purchased from a zone capital corporation. Zone capital corporations were corporations designed to raise money for investment in zone businesses. The credit equaled 25 percent of the amount paid for the stock, up to a lifetime maximum of $100,000. In any tax year, the credit could not exceed 50 percent of the taxpayer's pre-credit liability. Taxpayers could carry forward unused amounts indefinitely. A recapture provision applied if the taxpayer disposed of the investment within 36 months of acquisition.

For tax years beginning on or after January 1, 1994, the law was amended to allow the EZ capital tax credit for investments in zone capital corporations, direct equity investments in certified zone businesses, and contributions to community development projects. The new credit equaled 25 percent of the sum of each type of investment. The lifetime maximum credit per taxpayer equaled $100,000 in each category for an aggregate limit of $300,000.

Starting in the 2005 tax year, credit could no longer be earned for investments in or contributions to EZ capital corporations. Taxpayers can continue to carryforward any unused amounts of credit calculated for investments made prior to January 1, 2005, however.

EZ Investment Tax Credit

Production property acquired or built in an EZ may qualify for an EZ-ITC of 10 percent. Like the regular ITC, this credit cannot reduce the tax due for any year to less than the higher of the tax on the minimum income base or the fixed dollar minimum. However, corporations may carry forward any unused EZ-ITC indefinitely.

An additional 3 percent credit rate (30 percent of the EZ-ITC) applies in the three years following the year in which the corporation claims the EZ-ITC. To qualify for this second credit, the EZ-EIC, the taxpayer's employment in the EZ (excluding general executive officers) must equal at least 101 percent of its average employment in the year prior to earning the EZ-ITC.

Effective January 1, 1994, the EZ-ITC was amended to allow new businesses to elect a 50 percent refund of the unused credit in lieu of a carryforward. Effective January 1, 2001, taxpayers could apply the EZ-EIC against the alternative minimum tax base.

EZ Investment Tax Credit for the Financial Services Industry

Financial services industry taxpayers that are located in an Empire Zone may be eligible for the EZ-ITC and EZ-EIC. The eligibility tests are the same as the traditional financial services ITC and EIC.

Qualified Empire Zone Enterprise Credits

In 2000, the "Empire Zones Program Act" established two new EZ credits. Businesses that become certified as Qualified Empire Zone Enterprises (QEZEs) can receive a credit against property taxes paid and a tax reduction credit in addition to the other EZ credits. In order to qualify for the QEZE credits, a taxpayer must first satisfy an annual employment test.

QEZE Real Property Tax Credit

The QEZE real property tax credit (RPTC) is fully refundable and is calculated differently, depending upon the date the taxpayer was certified by Empire State Development.

Certifications prior to April 1, 2005

The credit for real property taxes paid is the product of three factors:

1. a benefit period factor which is based on the number of years the taxpayer has been certified as a QEZE;
2. an employment increase factor which varies depending upon the number of jobs created by the QEZE; and
3. eligible real property taxes paid by the QEZE.

For taxpayers certified on or after August 1, 2002, the amount of credit claimed is limited to the greater of the employment increase limitation or the capital investment limitation. The employment increase limitation is the product of $10,000 and taxable year employment minus test year employment. The capital investment limitation is 10 percent of the cost or other basis of the real property multiplied by the greater of the percentage of the property which is physically occupied and used by the QEZE, or the percentage of the cost or other basis attributable to the construction, expansion, or rehabilitation of the real property (as opposed to the acquisition). If 50 percent or more of the cost is attributable to the aforementioned activities, then the percentage is deemed to be 100 percent.

Certifications on or after April 1, 2005

For businesses certified on or after April 1, 2005, there are two separate credit calculations and the credit contains different restrictions depending upon whether the QEZE is located in an Investment Zone (IZ) or a Development Zone (DZ). Manufacturers calculate their credit as if they were located in an IZ. The credit equals 25 percent of the wages, health benefits, and retirement benefits of net new employees. Net new employees are calculated by subtracting the base period employment from taxable year employment. Wages and benefits in excess of $40,000 are excluded and the credit cannot exceed $10,000 per employee.

QEZEs located in a DZ must reduce their credit by an employment increase factor:

Net New Employees	Employment Increase Factor
1 to 10	0.25
11 to 49	0.5
50 to 75	0.75
76+	Amount divided by 100, up to 1.0

Taxpayers claim the greater of the amount of credit or the capital investment limitation, but neither may exceed the amount of the taxpayer's eligible real property taxes for the taxable year.

QEZEs located in an IZ and all manufacturers calculate their capital investment limitation in the same manner as taxpayers certified on or after August 1, 2002, but taxpayers located in a DZ are subject to a more restrictive limitation.

The DZ investment limitation equals the product of the percentage of the property which is physically occupied and used by the QEZE, and 10 percent of the amount of the cost or other basis attributable to the construction, expansion, or rehabilitation of the real property (as opposed to the acquisition). If 50 percent or more of the cost is attributable to the aforementioned activities, then the percentage is deemed to be 100 percent.

Certifications on or after April 1, 2009

The QEZE real property tax credit is reduced by an additional 25 percent.

QEZE Tax Reduction Credit

The tax reduction credit is the product of four factors:

1. a benefit period factor, based on the number of years the taxpayer has been certified as a QEZE;
2. an employment increase factor that varies depending upon the number of jobs created by the QEZE;
3. a zone allocation factor that measures the economic presence of the QEZE in the EZ and in New York State; and
4. a tax factor that is the larger of the tax on the entire net income base or the minimum taxable income base.

The credit is non-refundable, but may be used against the alternative minimum tax base. If a taxpayer is wholly located within a zone (has a zone allocation factor of 100 percent), it may apply the credit against the fixed dollar minimum tax.

EZ Program Sunset Transitional Rules

The Empire Zones Program expired on June 30, 2010. However, taxpayers certified in EZs are granted additional time to fully utilize their tax benefits as follows:

- The EZ-ITC is available until April 1, 2014.
- Qualified investment projects[1] remain certified for an additional nine years.
- The EZ-EIC is allowed for the three years following the related EZ-ITC claim, notwithstanding the 2014 EZ-ITC cutoff.
- Payments of commitments made to community development projects approved by ESD prior to the expiration of the Zones Program will be allowed to generate EZ capital credit until April 1, 2014.
- Taxpayers claiming the EZ wage tax credit, the QEZE real property tax credit, and the QEZE tax reduction credit will be allowed to claim credit for the duration of their benefit periods provided they continue to meet all eligibility criteria.

Alternative Minimum Tax Credit

Taxpayers began to accumulate the alternative minimum tax (AMT) credit in 1990. Beginning in 1991, taxpayers could claim the AMT credit against their entire net income (ENI) base tax for a portion of AMT paid in 1990 and subsequent years. A taxpayer can use the AMT credit to reduce its ENI tax liability to the fixed dollar minimum, the capital base, or the AMT base, whichever is highest. The credit cannot be used against the subsidiary capital base.

The calculation of the minimum tax credit involves a two-step process. The taxpayer calculates a “tentative” minimum tax by subtracting from the minimum tax the highest of the tax on entire net income, the tax on business and investment capital, or the fixed dollar minimum tax.

In the second step, corporations recalculate the minimum tax they would have paid, accounting for only two specific tax preferences.

The first is the preference related to depletion under IRC Section 57(a)(1). The second is the preference related to the appreciated property charitable deduction under IRC Section 57(a)(6)(b). In addition, prior to 1994, both minimum tax calculations disallowed the net operating loss deduction, and required single weighting of the receipts factor.

Corporations reduce this recalculated minimum tax by the highest of the tax on entire net income, the tax on business and investment capital, or the fixed dollar minimum tax. The result of subtracting the recalculated minimum tax from the "tentative" minimum tax equals the minimum tax credit available for subsequent years.

Effective for taxable years beginning in 1994, taxpayers may claim an AMT credit against ENI-base tax liability for part of the net operating loss deduction not used in computing the AMT. Taxpayers may calculate the AMT credit retroactively for taxable years after 1989 and carry forward the credit indefinitely.

The pre-1994 net operating loss component is subject to a five-year transition rule, beginning in taxable years after 1993 and ending before 1999. Under the transition rule, a taxpayer may use up to 20 percent of the credit in each of the five years beginning with the 1994 tax year. Taxpayers will have available the remainder of any unused credit for tax years after 1999.

Farmers' School Tax Credit

Eligible farmers may claim a refundable real property tax credit against the corporate franchise tax. The credit is available to an eligible farmer, defined as a taxpayer whose gross income from farming is at least 2/3 of total gross income. Eligible farmers also include those who paid school district property taxes on qualified agricultural property pursuant to a land contract. The credit equals the total school property taxes paid on qualified agricultural property in the State up to the acreage limitation, and 50 percent of the school taxes paid on acres in excess of the limitation. The acreage limitation has been increased periodically:

- 100 acres in 1997
- 250 acres between 1998 and 2005
- 350 acres in 2006 and beyond.

The credit is phased out for taxpayers with New York adjusted gross income (entire net income) in excess of $200,000. Recapture provisions provide for an addback of the credit if the taxpayer converts the property to a nonqualified use in the two years subsequent to the first year of the credit.

Credit for Employment of Persons with Disabilities

Employers who employ individuals with disabilities may claim a credit for a portion of wages paid to such individuals. The credit equals 35 percent of the first $6,000 of first year wages paid to the disabled employee (a maximum of $2,100 per employee). However, if the first year's wages qualify for the federal work opportunity tax credit, the New York credit will apply to second year wages. The credit may be applied against the AMT, and unused credits are not refundable but may be carried forward indefinitely. To become eligible for the State credit, the disabled employee must work for the employer on a full time basis for at least 180 days or 400 hours, and must be certified as disabled by the State Education Department. Visually handicapped individuals may receive certification from the appropriate agency responsible for vocational rehabilitation of the blind and visually impaired.

Alternative Fuels Credit

Prior to 2005, a tax credit was allowed for electric vehicles, clean fuel vehicles using natural gas, methanol, and other alternative fuels, qualified hybrid vehicles, and clean fuel refueling facility property.

Starting on January 1, 2005, only credit for clean-fuel vehicle refueling property was allowed. The credit equaled 50 percent of the cost of property used more than 50 percent of the time in a trade or business located in New York State. The property was defined in the Internal Revenue Code[2]. The credit based on refueling property expired after December 31, 2010.

Carryforwards of credit from qualified vehicles and vehicle refueling property is still allowed.

Qualified Emerging Technology Company (QETC) Tax Credits

There are three tax credits related to businesses that qualify as qualified emerging technology companies: an employment credit, a capital credit, and a facilities, operations, and training (FOT) credit.

For the employment and capital credits, a QETC is a business that is located in New York State, has total annual sales of $10 million or less, and either: has a ratio of research and development (R & D) funds to net sales that equals or exceeds an average ratio; or has products or services classified as emerging technologies. The ratio is updated annually and is included in the instructions for the credit forms. Likewise, the definition of *emerging technologies* is included in the instructions.

To claim the employment credit, a QETC must also have an average number of individuals employed full-time in New York State equal to at least 101 percent of its base-year employment.

For the FOT credit, businesses must have primary products and services that are themselves emerging technology and satisfy additional restrictions. First, a business must have 100 employees or less, with at least 75 percent employed in New York State. Also, the R & D funds to net sales ratio must equal or exceed 6 percent. Finally, gross revenues may not exceed $20 million for the immediately preceding tax year.

QETC Employment Credit

The employment tax credit equals $1,000 for each individual employed over a base year level and is allowed for three years. Excess credit may be refunded.

QETC Capital Credit

The capital tax credit is available to taxpayers making qualified investments in certified QETCs. The credit varies in amount depending on how long the investment is held. Investments held for four years from the close of the tax year in which the QETC capital tax credit is first claimed qualify for a 10 percent credit. Investments held for nine years qualify for a 20 percent credit.

The total amount of credit allowable to a taxpayer for all years may not exceed $150,000 for credit computed at the 10 percent rate, and $300,000 for credit computed at the 20 percent rate. Also, the credit and any carryforwards may not exceed 50 percent of the tax due prior to the application of any other tax credits.

QETC Facilities, Operations, and Training Credit

The credit consists of three components:

1. 18 percent of R & D property, costs, and fees incurred in connection with emerging technology activities;
2. 9 percent of qualified research expenses; and
3. 100 percent of qualified high-technology training expenses, limited to $4,000 per employee per year.

The total amount of credit is limited to $250,000 per year and is fully refundable.

The credit may be claimed for four consecutive years. However, taxpayers relocating from an academic incubator facility may claim credit for an additional year and elect to defer the start of the five year period until after they leave the facility.

No credit may be earned in taxable years beginning on or after January 1, 2012.

Low-Income Housing Credit

The New York State low-income housing tax credit program, based on the existing federal program, requires an agreement between the taxpayer and the Commissioner of the New York State Division of Housing and Community Renewal (DHCR) for a long-term commitment to low-income housing. The amount of the credit depends on the applicable percentage of the qualified basis of each low-income building. The credit amount allocated by DHCR is allowed as a credit against tax for ten tax years. Unused credits may be carried forward indefinitely.

Credit for Purchase of an Automated External Defibrillator

Taxpayers may claim a credit for the purchase of an automated external defibrillator. The amount of the credit is equal to the cost of the defibrillator, but is capped at $500 per unit. There is no limit on the number of units for which the credit may be taken. The credit is nonrefundable and excess credit may not be carried forward.

Green Building Credit

The green building credit provides incentives for the construction, rehabilitation, and maintenance of buildings with high environmental standards and energy efficiency. The credit rewards the use of environmentally preferable building materials and renewable and clean energy technologies.

There are six different credit components for which a taxpayer may be allowed a credit. Each credit component has its own requirements, formula for calculating the amount of the credit, and cap. A taxpayer may be allowed one or more of these components, with certain restrictions. The components are:

- whole building credit component (owner or tenant) - where base building and all tenant space are green;
- base building credit component (owner) - applies to areas not intended for occupancy by either a tenant or owner;
- tenant space credit component (owner or tenant);
- fuel cell credit component;
- photovoltaic module credit component; and
- green refrigerant credit component.

To obtain eligibility for the green building credit, the taxpayer must first apply to the Department of Environmental Conservation for an initial credit component certificate. The certificate will set forth the first taxable year for which the credit may be claimed and the maximum credit amount allowable to the taxpayer. The credit may be claimed for five taxable years beginning with the first taxable year allowed pursuant to the certificate. In addition, for each taxable year that a credit is claimed, a taxpayer will have to obtain an eligibility certificate issued by a licensed architect or engineer certifying that the project meets the standards for green buildings.

Where a credit has been allowed to an owner who sells a building or to a tenant who terminates his or her tenancy within the period for allowance of the credit, the successor owner or successor tenant will be allowed the credit for the remainder of the period, as long as the property continues to meet the applicable environmental standards.

Long-Term Care Insurance Credit

Taxpayers may claim a credit equal to 20 percent of the premiums paid during the tax year for the purchase of, or for continuing coverage under, a long-term care insurance policy that qualifies for the credit pursuant to Insurance Law section 1117. The credit is nonrefundable, but may be carried forward indefinitely.

A qualifying long-term care insurance policy is one that is:

- approved by the New York State Superintendent of Insurance pursuant to section 1117(g) of the Insurance Law; or
- a group contract delivered or issued for delivery outside of New York State that is a qualified long-term care insurance contract as defined in Internal Revenue Code section 7702B.

Empire State Film Production Credit[3]

A taxpayer that is a qualified film production company can apply to the Governor's Office for Motion Picture and Television Development (MP/TV) to receive a refundable, 30 percent[4] Empire State film production credit.

To become a qualified production company, 75 percent of film production facility expenditures must be spent at a *qualified film production facility*, defined as a facility in New York in which television shows and films are or are intended to be regularly produced, and which contains at least one sound stage of at least 7,000 square feet. Productions that qualify for the credit are feature length films or television films, pilots, or series. Generally, documentaries, news or current affairs programs, interview or talk shows, instructional videos, sport shows or events, daytime soap operas, reality programs, commercials, and music videos do not qualify for the credit.

Taxpayers meeting the test above can qualify for a credit of 30 percent on qualified costs incurred at the facility. *Qualified costs* are costs for tangible property or services used or performed within New York directly and predominantly in the production (including post production) of a qualified film. Qualified production costs generally include most below the line items such as costs of technical and crew production, expenditures for facilities, props, makeup, wardrobe, set construction, and background talent, and generally exclude costs of stories and scripts, and wages for writers, directors, producers, and performers (other than extras without spoken lines).

Generally, *above the line* and *below the line* are terms of art in the film and television industry referring to divisions of categories or types of spending on the budget form. *Above the line* typically means fees and salaries for the creative team (director, producers, actors, writers) and the cost of purchase of the story and/or script, while *below the line* refers to all the other "hard" costs of production (crew salaries, equipment and facilities rental, film and lab costs, construction, materials, props, makeup, wardrobe, locations, editing, and catering -- essentially everything else involved in production of the film).

If a production has met the 75 percent test for production facility expenditures as described above, it may also qualify for the tax credit based upon qualified expenditures outside the qualified facility that are related to pre-production, location production, and post production in New York in one of two possible ways:

a) if the qualified New York expenditures related to the qualified production facility total $3 million or more, then all qualified expenditures related to pre-production, location, and post production in New York State qualify for the credit;

b) if expenditures on the qualified production facility days are less than $3 million, then the shooting days spent in New York outside of a film production facility must equal or exceed 75 percent of the total shooting days spent within and without New York outside of a film production facility.

As enacted, the credit was refundable in equal amounts over a two-year period. For tax years beginning on or after January 1, 2008, the credit was entirely refundable in the year in which it was claimed.

The 2009-10 State budget "trifurcated" the utilization of the credit, effective for tax years beginning on or after January 1, 2009:

If the amount of the credit is:	**it is claimed:**
under $1 million	in the taxable year in which the film is completed
at least $1 million but less than $5 million	over a two year period, with half claimed each year
at least $5 million	over a three year period, with one-third claimed each year

Empire State Commercial Production Credit

The Governor's Office for Motion Picture and Television Development (MP/TV) administers a three-part credit designed to encourage the production of commercials in New York State. $7 million in aggregate credit is allowed annually, allocated as follows:

- Incremental cost component - $3 million: 20 percent of qualified production costs in excess of the average of the three prior years' costs. The credit is distributed on a pro-rata basis among all credit applicants, although no individual company can receive an annual allocation greater than $300,000;
- MCTD component - $3 million: 5 percent of qualified production costs in excess of $500,000 during the calendar year for work within the Metropolitan Commuter Transportation District (MCTD). This component is also awarded on a pro-rata basis, but with no per-company limitation.
- Outside MCTD component - $1 million: 5 percent of qualified production costs in excess of $200,000 during the calendar year for work outside the MCTD. This component is allocated in the same manner as the MCTD component.

For calendar years beginning on or after January 1, 2012, the allocation is as follows:

- Incremental cost component - $1 million;
- MCTD component - $3 million; and
- Outside MCTD - $3 million. If the amount authorized for this component exceeds claims, the excess my be redirected to the incremental cost component.

Fifty percent of the credit is refundable in the first year, with the remainder fully refundable in the following year. The credit applies to tax years beginning before January 1, 2015.

Security Training Tax Credit

Owners of commercial buildings over 500,000 square feet can receive a $3,000 credit for each security guard employed who has undergone training certified by the New York State Office of Homeland Security (OHS) and is paid a certain minimum wage. The credit is administered by OHS and is refundable.

Fuel Cell Electricity Generating Equipment Credit

Previously, taxpayers could claim a credit equal to qualified fuel cell electric generating equipment expenditures for the tax year in which the equipment was placed in service, starting with costs incurred on or after July 1, 2005.

Qualified expenditures were those associated with the purchase of on-site electricity generation systems utilizing proton exchange membrane fuel cells up to 100 kilowatts of rated capacity. The maximum credit was $1,500 per generating unit.

The SFY 2009-10 budget repealed this credit, effective for tax years beginning on or after January 1, 2009. Taxpayers will be allowed to carry forward any unused credit indefinitely.

Brownfields Tax Credits

Three refundable tax credits are available to taxpayers that remediate a site under the Brownfield Cleanup Program. The credits are effective for tax years beginning on or after April 1, 2005.

Brownfield Redevelopment Tax Credit

The brownfield redevelopment tax credit equals the sum of three credit components:

- site preparation;
- on-site groundwater remediation; and
- tangible property.

The credit equals 12 percent of costs associated with each component. The credit increases by two percent if the site is remediated to a Track 1 cleanup level as determined by the Department of Environmental Conservation (DEC), and by another eight percent if at least one half of the site is located in an Environmental Zone (En-Zone).

An En-Zone is an area designated by the Commissioner of Economic Development and, as of the 2000 census, has a poverty rate of at least 20 percent and an unemployment rate of at least 1¼ times the statewide unemployment rate.

Projects Accepted on or after June 23, 2008

The credit structure differs for projects accepted into the Brownfield Cleanup Program on or after June 23, 2008. The tangible property component is subject to the same rates as above, but with an additional two percent allowed for projects located in a Brownfield Opportunity Area (BOA), as determined by the New York Secretary of State.

The tangible property component is also subject to a cap. The cap equals the lesser of $35 million or three times the costs included in the computation of the site preparation and groundwater cleanup components. The cap rises to $45 million or six times the costs included in the other components if the site is primarily used for manufacturing activities.

The rates for the other two components differ significantly as well:

- 50% for sites approved for unrestricted use;
- 40% for sites for residential use (except Track 4);
- 28% for sites for residential use remediated to Track 4;
- 33% for sites for commercial use (except Track 4);
- 25% for sites for commercial use remediated to Track 4;
- 27% for sites for industrial use (except Track 4);
- 22% for sites for industrial use remediated to Track 4.

Remediated Brownfield Credit for Real Property Taxes

The remediated brownfield credit for real property taxes equals 25 percent of the product of the taxpayer's employment factor (a percentage based on the number of persons employed by the taxpayer on a qualified site) and the taxpayer's eligible real property taxes. If the site is located in an En-Zone the credit increases to 100 percent.

Employment Number Factor Table	
Average number of full-time employees is at least:	Factor:
25 but less than 50	0.25
50 but less than 75	0.50
75 but less than 100	0.75
100	1.00

The credit is limited to the product of the number of full time employees at the qualified site multiplied by $10,000.

Environmental Remediation Insurance Credit

The environmental remediation insurance credit is allowed one time for premiums paid for environmental remediation insurance up to the lesser of $30,000 or 50 percent of the cost of the premiums.

Biofuel Production Credit

Taxpayers are allowed to claim a refundable credit for the production of biofuel in New York State. The credit equals 15 cents per gallon after the production of the first 40,000 gallons per year presented to market.

Biofuel means biodiesel, ethanol, and any other fuel that meets standards approved by the New York State Energy and Research Development Authority.

The credit is capped at $2.5 million per taxpayer per year for up to four consecutive years per biofuel plant. Starting in the 2010 tax year, the cap is imposed at the entity level. The credit sunsets after December 31, 2019.

Conservation Easement Credit

Land that is under a conservation easement is eligible for a refundable credit equal to 25 percent of the taxpayer's school district, county, and city/town real property taxes paid.

The maximum allowable tax credit is $5,000. Also, this credit in combination with any credit based on property taxes cannot exceed the total amount of school district, county, and town real property taxes.

A *conservation easement* is defined as a perpetual and permanent conservation easement that serves to protect open space, biodiversity, or scenic, natural, agricultural, watershed, or historic preservation resources. It must be filed with the DEC.

Clean Heating Fuel Credit

A refundable tax credit is available for the purchase of bioheat used for space heating or hot water production for residential purposes within New York State. The credit is equal to one cent for each percent of biodiesel per gallon of bioheat, up to 20 cents per gallon.

The credit applies to purchases made on or after July 1, 2006, and before July 1, 2007, and on or after January 1, 2008, and before January 1, 2017.

Credit for Rehabilitation of Historic Properties

Taxpayers may claim a tax credit for the rehabilitation of historic properties located in New York State. The amount of the credit is equal to 30 percent of the credit amount allowed under subsection (c)(3) of section 47 of the Internal Revenue Code (IRC) for the same taxable year. The credit is capped at $100,000 and any credit taken must be recaptured if the federal credit upon which it is based is recaptured by the taxpayer. Taxpayers may carry forward unused credit amounts to subsequent tax years.

For taxable years beginning on or after January 1, 2010, the rate is increased to 100 percent of the federal credit and the credit cap is raised to $5 million. The rate and cap revert to pre-2010 tax year levels starting on January 1, 2015.

Credit for Companies Who Provide Transportation to Individuals with Disabilities

Corporations providing a taxicab or livery service can claim a credit equal to the incremental cost associated with the purchase of a handicapped accessible vehicle or the conversion of a conventional vehicle to a handicapped accessible vehicle. The maximum credit is $10,000 per vehicle. The credit can be used to reduce tax to zero and any remaining credit may be carried forward indefinitely. The credit applies to qualifying expenses incurred on or after January 1, 2006 but before January 1, 2011.

A similar credit was enacted that takes effect on January 1, 2011 and expires after December 31, 2016.

Endnotes

1. The SFY2006-07 Executive Budget created two special Empire Zone designations - qualified investment projects (QUIPs) and significant capital investment projects (SCIPs). Taxpayers eligible for these designations are subject to more beneficial EZ-ITC, EZ-EIC, and EZ wage credit refund rules and may qualify for extended benefit periods for the QEZE credits. For more details, see the Changes in 2006-07 State Budget Year section in Appendix B.

2. To be eligible for the alternative fuels credit, property initially must have been qualified for the federal clean-fuel deduction under Internal Revenue Code (IRC) section 179A. Federal legislation converting the deduction to a credit necessitated an amendment to the New York credit. Qualified property must be eligible for the federal credit under IRC section 30C.

3. The 2010-11 Executive Budget made several changes to this credit, including extending eligibility to independent films and adding additional qualification requirements. For complete details, see the Changes in 2010-11 State Budget Year section in Appendix B.

4. Prior to tax years beginning on or after January 1, 2008, the credit rate was 10 percent.

Credit Provisions Effective for Tax Years After the 2009 Tax Liability Year

This section describes the tax credits that were available to taxpayers for periods following the 2009 tax liability year. Although these tax credits are generally available in the year in which this report is produced, final data is not yet available due to filing extensions, fiscal year considerations, and verification and processing procedures.

Credits Effective on or after August 11, 2010

Empire State Film Post-Production Credit

Companies that are ineligible for the Empire State film production tax credit may qualify for the post-production credit. The credit equals 10 percent of qualified post production costs paid in the production of a qualified film at a qualified post production facility, generally a facility in New York State.

To be eligible for the credit, the costs incurred at a qualified post production facility must equal or exceed 75 percent of the total post production costs at any post production facility. The credit is allowed for the taxable year in which the production of the qualified film is completed.

The Governor's Office for Motion Picture and Television Development (MP/TV) can award $7 million in credit annually, with a aggregate limit of $35 million. The allocation is included within the larger film credit allocation. If there are insufficient claims for the post production credit and applications for the film production credit exceed the allotted total, MP/TV may redirect post production credit funds to the film credit.

Applications received after July 24, 2012 are eligible for increased credit rates. The credit now equals 30 percent for work in the Metropolitan Commuter Transportation District (MCTD) and 35 percent for work outside of the MCTD.

Excelsior Jobs Program Act Tax Credits

The Excelsior Jobs Program (EJP) Act replaced the Empire Zones Program as the primary economic development program in New York State. The program is administered by Empire State Development (ESD) and offers four tax credits focused on certain strategic industries. ESD can issue up to $50 million in new credit annually, with a fully effective annual total program cost of $250 million. The credits are first available for tax years beginning in 2011.

<u>Excelsior jobs tax credit</u>

EJP participants are eligible for a credit for each new job created in the state. For participants accepted into the program on or before April 1, 2011, the value of the credit is computed on a marginal wages plus benefits basis as follows:

Wages plus Benefits Range	Credit Percentage
$50,000 or less	5%
$50,001 - $75,000	4%
$75,000+	1.33%

Credit is capped at $5,000 per net new job;
equates to a wages plus benefits base of $187,782

For participants accepted into the program after April 1, 2011, the credit is equal to the gross wages multiplied by 6.85 percent.

<u>Excelsior investment tax credit (EJP-ITC)</u>

The EJP-ITC is a refundable credit equal to 2 percent of the cost of qualified investments. Generally, qualified investments are depreciable property with a useful life of four or more years located in New York State and placed in service on or after the date ESD issues a certificate of eligibility to the taxpayer.

<u>Excelsior research and development tax credit (EJP-R&D)</u>

The refundable EJP-R&D credit is a percentage of the portion of the taxpayer’s federal research and development credit pertaining to New York expenditures. For participants accepted into the program on or before April 1, 2011, the percentage is ten percent. For those accepted into the program after April 1, 2011, the percentage is fifty percent, subject to a limit of three percent of

New York qualified research and development expenditures. Eligible research and development expenditures are defined in Section 41 of the Internal Revenue Code.

Excelsior real property tax credit (EJP-RPTC)

Certain participants in the EJP can earn a refundable RPTC. The credit equals 50 percent of the property taxes assessed and paid in the year immediately prior to a taxpayer's application to the EJP and is gradually phased out. For taxpayers accepted into the program on or before April 1, 2011, the credit is available for five years and is reduced by ten percent a year. For those accepted into the program after April 1, 2011, the credit is available for 10 years and is reduced by five percent a year. Also, the credit base can be increased to account for any property improvements.

Credits Effective On or After March 31, 2011

Economic Transformation and Facilities Redevelopment Program Tax Credit

The Economic Transformation and Facility Redevelopment (ETFR) Program is designed to mitigate the economic consequences in communities where correctional facilities and facilities operated by the Office of Children and Family Services (OCFS) are closed through the period ending March 1, 2012. The program is administered by Empire State Development (ESD) and offers a refundable tax credit with four components to redevelop closed facilities and attract new businesses to the surrounding areas. Participants may claim credit for five consecutive years.

To participate, taxpayers must create at least five net new jobs and maintain a benefit:cost ratio of 10:1.

ETFR Jobs Tax Credit Component
Participants may claim a credit for each net new job created in the State. The credit is equal to the gross wages multiplied by 6.85 percent.

ETFR Investment Tax Credit Component

Participants may claim a credit for qualified investments in the economic transformation area. For investments on the grounds of a closed facility, the credit is 10 percent of the cost of the investment, not to exceed $8 million for the facility. For investments in areas outside of the facility but within the economic transformation area, the credit is 6 percent of the cost of the investment, not to exceed $4 million per entity.

ETFR Job Training Tax Credit Component

Participants may claim a credit for 50 percent of qualified training expenses paid during the year for employees displaced by a facility closure, not to exceed $4,000 per employee per tax year.

ETFR Real Property Tax Credit Component

Participants may claim a credit equal to 50 percent of the real property taxes assessed and paid in the first tax year of the benefit period for property located entirely within the grounds of a closed facility. The percentage decreases by 10 percent each year for the subsequent years of the benefit period. For property located outside of the facility but within the economic transformation area, the credit is equal to 25 percent of the real property taxes assessed and paid decreasing by 5 percent each year for subsequent years of the benefit period.

Credits Effective For Tax Years Beginning On or After January 1, 2012

New York Youth Works Tax Credit

The New York Youth Works Tax Credit Program is designed to provide tax incentives to employers for employing at-risk youth in full-time and part-time positions in tax years 2012 and 2013. The program is administered by the New York State Department of Labor (NYDOL). NYDOL can issue up to $25 million of tax credits under this program.

The refundable credit equals $500 per month for up to six months for each qualified full-time employee or $250 per month for each qualified part-time position of at least 20 hours per week. This portion of the credit is allowed for taxable year 2012. An additional $1,000 per full time employee or $500 per part time employee is available if the qualified employee remains employed for at least an additional six months. This portion of the credit is allowed for taxable years 2012 and 2013.

Empire State Jobs Retention Program Credit

The Empire State Jobs Retention Program is designed to support the retention of strategic businesses and jobs directly impacted by an event that leads to an emergency declaration by the Governor. The program is administered by Empire State Development and the total amount of credit issued is allocated from the funds available for tax credits under the Excelsior Jobs Program Act.

The Program offers a jobs tax credit equal to the product of 6.85 percent and the gross wages paid for each impacted job, defined as a job existing at the relevant location on the day before an event occurs that leads to an emergency declaration. A participant may also be eligible for a 2 percent investment tax credit, but only for costs in excess of costs recovered by insurance. Taxpayers may claim the credit for ten consecutive years.

Beer Production Credit

Registered beer distributors producing 60 million or fewer gallons of beer in New York State in the tax year are eligible to claim a refundable credit for beer production. The credit is limited to first 15.5 million gallons of beer produced in New York during the tax year.

The credit is equal to 14 cents per gallon for the first 500,000 gallons plus 4.5 cents per gallon for each additional gallon over 500,000 (up to 15 million additional gallons) produced in New York in the same tax year. Therefore, the maximum amount of credit allowed to a distributor in a tax year is $745,000. In the case of partnerships and S corporations, the cap is applied at the entity level.

Appendix A: Article 9-A Tax Credit Forms and Credit Ordering Rules

Forms for Credits Available to Taxpayers During the 2009 Tax Year[1]	
Form Number	***Form Name***
CT-38	*Minimum Tax Credit*
CT-40	*Claim for Alternative Fuels Credit*
CT-41	*Claim for Credit for Employment of Persons with Disabilities*
CT-43	*Claim for Special Additional Mortgage Recording Tax Credit*
CT-44	*Claim for Investment Tax Credit for the Financial Services Industry*
CT-46	*Claim for Investment Tax Credit and Employment Incentive Credit*
CT-47	*Claim for Farmers' School Tax Credit*
CT-238	*Claim for Rehabilitation of Historic Properties Credit*
CT-239	*Claim for Credit for Taxicabs and Livery Service Vehicles Accessible to Persons with Disabilities*
CT-241	*Claim for Clean Heating Fuel Credit*
CT-242	*Claim for Conservation Easement Tax Credit*
CT-243	*Claim for Biofuel Production Credit*
CT-246	*Claim for Empire State Commercial Production Credit*
CT-248	*Claim for Empire State Film Production Credit*
CT-249	*Claim for Long-Term Care Insurance Credit*
CT-250	*Credit for Purchase of an Automated External Defibrillator*
CT-259	*Claim for Fuel Cell Electric Generating Equipment Credit*
CT-601/601.1	*Claim for EZ Wage Tax Credit/Claim for ZEA Wage Tax Credit*[2]
CT-602	*Claim for EZ Capital Tax Credit*

Forms for Credits Available to Taxpayers During the 2009 Tax Year (continued)	
Form Number	***Form Name***
CT-603	*Claim for EZ Investment Tax Credit and EZ Employment Incentive Credit*
CT-604	*Claim for QEZE Tax Reduction Credit*[3]
CT-605	*Claim for EZ ITC and EZ EIC for the Financial Services Industry*
CT-606	*Claim for QEZE Credit for Real Property Taxes*[3]
CT-611	*Claim for Brownfield Redevelopment Tax Credit for Qualified sites accepted into the Brownfield Cleanup Program prior to June 23, 2008*
CT-611.1	*Claim for Brownfield Redevelopment Tax Credit For Qualified sites accepted into the Brownfield Cleanup Program on or after June 23, 2008*
CT-612	*Claim for Remediated Brownfield Credit for Real Property Taxes*
CT-613	*Claim for Environmental Remediation Insurance Credit*
CT-631	*Claim for Security Officer Training Tax Credit*
DTF-619	*Claim for QETC Facilities, Operations, and Training Credit*
DTF-621	*Claim for QETC Employment Credit*
DTF-622	*Claim for QETC Capital Tax Credit*
DTF-624	*Claim for Low-Income Housing Credit*
DTF-630	*Claim for Green Building Credit*
Forms for Credits Available to Taxpayers After 2009 Tax Year	
CT-236	*Claim for Credit for Taxicabs and Livery Service Vehicles Accessible to Persons with Disabilities* [6]
CT-261	*Claim for Empire State Film Post-Production Credit*
CT-607	*Claim for Excelsior Jobs Program Tax Credit*
CT-633	*Economic Transformation and Facility Redevelopment Tax Credit*
CT-634	*Empire State Jobs Retention Program Tax Credit*
CT-635	*New York Youth Works Tax Credit*
CT-636	*Beer Production Credit*

Tax Credit Ordering Rules

Taxpayers are instructed to apply tax credits in the following order:

- non-carryover, non-refundable credits;
- Empire Zone/Zone Equivalent Area Wage Tax Credits;
- carryovers of limited duration;
- carryovers of unlimited duration;
- refundable credits.

The appropriate application of multiple credits is illustrated in the following table. Credits that were available after the 2009 tax liability year, and therefore not covered by this report, are shaded.

Noncarryover Credits
Automated external defibrillator credit
Qualified Empire Zone Enterprise (QEZE) tax reduction credit
Mortgage servicing tax credit
Empire Zone (EZ) and Zone Equivalent Area (ZEA) Wage Tax Credits
EZ wage tax credit
EZ wage tax credit for new businesses only[4,5]
ZEA wage tax credit
Carryover Credits of Limited Duration
Investment tax credit (ITC) for financial services
Employment incentive credit (EIC) for the financial services industry
ITC, including retail enterprises and historic barns credit
EIC
Carryover Credits of Unlimited Duration
Alternative minimum tax credit
Alternative fuels credit
Credit for employing individuals with disabilities
Special additional mortgage recording tax credit
Credit for Rehabilitation of historic properties
Credit for taxicabs and livery service vehicles accessible to persons with disabilities
Long-term care insurance credit
Fuel cell electricity generating equipment credit
EZ capital tax credit
EZ-ITC[5]
EZ-EIC[5]
EZ-ITC for the financial services industry[5]
EZ-EIC for the financial services industry[5]
QETC capital tax credit
Low-income housing credit
Green building credit

Refundable Credits
Special additional mortgage recording tax credit for residential mortgages only
ITC for the financial services industry for new businesses only
ITC, including retail enterprises and historic barns credit, for new businesses only
Farmers' school tax credit
Clean heating fuel credit (available for purchases occurring on/after 7/1/06 and before 7/1/07 and on/after 1/1/08 and before 1/1/17)
Conservation easement tax credit
Biofuel production credit
Empire State commercial production credit
Empire State film production credit
EZ-ITC and EZ-EIC for qualified or new businesses only
QEZE real property tax credit
EZ-ITC and EZ-ITC for the financial services industry for certain businesses only[5]
Brownfields tax credits
Security training tax credit
QETC facilities, operations, and training credit
QETC employment credit
Credit for taxicabs and livery services accessible to individuals with disabilities [6]
Empire State film post-production credit
Excelsior Jobs Program tax credits
Economic Transformation and Facility Redevelopment Program tax credit
New York Youth Works Program tax credit
Empire State Jobs Retention Program tax credit
Beer production credit

Endnotes

1. The amount of the credit for servicing certain mortgages, which is available only to mortgage bankers, is reported on a letter from the New York State Mortgage Association to the taxpayer.

2. Because taxpayers can no longer earn ZEA wage tax credit, the CT-601.1 form is only used to report amounts of credit claimed from prior periods, amounts used in the current period, and amounts carried forward for use in future periods.

3. Corporate partners of a QEZE complete form CT-604-CP, *Claim for QEZE Credit for Real Property Taxes and QEZE Tax Reduction Credit for Corporate Partners.*

4. Despite the fact that the EZ wage tax credit is refundable to new businesses, the Tax Law requires the credit to be applied prior to carryover-eligible credits or other refundable credits.

5. Legislation enacted as part of the 2006-07 Executive Budget created two special EZ project designations: qualified investment project (QUIP) and significant capital investment project (SCIP). Owners of QUIPs or SCIPs may refund 50 percent of excess EZ wage tax credit, EZ investment tax credit, and EZ employment incentive credit attributable to activity occurring at the project.

6. A similar credit existed for tax years beginning on or after January 1, 2006 and before January 1, 2011.

Appendix B: History of Legislative Actions Impacting Article 9-A Tax Credits

This appendix provides a brief summary of changes to tax credits that were contained in state budgets or as separate legislation. Each year, the Office of Tax Policy Analysis publishes a *Summary of Tax Provisions* which offers a more detailed discussion of budget and tax credit provisions. Also, the Tax Department typically publishes an annual Technical Services Bureau memorandum (TSB-M) that summarizes changes to the Tax Law. For changes before the 2000-01 State Budget Year, please see the 2006 report.

Changes in 2000-01 State Budget Year

- *“Empire Zones Program Act”*

The “Empire Zones Program Act” changed the term, “Economic Development Zone” to “Empire Zone” (EZ) and created two new credits. Businesses that meet an annual employment test can become certified as Qualified Empire Zone Enterprises (QEZEs) and receive a credit for real property taxes and a tax reduction credit. The credits apply to taxable years beginning on or after January 1, 2001.

- *Empire Zone Employment Incentive Credit and the Alternative Minimum Tax*

The budget amended the EZ employment incentive credit, allowing it to be used against the alternative minimum tax base. The change was effective for tax years beginning on or after January 1, 2001.

- *Green Building Credit*

The green building credit was enacted. The total credit pool available is $25 million over 10 years, and the Department of Environmental Conservation determines the amount of credit available to individual taxpayers. The credits apply to costs incurred on or after June 1, 1999, for property placed in service or that has received a final certificate of occupancy in tax years beginning on or after January 1, 2001.

- *Industrial or Manufacturing Business Credit*

The industrial or manufacturing business (IMB) credit was enacted, effective for taxable years ending on or after January 1, 2000.

- *Merger and Acquisition Retroactive Investment Tax Credit*

The budget provided for the law preventing the unfair elimination of ITC for companies involved in mergers and acquisitions to apply retroactively to tax years beginning on or after January 1, 1997. Amended returns could not be filed prior to April 1, 2001.

- *Alternative Fuels Credit Extension*

Special provisions under Article 9-A relating to the sale or lease of electric vehicles or clean fuel vehicle property installed in motor vehicles to governmental entities were extended to include taxable years beginning in 2002 and 2003.

- *Low-Income Housing Credit*

The budget established the “New York State Low-Income Housing Tax Credit Program.” The credit is administered by the New York State Division of Housing and Community Renewal (DHCR) and is effective for tax years beginning on or after January 1, 2000, with respect to commitments for construction agreed upon on or after May 15, 2000.

- *Investment Tax Credit Transfer*

This provision allowed taxpayers to transfer their ITC to a transferee corporation in a qualified, stock-for-assets spinoff transaction. The credit transfer is allowed for ITC property transferred as part of the spinoff, where recapture or limitation of the ITC would otherwise be required. If both parties jointly elect, the transferor would not be required to recapture its ITC on the transferred property. The transferee would then acquire the transferor's unused ITC. If they do not jointly elect the first option, the transferor would be required to recapture its ITC. The transferee would obtain the recaptured amount as its credit.

Under either option, the transferee would treat the transferor's holding period and original cost as if it were its own for purposes of possible recapture. If the transferred credit exceeds the transferee's tax, the transferee would be entitled to a refund in the year of the credit. The credit allowed to the transferee is available in four equal portions beginning in the second succeeding taxable year following the transaction year. This provision applies to transfers of property occurring on or after January 1, 1999, in connection with qualified transactions completed prior to June 1, 1999, where the transfers occur in a taxable year of the transferee of the property which began in 1999.

- *Long-term care insurance credit*

The long-term care insurance credit was enacted, effective for tax years beginning on or after January 1, 2002.

Changes in 2001-02 State Budget Year

- *Empire Zone program expansion*

Eight new Empire Zones were authorized.

Changes in 2002-03 State Budget Year

- *Special Investment Tax Credit Provisions*

Special provisions were enacted for dealing with property damaged or destroyed in the September 11th terrorist attacks. Ordinarily, a taxpayer would be required to recapture the ITC in the year in which such property ceases to be in qualified use, but in this instance, such recapture may be deferred to the next taxable year. If, in that year, a taxpayer retains a significant number of employees, no recapture is required. Also, no recapture is required if a taxpayer lost more than 50 percent of its employees. If a taxpayer elects not to defer recapture and purchases replacement property, the ITC base is determined without regard to the normal required basis reduction.

- *Investment Tax Credit for the Financial Services Industry Extended*

The sunset date for the ITC for the financial services industry was extended from October 1, 2003 to October 1, 2008. This provision applies to property placed in service before October 1, 2008.

- *Low-Income Housing Credit Doubled*

The statewide aggregate credit limit for the low-income housing tax credit was doubled from $2 million to $4 million.

- *Empire Zone Technical Corrections*

The EZ program was amended to clarify certain provisions and implement new components for several credit calculations. The changes fall into three main categories:

<u>New Business Definition</u>
The five-year new business period concept was clarified and simplified for the purpose of claiming refunds of credits. The new language clarified that a new business can receive an EZ-ITC refund in each of its first five years.

<u>QEZE Technical Corrections</u>
Technical issues were addressed regarding: the interplay of the effective date of the QEZE program with the General Municipal Law (GML) statutory provisions; the real property tax credit calculation; the treatment of payments in lieu of taxes; the employment test; and the definition of "employment number."

The effective date correction allows a certified QEZE to continue to receive QEZE benefits for the full term to which they are entitled, even in the event that the GML provisions authorizing the QEZE program were not extended past their expiration date of July 31, 2004.

The real property tax credit calculation was amended to include a limitation which is the greater of the employment increase limitation or the capital investment limitation. It also incorporated a recapture provision for instances where the amount of property taxes used in the property tax factor are reduced.

The corrections also codified Tax Department policy that the term *eligible real property taxes* included certain payments in lieu of taxes (PILOT payments). However, the amendment included a requirement that the PILOT payments be made pursuant to a written agreement approved by both the New York State Department of Economic Development and Office of Real Property Services as satisfying generally accepted and recognized standards of real property tax appraisals.

The employment test was modified so that: if a QEZE is certified in at least one EZ, all qualified employees working in any EZ will be considered employees for purposes of the employment test, regardless of whether the QEZE is certified in all of the EZs; for QEZEs that have a base period of zero years and an employment number in EZs greater than zero, the employment test will be met only if the QEZE is a new business; a taxpayer located in an EZ as a result of a boundary revision or in a newly designated EZ, will calculate the test as if they were always in that location and as if that location was always included in that EZ; and when a business enterprise relocates to an EZ from a business incubator facility, the test will be calculated as if the business enterprise was located in the EZ during its base period.

The term "employment number" was modified to exclude any individual who was employed in the preceding sixty months by a related person to the QEZE (as related person is defined in IRC section 465(b)(3)(c)).

<u>EZ Wage Tax Credit Amendments</u>
The new language specified that, in order for a related business to claim a wage tax credit, the employee for which the credit is being claimed must not have been employed by the related business within the preceding 60 months. This requirement can be waived if the individual had never previously generated a wage tax credit. The budget also clarified that the wage tax credit allowance period is five years from the date of original certification.

- *Empire Zone Expansion*

Ten new EZs were authorized, bringing the total number of EZs across the State to 72. Four zones were previously approved but not designated, while of the six new zones, four will contain two square miles, and two will contain one square mile. Also, this provision required that 75 percent of all unused zone acreage designated after January 1, 2003, must be limited to three primary non-contiguous areas. The remaining 25 percent of "floater" acreage can only be designated outside of three primary areas if certain specific job creation criteria are met.

Changes in 2003-04 State Budget Year

There were no tax credit provisions enacted or affected by the 2003-04 State Budget. Separate legislation, Part H of Chapter 1 of the Laws of 2003, enacted the Brownfields tax credits.

- *Brownfields Tax Credit Program*

The brownfields tax credit program consists of three components:

Brownfield Redevelopment Tax Credit
The refundable credit equals 12 percent of the expenses related to site remediation, tangible personal property (i.e. structures) development, and groundwater remediation. A two percent bonus rate applies if the cleanup achieves a "Track 1" standard, established by the Department of Environmental Conservation (DEC). An eight percent bonus rate applies if the project is in an "En-Zone," defined as an area with a poverty rate of at least 20 percent and an unemployment rate of at least 1.25 times the statewide rate.

Remediated Brownfield Credit for Real Property Taxes
The refundable credit is based on the number of full-time employees hired and property taxes paid. To qualify, the taxpayer must hire at least 25 employees. The credit is capped at 25 percent of property taxes, but if the property is located in an En-Zone, the cap is removed.

Remediation Insurance Credit
The refundable credit is available only in the year in which the certificate of remediation is issued by DEC. The credit equals the lesser of $30,000 or 50 percent of the premiums paid by the taxpayer for environmental remediation insurance.

Changes in 2004-05 State Budget Year

- *Empire State Film Production Credit*

The budget established a new tax credit for film production activity in New York State. If the taxpayer satisfies certain criteria regarding a threshold level of activity in the State, the credit equals 10 percent of qualified production costs incurred in the production of films and television shows. Fifty percent of excess credit is refundable, and any excess credit carried forward is fully refundable in the second year. The aggregate amount of credit available in any calendar year is $25 million. The credit is administered by the Governor's Motion Picture Office. The credit sunsets in four years.

- *Low-Income Housing Credit Increased*

The statewide aggregate credit limit for the low-income housing tax credit was increased from $4 million to $6 million.

- *Alternative Fuels Credit Extension*

The alternative fuels credit was extended for vehicles and property placed in service in taxable years beginning on or after January 1, 2004. The credit sunsets for taxable years beginning after December 31, 2004.

- *QETC Credits Expanded*

The QETC employment and capital tax credits were expanded to cover businesses engaged in biotechnology.

- *Empire Zone Extension and Clarification*

The budget extended the Empire Zones program to March 31, 2005.

A separate law, Chapter 209 of the Laws of 2004, was enacted which clarified that taxpayers who are certified before the expiration of the EZ program would be allowed to continue to claim the benefits to which they are entitled for the full benefit period.

- *Long-Term Care Insurance Credit Doubled*

Health-related budget legislation (Chapter 58 of the Laws of 2004) increased the credit for long-term care insurance from 10 to 20 percent of premiums paid, effective for tax years beginning after 2003.

Changes in 2005-06 State Budget Year

- *Empire Zone/Qualified Empire Zone Enterprise Reform and Extension*

Part W of Chapter 61, as amended by Part A of Chapter 63, of the Laws of 2005 contained significant reforms to the Empire Zones (EZ)/Qualified Empire Zone Enterprise (QEZE) program.

Changes to the zone boundaries affect all taxpayers, while changes to eligibility and benefits apply to taxpayers certified on or after April 1, 2005. The entire program was extended to June 30, 2011.

Zone Structure

- Zones will now be designated as either Investment Zones (IZ) or Development Zones (DZ). Generally, IZs encompass economically distressed areas and DZs are "county zones."
- The zone boundaries will be redrawn and will attempt to encompass as much of the old boundaries as possible.
- IZs may only contain three areas; DZs may only contain six areas. However, if the DZ is located in more than one county, it may contain 12 areas.
- Both IZs and DZs can apply to have one additional area within their borders.
- DZs can apply to have three areas designated as IZs.
- Current beneficiaries that cannot be included in the redrawn boundaries will continue to be eligible for their benefits until they are decertified.
- Certain projects can be located outside of the designated areas within IZs and DZs. These include: manufacturers who create 50 or more jobs; agri-businesses; hi-tech or biotech companies making a $10 million capital investment and creating 20 or more jobs; and financial or insurance services firms or distribution centers creating 300 or more jobs.
- Twelve new zones will be created. Each of the 11 counties that do not currently have a zone will be eligible to apply for one, as will Chinatown.

Taxpayer Eligibility

- For purposes of the QEZE employment test, taxpayers will include their employees within EZs in their statewide employment number.
- The number of employees in the current tax year must exceed the number in the base period.
- If a corporation has zero base period employment or a base period of zero, they must qualify as a new business.
- The base period is shortened from five years to four years.
- The QEZE employment number can include employees from a related person only if they were employed within New York State within the preceding 60 months.
- Corporations identical in ownership and operation can qualify as a new business if they are expanding operations in a different county. The benefit period is the same for both QEZEs however.

- Businesses certified prior to August 1, 2002 with zero base years or zero base period employment will not be deemed new businesses unless they were formed for a valid business purpose and not solely to gain Empire Zone benefits.

<u>Taxpayer Benefits</u>

- The benefit period is shortened from 15 years to 10 years.
- The QEZE real property tax credit calculation is amended to be 25 percent of the product of the wages and health and retirement benefits of net new employees, up to $10,000 per employee. Wages in excess of $40,000 will not be counted.
- If a taxpayer is located in a DZ, they are subject to an additional employment increase factor which will reduce the credit. The factor is scaled to reward greater employment increases. Manufacturers will not be subject to this factor, regardless of location.
- The credit limitation is amended to be the greater of the credit calculation or the capital investment amount.
- For QEZEs in an IZ and QEZE manufacturers, the limitation is the existing credit limitation. For QEZEs in a DZ, the limitation is the product of 10 percent of the cost of construction, expansion, or rehabilitation, as opposed to acquisition, of real property owned by the QEZE and located in the EZ, and the percent of property occupied and used by the QEZE or a related person.
- The credit is further limited to the amount of real property taxes paid.
- Real property taxes will include property taxes paid by a lessee under certain circumstances.
- The language regarding PILOTs is amended to restrict the amount of the PILOT for purposes of the credit to the product of the taxpayer’s basis in the property and the county full value tax rate.

<u>Agricultural Co-operatives</u>

- The bill adds a fixed dollar minimum limitation for agricultural co-ops for the QEZE real property tax credit.
- The EZ investment tax credit, employment incentive credit, and wage tax credit are extended to agricultural co-ops.
- These changes are retroactive to 2004.

<u>EZ Wage Tax Credit</u>

- Honorably discharged veterans are added to the list of targeted employees.
- If a taxpayer is located in an IZ, the credit is increased by $500 per each employee paid over $40,000 in wages.

EZ Capital Tax Credit

- The credit for investments in or contributions to EZ capital corporations is eliminated.

- *QETC Facilities, Operations, and Training Credit*

A new qualified emerging technology company credit was created for certain QETCs. To qualify, a QETC must have fewer than 101 employees, 75 percent of which are employed in New York State. They must also have a ratio of research and development funds to net sales which equals or exceeds six percent. Finally, gross revenues may not exceed $20 million for the tax year immediately preceding the year in which the taxpayer is claiming the credit. A taxpayer may claim the credit for four consecutive years. However, if relocating from an academic incubator facility, a taxpayer is entitled to one additional year. The credit is capped at $250,000 per taxpayer per year and is refundable. No credit is allowed for taxable years beginning on or after January 1, 2012.

The credit consists of three components:

Research and Development Property

Research and development property is eligible for an 18 percent credit rate. Qualified property is the same as that eligible for the investment tax credit, although the base is expanded to specifically include property used for testing or inspection, or costs associated with quality control, research, development, fees for use of facilities or processes for such activities, or production or distribution of materials and products resulting from the research.

Research Expenses

Qualified research expenses are eligible for a 9 percent credit rate. Qualified expenses include expenses associated with in-house research and processes, and costs associated with the dissemination of research and development results and the patent process.

High-technology Training Expenditures

A taxpayer may take a credit equal to qualified training expenses, up to $4,000 per employee per year. Training includes courses related to the activities of the QETC completed at a post-secondary college or university located in New York State. Training expenses include items such as costs of tuition and fees, software, and textbooks.

- *Green Buildings Tax Credit Period Two*

A second allocation of green buildings tax credits was authorized.

An aggregate of $25 million in credit component certificates may be issued by the DEC in tax years beginning in 2005 through 2009. The amount on any one certificate is limited to $2 million, but a taxpayer may obtain multiple certificates if they are an owner or tenant of more than one qualified building. The aggregate credit components of $25 million are applicable for years beginning in 2006 and ending in 2014. The budget also addressed circumstances where a taxpayer is unable to claim the credit they have been allocated. DEC may reallocate such credit either to an existing qualified recipient or to a new qualified applicant, provided the reallocation does not exceed the $2 million limit for period two.

- *Low-Income Housing Credit Increased*

The statewide aggregate credit limit for the low-income housing tax credit was increased from $6 million to $8 million.

- *Alternative Fuels Credit*

Chapter 310 of the Laws of 2005 extended the alternative fuels credit to cover only clean-fuel vehicle refueling property placed in service during the taxable year. The term "clean-fuel" means natural gas, liquefied petroleum gas, hydrogen, electricity, and any other fuel which is at least 85 percent, singly or in combination, methanol, ethanol, any other alcohol, or ether.

- *Investment Tax Credit Extended to Film Production Facilities*

Chapter 393 of the Laws of 2005 extended the ITC to property owned by a qualified film production facility and used by another for film production activity. For the taxpayer to qualify, they must provide three or more services to a qualified film production company using the facility, such as studio lighting grids, lighting and grip equipment, multi-line phone service, broadband information technology access, industrial scale electrical capacity, food services, security services, and heating, ventilation and air conditioning.

- *Security Training Tax Credit Enacted*

Chapter 537 of the Laws of 2005 created a tax credit for owners of buildings over 500,000 square feet who employ qualified security guards. The credit is $3,000 for each guard who has undergone training certified by the New York State Office of Homeland Security (OHS) and is paid a certain minimum wage. The credit is administered by OHS and is refundable.

- *Fuel Cell Electricity Generating Equipment Credit*

The tax credit for fuel cell electricity generating equipment available under the personal income tax is extended to the corporate franchise tax. Effective for costs incurred on or after July 1, 2005, a taxpayer may claim a credit equal to qualified fuel cell electric generating equipment expenditures. Qualified expenditures are associated with the purchase of on-site electricity generation systems utilizing proton exchange membrane fuel cells up to 100 kilowatts of rated capacity. The maximum credit is $1,500 per generating unit and the taxpayer may carryforward unused credit indefinitely.

Changes in 2006-07 State Budget Year

- *Enhanced Farmers' School Tax Credit*

The budget increased the base acreage from 250 to 350 acres, raised the income phase-out range from $100,000-$150,000 to $200,000-$300,000, included Christmas tree farms as eligible for the credit, and allowed the flow through of income of corporate farms to shareholders.

- *Land Conservation Easement Credit*

The budget created a refundable tax credit equal to 25 percent of the taxpayer's school district, county and city/town real property taxes paid on land that is under a conservation easement held by a public or private conservation agency. The maximum allowable tax credit is $5,000.

- *Empire Zone (EZ)/Qualified Empire Zone Enterprise (QEZE) Program Amendments*

The budget created several new taxpayer designations for purposes of the EZ/QEZE benefits and made additional technical changes to the program. The designations require certification by Empire State Development.

New Designations

- Qualified Investment Projects (QUIPs)
  Owners of a qualified investment project may choose between the date of certification of the business enterprise at the location of the QUIP or the date when property constituting the QUIP is first placed in service as the starting date of their benefit period. A QUIP is a project located in an EZ at which 500 or more new jobs will be created and which will consist of tangible personal property and other tangible property, including buildings and structural components of buildings, with a basis of $750 million or more. Also, the owner of the QUIP may not employ more than 200 persons in New York State at the time the project commences.

- Significant Capital Investment Projects (SCIPs)
  Owners of a significant capital investment project can receive a ten year benefit period extension, starting with the tax year in which the property comprising the SCIP investment is placed in service. The original ten year benefit period and the extension are considered one continuous benefit period for purposes of the QEZE credits. A SCIP is a project located in an EZ which will be either a newly constructed facility or an addition or expansion of a QUIP consisting of tangible personal property and other tangible property, including buildings and structural components of buildings, with a basis of $750 million or more. In addition, the SCIP must be constructed after the basis of the QUIP equals or exceeds $750 million and will create 500 or more new jobs.

- New Business Designation
  Taxpayers are deemed new if they meet four criteria. They must be approved as a QUIP or SCIP, have a base period of zero years, place property, or a project which includes such property, in service which comprises a QUIP or SCIP, and be certified by December 31, 2007.

In addition, owners of QUIPs and SCIPs may receive a refund of 50 percent of excess EZ-ITC, EZ wage tax credit, and EZ-EIC. Generally, the first two credits are only refundable to new businesses and the EZ-EIC is non-refundable. Taxpayers claiming the EZ-ITC and EZ-EIC will be allowed the refunds for a maximum of ten taxable years with respect to the QUIP and SCIP, starting with the first taxable year in which property comprising such project is placed in service.

- Clean Energy Research and Development Enterprises (CERDEs)
  This new designation classifies a CERDE as a regionally significant project which allows it to be located outside of the EZ's investment or development zone boundaries. A CERDE is defined as "any electric generating facility that used pulverized coal technology, circulating fluidized bed technology or integrated gasification combined cycle technology and that is capable of capturing carbon dioxide for sequestration or capable of being retrofitted to capture carbon dioxide for sequestration."

- Clean Energy Enterprises (CEEs)
  A business designated as a CEE may be located anywhere in the state and will compute its benefits as if located in an investment zone. A CEE is defined as "any business primarily engaged in research, development or manufacturing of renewable energy or energy efficiency technologies or products; provided, however, that an initial clean coal electric generating facility capable of capturing carbon dioxide for sequestration or capable of being retrofitted to capture carbon dioxide for sequestration." A business is primarily engaged in research, development or manufacturing of renewable energy or energy efficiency technologies or products if eighty percent or more of its property in New York is utilized for such purposes.

Technical Changes

- QEZE Employment Number Definition
  For taxpayers meeting certain criteria in their first taxable year, the employment number will not require employment full-time for at least one-half of the taxable year. Instead, the employment number will be computed using full-time employment on the last day of the taxable year. The criteria are:
  1. the taxpayer acquired real or tangible personal property during its first taxable year from an unrelated entity;
  2. the first taxable year is a short taxable year of not more than seven months; and
  3. the number of individuals employed full-time on the last day of the first taxable year shall be at least 190 and substantially all of the individuals must have been

previously employed by the entity from whom such enterprise purchased its assets.

- <u>EZ Wage Tax Credit Wages Paid Requirement</u>
  The credit requirement that an employee must receive EZ wages for more than half the taxable year will not apply in the first taxable year under certain criteria. In these instances, the credit will be computed by using the number of individuals employed full time on the last day of the first taxable year. The criteria are:
  1. the taxpayer acquired real or tangible personal property during its first taxable year from an unrelated entity;
  2. the first taxable year is a short taxable year of not more than seven months; and
  3. the number of individuals employed full-time on the last day of the first taxable year shall be at least 190 and substantially all of the individuals must have been previously employed by the entity from whom such enterprise purchased its assets.

- <u>QEZE Employment Test and Real Property Tax Credit Calculations</u>
  The employment test and real property tax credit calculations for QEZEs certified on or after April 1, 2005 were extended to QEZEs certified between August 1, 2002 and March 31, 2005 that conduct operations on real property that they own or lease that is both located within an EZ and is subject to a brownfield site cleanup credit agreement executed prior to January 1, 2006.

- <u>*EZ Designation Acceleration*</u>
  Finally, the schedule for the designations of Empire Zones was accelerated. Originally, 12 new zones were to be phased in equally over a four-year period. Now, the 4th year's allotment is moved to year two, so that three EZs will be designated in year one, six in year two, and three in year three.

- *Biofuel Production Credit*

The budget created a refundable credit for the production of biofuel. The credit is equal to 15 cents per gallon after the production of the first 40,000 gallons per year presented to market. The credit is capped at $2.5 million per taxpayer per year for up to four consecutive years per plant. The credit sunsets after December 31, 2012.

- *Empire State Film Production Credit Amendments*

The film credit was amended to increase the annual credit cap and extend the sunset date of the credit. The cap was raised from $25 million annually to $60 million annually in 2006 through 2011. The original sunset date was extended from four years after enactment of the original bill (2008) to December 31, 2011.

- *Empire State Commercial Production Credit*

A new credit was created to encourage production of commercials in New York State. The Governor's Office for Motion Picture and Television Development will administer the credit, determining credit eligibility and allocating the $7 million aggregate credit amount allowed annually. The credit consists of three components:

1. *Incremental cost component* - $3 million: 20 percent of qualified production costs in excess of the average of the three prior years' costs. The credit is distributed on a pro-rata basis among all credit applicants, although no individual company shall receive an annual allocation greater than $300,000.
2. *MCTD component* - $3 million: 5 percent of qualified production costs in excess of $500,000 during the calendar year for work within the Metropolitan Commuter Transportation District (MCTD). This component is also awarded on a pro-rata basis, but with no per-company limitation.
3. *Outside MCTD component* - $1 million: 5 percent of qualified production costs in excess of $200,000 during the calendar year for work outside the MCTD. This component is allocated in the same manner as the MCTD component.

Fifty percent of the credit is refundable, with the remainder fully refundable in the following year. The credit sunsets on December 31, 2011.

- *Extension of Environmental Zones (EN-Zones) for the Brownfield Redevelopment Tax Credit and the Tax Credit for Remediated Brownfields*

Taxpayers claiming brownfields credits on sites located in EN-Zones can receive enhanced credit rates. For an area to be designated as an EN-Zone, it must meet one of two tests. It must have a poverty rate of at least 20 percent and an unemployment rate of at least 1.25 times the statewide rate, or have a poverty rate of at least two times the poverty rate for the county in which the area is located. Under the latter provision, the site also had to be the subject of a brownfield site cleanup agreement pursuant to section 27-1409 of the Environmental Conservation Law entered into prior to a certain date. The budget extended that date from September 1, 2006 to September 1, 2010.

- *Low-income Housing Credit*

The budget increased the statewide, aggregate credit limit for the low-income housing credit from $8 million to $12 million. The New York State low income housing tax credit program is based on the existing federal program and requires an agreement between the taxpayer and the Commissioner of the New York State Division of Housing and Community Renewal for a long-term commitment to low-income housing. The amount of the credit depends on the applicable percentage of the qualified basis of each low-income building. The credit amount allocated is allowed as a credit against tax for ten tax years. Unused credits may be carried forward indefinitely. The total amount of credit available is $12 million each year

- *Alternative Fuel Vehicle Refueling Property Technical Fix*

The budget updated Internal Revenue Code references in the alternative fuel vehicle refueling property credit statute to conform to federal changes. Previously, the credit was tied to a federal deduction, but the deduction was changed to a federal tax credit this past year. The budget also extended the sunset date of the credit from July 26, 2008 to December 31, 2010.

- *Handicapped Accessible Taxicabs and Livery Service Vehicles Credit*

Chapter 522 of the Laws of 2006 created a credit for corporations who provide a taxicab or livery service. The credit is equal to the incremental cost associated with the purchase of a handicapped accessible vehicle or the conversion of a conventional vehicle to a handicapped accessible vehicle, up to $10,000 per vehicle.

- *Clean Heating Fuel Credit*

Chapter 35 of the Laws of 2006 created a refundable tax credit for the purchase of bioheat used for space heating or hot water production for residential purposes within New York State. The credit is equal to one cent for each percent of biodiesel per gallon of bioheat purchased on or after July 1, 2006, and before July 1, 2007. The credit is only available in tax years beginning in 2006 and 2007. The amount of the credit may not exceed 20 cents per gallon.

- *Credit for Rehabilitation of Historic Properties*

Chapter 547 of the Laws of 2006 created a tax credit for the rehabilitation of historic properties located in New York State. The amount of the credit is equal to 30 percent of the credit amount allowed under subsection (c)(3) of section 47 of the federal Internal Revenue Code (IRC) for the same taxable year. The credit is capped at $100,000.

- *Brownfield Redevelopment Tax Credit Expansion*

Chapter 420 of the Laws of 2006 expanded the tangible property credit component of the brownfield redevelopment tax credit. The chapter amended the definition of "qualified tangible property" to allow the credit to apply to co-operative and condominium units.

Changes in 2007-08 State Budget Year

- *Low-income Housing Credit*

The budget increased the statewide, aggregate credit limit for the low-income housing credit from $12 million to $16 million. The amount of the credit depends on the applicable percentage of the qualified basis of each low-income building. The credit amount allocated is allowed as a credit against tax for ten tax years.

Changes in 2008-09 State Budget Year

- *Empire State Film Production Credit*

The budget amended the Empire State film production credit to increase the credit rate, accelerate the credit refund, and increase the statutory credit allotment.

The credit rate was increased from 10 percent to 30 percent of qualified production costs. The credit refund language was amended to allow the entire amount of excess credit to be refunded in one year, instead of across two tax years. Finally, the total amount of credit that can be awarded by the Governor's Office for Motion Picture and Television Development was increased from $60 million annually in 2008 through 2011 to $65 million in 2008, $75 million in 2009, $85 million in 2010, $90 million in 2011 and 2012, and $110 million in 2013.

- *Empire Zones*

The budget made two amendments to the Empire Zones (EZ) Program pertaining to qualified investment projects (QUIPs) and significant capital investment projects (SCIPs).

<u>EZ Wage Tax Credit</u> - QUIPs and SCIPs will be able to delay the start of the five-year period in which to claim the EZ wage tax credit. The five-year period will begin in the first year of the QUIP's or SCIP's QEZE tax benefit period. Generally, the five-year period begins in the first year a taxpayer pays EZ wages. *EZ wages* are defined as wages paid by a certified taxpayer for fulltime employment (excluding general executive officers) during the tax year in an area designated or previously designated as an EZ, if the employment is in a job created in the EZ during the period of its designation as an EZ, or within four years of the expiration of the EZ designation.

<u>*QUIP/SCIP Designation Deadlines*</u> - The deadline to submit applications to Empire State Development to become certified as the owner of a QUIP was extended from December 31, 2007 to December 31, 2009. Applications to become certified as the owner of a SCIP submitted by an entity previously qualified as a QUIP, or a related person, must be submitted by June 30, 2011.

- *Low-Income Housing Credit*

The budget increased the statewide aggregate credit limit for the low-income housing credit from $16 million to $20 million.

- *Financial Services ITC*

The budget extended the sunset date for the financial services investment tax credit (ITC) from October 1, 2008 to October 1, 2011.

Chapter 637 of the Laws of 2008 made further changes to the credit. Property purchased by a taxpayer affiliated with a registered investment advisor, or property leased to an affiliated registered investment advisor will be eligible for the credit if the property is principally used in qualifying activities.

Also, to determine if the property is principally used in qualifying uses, the uses by a taxpayer and its affiliated brokers, dealers, and registered investment advisors may be aggregated.

Finally, Chapter 637 addressed the employment eligibility test that is a prerequisite to claiming the credit. The 80 percent current-year formula and the 95 percent three-year back-office formula that were established by Tax Department guidance memoranda were codified. Additionally, a new formula - the 90 percent end-of-year test was created. This test requires the number of New York State employees in the current year to be equal to or greater than 90 percent of the employees on:

a) December 31, 1998, for calendar year filers subject to tax in 1998 or;
b) the last day of the first tax year ending after December 31, 1998.

- *Credit for Taxicabs and Livery Service Vehicles Accessible to Persons with Disabilities*

The budget extended the credit for two years. The credit is now available through December 31, 2010.

- *Clean Heating Fuel Credit*

The budget reinstated the tax credit for the purchase of bioheat for residential customers. The credit expired June 30, 2007, and was reinstated for period January 1, 2008 through December 31, 2011.

- *Brownfield Tax Credits*

Chapter 390 of the Laws of 2008 made several changes to the brownfield redevelopment tax credit, effective for taxpayers accepted by the Department of Environmental Conservation into the Brownfield Cleanup Program (BCP) after June 23, 2008.

First, the tangible property credit component was limited to the lesser of $35 million or three times the costs included in the site preparation and on-site groundwater remediation components. For sites that will be used primarily for manufacturing or the activities of a qualified emerging technology company, the limit is the lesser of $45 million or six times the costs included in the calculation of the other two credit components.

Also, the basis of property eligible for the tangible property component must be adjusted to exclude any cost of acquisition when a Certificate of Completion is transferred or sold if the previous taxpayer already claimed credit on such property.

Finally, an additional 2 percent bonus credit rate was created for sites located in a Brownfield Opportunity Area and developed accordingly.

Chapter 390 also amended the credit rates under the site preparation and on-site groundwater remediation credit components for sites accepted into the BCP after June 23, 2008. The new rates range from 22 percent to 50 percent of qualified costs.

Finally, two new reports were mandated. The Tax Department must publish an annual report listing taxpayers claiming any of the brownfield tax credits, the credit amounts, and the respective brownfield sites. Developers of brownfield sites must file an annual report with the Tax Department containing actual or estimated amounts of state and local taxes generated by the activities of businesses and employees operating on the site.

Changes in 2009-10 State Budget Year

- *Tax Credit Repeal*

The budget repealed two tax credits: the fuel cell electric generating equipment credit and the transportation improvement contribution credit. Taxpayers will no longer be able to earn these tax credits for tax years beginning on or after January 1, 2009.

- *Empire State Film Production Credit*

The budget provided an additional authorization of $350 million in Empire State film production credit for 2009. The credit is administered by the Governor's Office for Motion Picture and Television Development. Also, effective for taxable years beginning on or after January 1, 2009, the utilization of the credit is spread across several years, depending on the size of the credit:

If the amount of the credit is:	it is claimed:
under $1 million	in the taxable year in which the film is completed
at least $1 million but less than $5 million	over a two year period, with half claimed each year
at least $5 million	over a three year period, with one-third claimed each year

- *Low-Income Housing Credit*

The budget increased the statewide aggregate credit limit for the low-income housing credit from $20 million to $24 million. The credit is administered by the Division of Housing and Community Renewal (DHCR). In addition, to conform with a recent change to the federal low-income housing credit, the budget eliminated the security bond in lieu of recapture option. Previously, taxpayers disposing of an interest in a low-income housing building were not required to recapture the credit immediately. Instead, they could post a bond intended to satisfy any liability stemming from credit recapture in the event the building fell out of compliance as low-income housing in the future. As a result of the change, taxpayers will no longer post a bond, but recapture is deferred if it is reasonably expected that the building will remain in compliance. Should the building cease to qualify, the period to issue a deficiency assessment arising from credit recapture is extended to three years beyond the date the taxpayer notified the Commissioner of DHCR that the building was no longer in compliance.

- *Empire Zones Reform*

The budget made numerous changes to the Empire Zones Program. The changes fall into two categories: administration and tax law changes.

Administration

- In 2009, Empire State Development (ESD) will conduct a performance review of all companies that have been certified for at least three years. Companies receiving tax benefits in excess of the amount of their wages, benefits, and investment, and firms certified prior to August 1, 2002 that used reincorporation strategies to manipulate eligibility for and calculation of tax benefits will be decertified.
- ESD will issue an Empire Zone Retention Certificate (EZRC) to all qualifying firms. Qualifying firms are existing certified businesses with less than three years in the Program and those with three or more years that pass the review. Businesses that do not qualify will be notified by mail with information on the appeals process.
- ESD will conduct its review based on business annual reports submitted by certified businesses during the 2001 to 2007 period.
- 2008 tax returns claiming EZ credits without the EZRC will not be accepted.
- Firms seeking certification by ESD after April 1, 2009 are required to meet a ratio comparing wages, benefits, and investments to EZ tax benefits. The general ratio is 20:1, although manufacturers are subject to a 10:1 ratio. ESD retains some discretion to certify companies not meeting the ratios.
- All previous criteria for certification and decertification remain.
- The EZ Program sunset date is accelerated from June 30, 2011 to June 30, 2010.

Tax Law Changes

Decertifications resulting from ESD's review will preclude taxpayers from claiming benefits starting with the 2008 tax year. This has several implications:

- Taxpayers that do not receive an EZRC will not be allowed to use carryforwards of EZ wage tax credit, investment tax credit, employment incentive credit, and capital credit.
- Taxpayers with an understatement of 2008 liability solely because they failed ESD's review and were denied the use of EZ credits will not be assessed an underpayment penalty.

For taxpayers that are granted a retention certificate by ESD:

- The period of time in which the Tax Department pays no interest on overpayment refunds is extended to 180 days after the filing of a 2008 tax return with an EZRC.

- Generally, when taxpayers have not received a refund within six months of timely filing a return, they may petition the Tax Department for the refund. The Executive Budget moved the start of the six month period from the date an original return was filed to the date a return was filed with an EZRC.

These two changes are intended to allow time for ESD's review, the issuance and dissemination of EZRCs, and, for taxpayers that already filed returns before receiving an EZRC, the filing and processing of a return accompanied by a retention certificate.

The budget also converted the Qualified Empire Zone Enterprise (QEZE) sales and use tax exemption to a refund or credit of tax paid on qualifying property and services (with local option).

Finally, the budget made two prospective changes applicable to companies certified on or after April 1, 2009:

- The QEZE real property tax credit is reduced by 25 percent.
- The company is not eligible for the QEZE sales tax refund/ credit unless the sale or use qualifies for a refund or credit of the county or city sales and use tax.

- *Credit for Rehabilitation of Historic Properties*

Chapter 239 of the Laws of 2009 made two significant changes to the amount of the credit. First, the credit rate is increased from 30 percent to 100 percent of the amount of the federal historic properties credit. Also, the maximum credit allowed is increased from $100,000 to $5 million. The rate and cap revert to pre-2010 levels on January 1, 2015.

Changes in 2010-11 State Budget Year

- *Excelsior Jobs Program Act*

Part MM of Chapter 59 of the Laws of 2010 creates the Excelsior Jobs Program (EJP) Act. The EJP replaces the Empire Zones Program as the primary economic development program in New York State. The new program is administered by Empire State Development (ESD) and offers four tax credits focused on certain strategic industries. ESD can issue up to $50 million in new credit annually, with a fully effective annual total program cost of $250 million. This part is effective July 1, 2010, and credit is first available for tax years beginning in 2011.

Tax Credit Summary

<u>Excelsior jobs tax credit</u>

Each net new job qualifies for a refundable tax credit worth up to $5,000. The value of the credit is computed on a marginal wages plus benefits basis as follows:

Wages plus Benefits Range	Credit Percentage
$50,000 or less	5%
$50,001 - $75,000	4%
$75,000+	1.33%

Credit is capped at $5,000 per net new job; equates to a wages plus benefits base of $187,782

<u>Excelsior investment tax credit (EJP-ITC)</u>

The EJP-ITC is a refundable credit equal to 2 percent of the cost of qualified investments. Generally, qualified investments are depreciable property with a useful life of four or more years located in New York State and placed in service on or after the date ESD issues a certificate of eligibility to the taxpayer.

<u>Excelsior research and development tax credit (EJP-R&D)</u>

The refundable EJP-R&D credit equals 10 percent of the amount of a taxpayer's federal R&D credit pertaining to expenditures attributable to New York State. Eligible research and development expenditures are defined in Section 41 of the Internal Revenue Code.

Excelsior real property tax credit (EJP-RPTC)

Certain participants in the EJP can earn a refundable, five year RPTC. The credit equals 50 percent of the property taxes assessed and paid in the year immediately prior to a taxpayer's application to the EJP and declines by 10 percent each year. The credit is available to taxpayers located in areas formerly designated as Investment Zones under the Empire Zones Program or regionally significant projects.

Program Administration
The EJP is targeted towards firms engaged in biotechnology, pharmaceutical, high-tech, clean-tech, green-tech, financial services, agriculture, and manufacturing. To claim credits, taxpayers must first apply to and be approved by ESD. Program participants pledge to make a substantial commitment to growth and credit is only awarded upon a demonstration that the commitment has been satisfied. ESD will calculate the amount of each credit annually and issue a certificate of tax credit to participants entitling them to the credits.

Three-quarters of the EJP's total allocation is dedicated to firms increasing employment - the "job growth track." One-quarter is reserved for firms with at least 50 full-time jobs that make new investments resulting in a 10:1 benefit-cost ratio, where the numerator is the sum of wages and benefits for net new jobs plus new investment and the denominator is the total tax benefits awarded - the "investment track."

All companies seeking to participate in the EJP must meet some minimum employment threshold. There are three main employment standards:
1. Investment track firms must have 50 full time job equivalents;
2. Employment growth track firms must meet new job creation standards that vary depending upon the type of industry/ activity (see chart);
3. To be eligible for the RPTC, companies can meet either standard above but must be located in an Investment Zone. Alternatively, businesses that qualify for regionally significant project (RSP) status can be located anywhere but they must meet a higher job growth figure (see chart). RSPs must also undertake significant capital investment, as determined by ESD.

Excelsior Jobs Program Employment Requirements			
Strategic Industry	**Base Requirement for Jobs, ITC, & R&D Credits**	**Requirement for RPTC in Investment Zones**	**Requirement for RPTC as RSP**
Manufacturing	25 net new jobs	25 net new jobs	50 net new jobs
Agriculture	10 net new jobs	10 net new jobs	20 net new jobs
Financial services - data center or customer back office operation	100 net new jobs	100 net new jobs	300 net new jobs
Scientific research & development	10 net new jobs	10 net new jobs	20 net new jobs
Software development	10 net new jobs	10 net new jobs	NA
Back office operations or distribution centers	150 net new jobs	150 net new jobs	300 net new jobs
Investment growth track businesses	50 FTEs	50 FTEs	NA

- *Temporary Deferral of Certain Tax Credits*

Part Y of Chapter 57 of the Laws of 2010 requires taxpayers to defer the use and refund of certain tax credits if they exceed $2 million in aggregate. Taxpayers with $2 million or less in credit are not impacted by this provision. This part is effective immediately and the deferral is required for tax years beginning on or after January 1, 2010 and before January 1, 2013. Credits subject to the deferral include:

Investment tax credit & employment incentive credit	Empire Zone (EZ) investment tax credit & employment incentive credit	Qualified emerging technology company (QETC) employment credit
Mortgage servicing tax credit	EZ wage tax credit	QETC capital credit
Special additional mortgage recording tax credit	EZ capital tax credit	QETC facilities, operations, & training credit
Credit for fuel cell electric generating equipment expenditures	Qualified EZ Enterprise (QEZE) credit for real property taxes	Credit for purchase of an automated external defibrillator
Alternative fuels credit	QEZE tax reduction credit	Low-income housing credit
Green building credit	Brownfield redevelopment credit	Historic homeownership rehabilitation credit
Conservation easement tax credit	Remediated brownfield credit for real property taxes	Credit for rehabilitation of historic properties
Empire State commercial production credit	Environmental remediation insurance credit	Solar energy system equipment credit
Clean heating fuel credit	Biofuel production credit	Security training tax credit
Credit for companies who provide transportation to individuals with disabilities	Credit for employment of persons with disabilities	Credit for certain investments in certified capital companies (CAPCO credit)
Power for Jobs credit		

Taxpayers will calculate the amount of each credit they would otherwise use and refund absent this provision. If the total for the specified credits sums to more than $2 million, taxpayers must reduce each credit proportionally. To determine the amount of each credit allowed, taxpayers must multiply the credit by the following ratio:

$$\frac{\$2 \text{ million}}{\text{Total amount of credits subject to the deferral otherwise used and refunded}}$$

The excess over the allowed amount of each credit is the amount deferred. Only credit that would otherwise have been used or refunded is deferred; credits earned but not used or refunded because of statutory limitations or insufficient liability are subject to their normal rules. Credit amounts deferred are accumulated in one of two new credits - temporary deferral nonrefundable payout credit and temporary deferral refundable payout credit. The amounts of these credits will either remain the same or grow until tax year 2013.

Taxpayers can begin to use the nonrefundable payout credit on their 2013 tax returns. Any amounts not used can be carried forward indefinitely. Taxpayers can use and refund 50 percent of the refundable payout credit on their 2013 tax return. They can use and refund 75 percent of the remaining credit on their 2014 tax return, and the entire remainder on their 2015 tax return.

Finally, taxpayers are required to make any mandatory first installment or estimated tax payments due after August 11, 2010 as if the credit deferral was in effect for the periods upon which the payments are based.

- *Empire Zone (EZ) Technical Amendments*

Part R of Chapter 57 of the Laws of 2010 makes several amendments to the EZ Program:

Empire State Development (ESD) Review and Decertification

Chapter 57 of the Laws of 2009 required Empire State Development (ESD) to review all EZ certified businesses. Businesses receiving tax benefits in excess of wages, benefits, and investments, and businesses that used reincorporation strategies to manipulate eligibility tests and credit amounts were to be decertified. As the law was written, there was some ambiguity about the effective date of the decertification. Part R of Chapter 57 of the Laws of 2010 clarifies that decertifcations resulting from ESD's review are in effect for tax years beginning on or after January 1, 2008.

Boundary Revisions and Regionally Significant Projects (RSPs)

Part R gives the Commissioner of ESD limited discretion to approve boundary revisions and RSPs after the date the EZ Program expires if a zone administrative board made an application or recommendation to ESD prior to such date. If the request is granted, the effective date of the revision or certification as an RSP can precede the Zones' expiration date.

Sales Tax Amendments

Chapter 57 of the Laws of 2009 converted the State and local QEZE sales and use tax exemption to a refund or credit of tax paid on qualifying property and services. Part R provides that localities that opted into the now-repealed sales and use tax exemption are deemed to have opted into the refund/credit.

This part also contains amendments that clarify the eligibility of businesses to apply for and claim the QEZE sales tax benefit, effective as of April 1, 2009.

EZ Investment Tax Credit (ITC) and Employment Incentive Credit (EIC)

QEZE benefits are available to taxpayers for periods of 15 or 10 years, depending upon the date of first certification. The EZ wage tax credit is available for five years. However, the EZ-ITC has no duration, and an EZ-EIC is available for three years after the year an EZ-ITC is claimed.

Part R creates a period during which additional EZ-ITC and EZ-EIC can be earned, nothwithstanding the expiration of the EZ Program. Qualified investment projects certified prior to the expiration of the EZ Program are deemed certified and can earn EZ-ITC for their next nine tax years. Other certified EZ businesses can earn EZ-ITC until April 1, 2014. The EZ-EIC is fully allowed for the three years following an EZ-ITC claim as well.

QEZE Real Property Tax Credit (RPTC) and Special Assessments
Uncertainty has arisen regarding the types of taxes and charges considered eligible real property taxes for purposes of the QEZE RPTC. Typically, the Tax Department has followed Internal Revenue Code treatment, which generally disallows special assessments, i.e. taxes assessed against local benefit of a kind tending to increase the value of the property assessed. However, recent appeals have resulted in contradictory rulings on the Department's position.

Part R clarifies that real property taxes for purposes of the QEZE RPTC do not include charges for local benefits that inure to specific properties. This part codifies existing Department policy and as such applies to all open periods as well as future tax returns. However, the Department will allow maintenance and interest charges to qualify as real property taxes only for tax years prior to January 1, 2010.

EZ Capital Credit

Part R extends the EZ capital credit through March 31, 2014 for contributions certified by the Commissioner of ESD to community development projects in fulfillment of a pledge made to the project before the EZ Program expired.

- *Empire State Film Production Tax Credit and New Empire State Film Post Production Credit*

Part Q of Chapter 57 of the Laws of 2010 allocates an additional $2.1 billion in film credit. The Governor's Office for Motion Picture and Television Development (MP/TV) will award $420 million annually in 2010 through 2014. Taxpayers will claim their credits in the later of the tax year the production of the qualified film is completed or the tax year immediately following the allocation year from which the taxpayer was awarded credit.

$35 million of the total allocation, $7 million annually, is devoted to a new post production tax credit. Companies that are ineligible for the film credit may qualify for the post production credit. The credit equals 10 percent of qualified post production costs paid in the production of a qualified film at a qualified post production facility, generally a facility in New York State. To be eligible for the credit, the costs incurred at a qualified post production facility must equal or exceed 75 percent of the total post production costs at any post production facility.

The credit is allowed for the taxable year in which the production of the qualified film is completed. If there are insufficient claims for the post production credit and applications for the film production credit exceed the allotted total, MP/TV may redirect post production credit funds to the film credit.

<u>*Extend film credit to qualified independent film production companies*</u>

To qualify under this designation, a film production company must:

- Have a maximum budget of $15 million;
- Control the film during production; and
- Not be a publicly traded entity, or have no more than 5 percent beneficial ownership by a publicly traded entity.

<u>*Additional shooting day test*</u>

A new eligibility test is added - at least 10 percent of total principal photography shooting days must be spent at a qualified film production facility. This test will not apply to independent film production companies or pilots.

Inclusion of promotional materials

Credit recipients are required to include a New York promotional video in each film distributed by DVD or other media to the secondary market or to include in the end credits of each qualified film, “Filmed with the Support of the New York State Governor’s Office of Motion Picture and Television Development,” and an accompanying logo.

Require purchases from registered sales tax vendors

Credit applicants must certify that they will only purchase tangible property and services that are qualified production costs from a registered New York State sales tax vendor.

Qualified costs and post production cost restriction

Post production costs will qualify for credit only if 75 percent or more of the total post production costs are attributable to property or services in New York State.

Qualified film production facility criteria

The definition of a qualified film production facility is amended to add minimum square footage, heating and cooling, soundproofing, electrical service, and space requirements for facilities located in New York City. Part Q also excludes armories in New York City as qualified facilities unless MP/TV determines that no qualified facility was available at the time of shooting. The new restrictions do not apply if the facility or armory is being used by a qualified independent film production company.

Information exchange between MP/TV and the Tax Department

Part Q allows for a waiver of taxpayer confidentiality rules to allow MP/TV and the Tax Department to exchange information regarding the film credit. The waiver will allow the Department to discuss specific taxpayers/applicants by name and divulge information contained on credit forms. This disclosure will assist MP/TV in the administration of the credit.

- *Biofuel Credit and Qualified Emerging Technologies Credit*

Part A of Chapter 57 of the Laws of 2010 clarifies that credit cap for the biofuel production credit and the qualified emerging technology company (QETC) facilities, operations, and training credit is applied at the entity level in the case of partnerships, S corporations, and limited liability companies. The aggregate credit that flows through to all partners, shareholders, or members of each entity cannot exceed $2.5 million for the biofuel credit and $250,000 for the QETC credit. This part applies to taxable years beginning on or after January 1, 2010.

- *Low-Income Housing Credit*

Part P of Chapter 57 of the Laws of 2010 increases the statewide aggregate credit limit for the low-income housing credit from $24 million to $28 million. The credit is awarded by the Division of Housing and Community Renewal (DHCR). This part is effective immediately.

- *Credit for Rehabilitation of Historic Properties*

Chapter 472 of the Laws of 2010 made several amendments to the credit. The credit was expanded to apply to Article 32 and Article 33 taxpayers. The law provided that credits cannot reduce the tax due to less than the fixed dollar minimum tax as well as limiting the location of the rehabilitation project. It also provided special rules for partners and S corporation shareholders that claim the credit.

Changes in 2011-12 State Budget Year

- *Excelsior Jobs Program Act*

Part G of Chapter 61 of the Laws of 2011 makes several amendments to the Excelsior Jobs Program. It modifies the credit to make it more widely available and more lucrative and creates a new energy incentive. It also lengthens the benefit period from five to ten years. Finally, it makes several administrative changes.

Tax Credit Changes

- The jobs tax credit component formula is revised to be the uncapped product of gross wages multiplied by 6.85 percent instead of a marginal wages computation capped at $5,000 per job.

- The research and development (R&D) credit component is increased from 10 percent to 50 percent of the taxpayer's federal R&D credit, subject to a limit of 3 percent of qualified R&D expenditures attributable to
- New York activity.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.
- The same property and expenses that qualify for the Excelsior investment tax credit (ITC) component are allowed for the traditional R&D ITC.
- The real property tax credit (RPTC) component schedule is amended to phase down from 50 percent to 5 percent over 10 years (5 percent each year) instead of 5 years (10 percent 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; previously the credit base was fixed at the amount of taxes assessed and paid in the year prior to application.
- Utilities are authorized to offer discounted gas or electric rates to Excelsior participants.
- The credit is extended to eligible agricultural cooperatives subject to tax under Article 9, Section 185.

<u>Administrative Changes</u>

- The strategic industries qualifying test will be applied to the location where the activity will take place instead of on the entity as a whole.
- An Empire Zone participant 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.
- Participants will be allowed to claim credit as interim milestones are reached.
- The tax credit recapture provision will be limited to instances where the Empire State Development Corporation (ESDC) revokes a taxpayer's certification for violating worker protection or environmental laws or failure to pay state and local taxes.

- *Economic Transformation and Facility Redevelopment Program*

Part V of Chapter 61 of the Laws of 2011 creates the Economic Transformation and Facility Redevelopment Program designed to mitigate the economic consequences in communities where correctional facilities and facilities operated by the Office of Children and Family Services (OCFS) are closed through the period ending March 31, 2012. The program offers several tax benefits to redevelop closed facilities and attract new businesses to the surrounding areas. To participate, a business must create and maintain at least 5 net new jobs in an economic transformation area (ETA) and meet a benefit-cost ratio of 10:1. Businesses must apply to ESDC for certification and if approved will receive a 5 year benefit period.

<u>Economic Transformation Areas</u>
ETAs are areas within a certain radius of a closed correctional facility and vary depending upon the facility's location. ESD will establish the ETA boundaries prior to the acceptance of any applications for participation in the Program.

	Economic Transformation Area Region		
	Outside MCTD & Port Authority District	In MCTD, outside Port Authority District	In Port Authority District
Base size	5 mile radius	1 mile radius	Site of facility
Size if closed facility employed over 60 persons	10 mile radius	5 mile radius	NA
Discretionary size adjustment*	Adjust 10 mile radius to between 5 and 15 miles	Decrease 5 mile radius to no lower than 1 mile	NA
*Discretionary factors for adjusting the size of an ETA radius include population density, poverty rate, unemployment rate, and loss of jobs in the region.			

<u>Tax Incentives Summary</u>
A fully refundable credit consisting of four components is available to personal income taxpayers, agricultural cooperatives, general business corporations, banks, and insurance companies.

1. *<u>Jobs tax credit component</u>* - 6.85 percent of the gross wages of each net new job created;
2. *<u>Investment tax credit (ITC) component</u>* - Ten percent of the cost of investments at a closed facility, with a facility-based cap of $8 million; six percent of the cost of investments elsewhere in an ETA, with a cap of $4 million per entity;

3. *Job training credit component* - 50 percent of training expenses for employees displaced by a facility closure, up to $4,000 per employee per year;
4. *Real property tax credit component (RPTC)* - 50 percent of real property taxes for projects located entirely within the grounds of a closed facility, declining by 10 percent a year; 25 percent of real property taxes for projects elsewhere in an ETA, declining by 5 percent a year.

Program Administration

ESD is the lead administrator for the Economic Transformation and Facility Redevelopment Program. Businesses seeking to participate in the Program must first apply to ESD for a certificate of eligibility. Prospective participants have until the later of 3 years after the closure of a correctional or OCFS facility or January 1, 2015 to submit an application.

ESD will validate that the applicant is located in an ETA, is a new business, and is not engaged in ineligible operations. Ineligible operations include retail, professional services licensed by the State, and real estate holding companies or landlords for such operations. However, businesses engaged in such operations may be eligible to participate at the site of a closed facility if it is part of an adaptive reuse plan for a substantial portion of the facility.

Once an applicant is granted a certificate of eligibility, it has one year to start construction, acquire a qualified investment, or create at least one net new job. A participant that fails to comply will not be allowed to claim any tax credit. The five year benefit period starts in the first year in which a participant creates five net new jobs and includes the following four consecutive years in which the net new jobs threshold is met. However, the benefit period must commence within two years of the issuance of a certificate of eligibility.

Participants must maintain the five net new jobs throughout their benefit period to remain eligible for the tax credit. Prior to claiming credit in the final year of the benefit period, a participant must demonstrate that it has satisfied the 10:1 benefit cost ratio. The numerator of the ratio is the sum of wages and benefits for net new jobs plus new investment and the denominator is the total tax benefits. Participants failing this ratio test will be required to recapture an amount of credit necessary to achieve the 10:1 ratio.

Finally, to ensure accountability and transparency, two reporting requirements are created. ESD must issue quarterly reports beginning on June 30, 2012 that include the number of applicants, the number and names of participants, and data regarding jobs, investment, and Program benefits. The Department will issue an annual report beginning on July 31, 2013 containing the names of taxpayers participating in the program and related tax benefit information.

- *Investment Tax Credit for the Financial Services Industry*

Part E of Chapter 61 of the Laws of 2011 extends the investment tax credit for financial services taxpayers to apply to property placed in service before October 1, 2015. The credit had previously been scheduled to expire for property placed in service on or after October 1, 2011. The credit is provided to taxpayers under Articles 9-A, 22, 32, and 33 of the Tax Law for qualifying property that is principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale of stocks, bonds or other securities.

- *Low-Income Housing Credit*

Part F of Chapter 61 of the Laws of 2011 increases the statewide aggregate credit limit for the low-income housing credit from $28 million to $32 million.

- *Clean Heating Fuel Credit*

Chapter 591 of the Laws of 2011 extends the tax credit to bioheat purchased on or after January 1, 2008 and before January 1, 2017. The credit had previously been scheduled to expire for bioheat purchased on or after January 1, 2012.

- *Taxicabs and Livery Services Accessible by Individuals with Disabilities*

Chapter 604 of the Laws of 2011 creates a tax credit for taxpayers providing taxicab or livery service to individuals with disabilities. The credit is equal to the incremental cost associated with upgrading a vehicle so that it is accessible by individuals with disabilities. In addition, taxpayers may also claim the credit for the purchase of new vehicles manufactured to be accessible by individuals with disabilities and for which there is no comparable make or model. The credit is limited to $10,000 per vehicle. A similar credit existed for tax years beginning on or after January 1, 2006 and before January 1, 2011.

- *New York State Youth Works Tax Credit*

Part D of Chapter 56 of the Laws of 2011 creates the New York State Youth Works Tax Credit to provide tax incentives to employers for employing at risk youth in full-time and part-time positions in tax years 2012 and 2013. The program is administered by the New York State Department of Labor (NYDOL). NYDOL can issue up to $25 million of tax credits under this program.

The refundable credit equals $500 per month for up to six months for each qualified full-time employee or $250 per month for each qualified part-time position of at least 20 hours per week. This portion of the credit is allowed for taxable year 2012. An additional $1,000 per full time employee or $500 per part-time employee is available if the qualified employee remains employed for at least an additional six months. This portion of the credit is allowed for taxable years 2012 and 2013.

- *Empire State Jobs Retention Program*

Part E of Chapter 56 of the Laws of 2011 creates the Empire State Jobs Retention Program to support the retention of strategic businesses and jobs directly impacted by an event that leads to an emergency declaration by the Governor. The program is administered by Empire State Development and the total amount of credit issued is allocated from the funds available for tax credits under the Excelsior Jobs Program Act.

The Program offers a jobs tax credit equal to the product of 6.85 percent and the gross wages paid for each impacted job, defined as a job existing at the relevant location on the day before an event occurs that leads to an emergency declaration. A participant may also be eligible for a 2 percent investment tax credit, but only for costs in excess of costs recovered by insurance. Taxpayers may claim the credit for ten consecutive years.

Changes in 2012-13 State Budget Year

- *Biofuel Production Credit*

Part K of Chapter 59 of the Laws of 2012 extends the sunset date for the biofuel production credit to tax years beginning before January 1, 2020.

- *New York State Low-Income Housing Credit*

Part J of Chapter 59 of the Laws of 2012 increases the amount of low-income housing credit that may be allocated by the New York State Division of Housing and Community Renewal from $32 million to $40 million. Part J further increases the allocation to $48 million, effective April 1, 2013.

- *Empire State Commercial Production Credit*

Part I of Chapter 59 of the Laws of 2012 reauthorizes and extends the Empire State commercial production tax credit. The Governor's Office for Motion Picture and Television Development (MP/TV) is authorized to issue $7 million in credits annually from 2012 through 2014 to taxpayers meeting certain thresholds of commercial production activity.

For calendar years beginning on or after January 1, 2012, the commercial production credit is allocated as follows:

- Incremental cost component - $1 million: 20 percent of qualified production costs in excess of the average of the three prior years' costs. The credit is distributed on a *pro rata* basis among all credit applicants; however no individual company may receive an annual allocation of greater than $300,000.

- Metropolitan Commuter Transportation District (MCTD) component - $3 million: 5 percent of qualified production costs in excess of $500,000 during the calendar year for work within the MCTD. This component is also awarded on a *pro rata* basis, but with no limitation per company.

- Outside MCTD component - $3 million: 5 percent of qualified production costs in excess of $200,000 during the calendar year for work outside the MCTD. This component is allocated in the same manner as the MCTD component. If the total amount authorized for this credit component exceeds credit claims, MP/TV may redirect the excess allocation to the incremental cost component.

Fifty percent of the credit is refundable in the first year, with the remainder fully refundable in the following year. The credit applies to tax years beginning before January 1, 2015.

- *Beer Production Credit*

Chapter 109 of the Laws of 2012 creates a credit for beer produced in New York State on or after January 1, 2012. To qualify for the credit, a taxpayer must be a registered distributor under Article 18 of the Tax Law and produce 60 million or fewer gallons of beer in New York State in the tax year the credit is claimed.

The beer production credit is equal to:

- 14 cents per gallon for the first 500,000 gallons produced in New York State in a tax year; plus
- 4.5 cents per gallon for each additional gallon over 500,000 (up to 15,000,000 additional gallons) produced in New York State in the same tax year.

The maximum amount of credit allowed to a distributor in a tax year is $745,000.

- *Empire State Film Post Production Credit*

Chapter 268 of the Laws of 2012 increased the post production credit rate from 10 percent to 30 percent for work done in the Metropolitan Commuter Transportation District (MCTD) and 35 percent for work outside the MCTD.

Table of Tax Credit Changes: 2000-2011

Credit	Budget Year	Object of Change
Alternative Fuels Credit	2000-01	sunset date extended
	2004-05	sunset date extended
	2005-06	sunset date extended only for refueling property
	2006-07	IRC references updated and sunset date extended
Beer Production Credit	2012-13	credit enacted
Biofuel Production Credit	2006-07	credit enacted
	2010-11	aggregate credit cap clarification
	2012-13	sunset date extended to tax years beginning before 1/1/20
Brownfields Tax Credit Program	2003-04	credit enacted
	2006-07	site cleanup agreement cutoff date for EN-Zones extended
		credit extended to co-operatives and condominiums
	2008-09	TPP component capped, BOA rate, basis adjustment, site prep & groundwater remediation rates increased, 2 report mandates
Clean Heating Fuel Credit	2006-07	credit enacted with June 30, 2007 sunset
	2008-09	credit reinstated for period of 1/1/08 through 12/31/11
	2011-12	credit extended through 12/31/16
Credit for Rehabilitation of Historic Properties	2006-07	credit enacted
	2009-10	credit rate increased from 30% to 100% of federal credit; cap increased from $100,000 to $5 million
	2010-11	location limitations added; cap imposed at entity level
Economic Transformation and Facility Redevelopment Credit	2011-12	credit enacted
Empire State Commercial Production Credit	2006-07	credit enacted
	2012-13	credit reauthorized and extended
Empire State Film Production Credit	2004-05	credit enacted
	2006-07	aggregate credit cap increased and sunset extended
	2008-09	cap increased and additional years added, rate tripled, refund change
	2009-10	additional $350 million allocated for 2009; credit utilization trifurcated, depending upon size of credit
	2010-11	additional $1.2 billion allocated, $420 per year starting 2010; numerous modifications made to program

Credit	Budget Year	Object of Change
Empire State Film Post Production Credit	2010-11	credit enacted; $35 million allocated for credit, $7 million annually
	2012-13	credit rate increased
Empire State Jobs Retention Program Credit	2011-12	credit enacted
Empire Zone Credits	2000-01	QEZE tax reduction credit and real property tax credit enacted
		EZ employment incentive credit allowed against alternative minimum
	2001-02	creation of additional zones authorized
	2002-03	EZ technical corrections enacted
		creation of additional zones authorized
	2004-05	sunset date extended
		full term of benefits language adopted
	2005-06	program reform and extension
	2006-07	new designations: QUIP, SCIP, CERDE, CEE
		EZ-ITC, EZ-WTC, EZ-EIC refundable to QUIPs/SCIPs
		technical changes for EZ-WTC and QEZE credits
		zone designations accelerated
	2008-09	QUIP/SCIP designation deadline extended WTC start delay
	2009-10	ESD review of all certified businesses; EZ retention certificate required
		QEZE real property tax credit reduced by 25% for certs on/after 4/1/09
		QEZE sales tax exemption changed to credit
		QEZE sales tax credit only allowed if local credit also available
		sunset accelerated from 6/30/11 to 6/30/10
		public report mandate enacted, effective 1/1/12
	2010-11	clarified effective date of ESD decertifications
		EZ-ITC and capital credit extended for continuing certified businesses
		clarified treatment of special assessments for QEZE real property tax credit
Excelsior Jobs Tax Credits	2010-11	credits enacted
	2011-12	credit modified to make it more widely available and lucrative, creates new energy incentives, and lengthens the benefit period
Farmers' School Tax Credit	2006-07	base acreage and income phase-out range increased
		Christmas tree farms made eligible
		flow-thru of corporate farm income to shareholders election enacted

Credit	Budget Year	Object of Change
Fuel Cell Electricity Generating Equipment Credit	2005-06	credit enacted
	2009-10	credit repealed
Green Building Credit	2000-01	credit enacted
	2001-02	period two and technical fixes enacted
Handicapped Accessible Taxicab and Livery Service	2006-07	credit enacted
	2008-09	credit extended to 12/31/10
	2011-12	new credit enacted for TYBOA 1/1/11 and before 12/31/16
Industrial or Manufacturing Business Credit	2000-01	credit enacted
Investment Tax Credit	2000-01	merger and acquisition retroactive technical fix
		allowed transfer of ITC in limited cases
	2002-03	recapture rules amended regarding property damaged on 9/11/01
		broker/dealer activity sunset date extended
	2005-06	credit extended to qualified film production facilities
	2008-09	investment advisors, aggregation allowed, codified 3 employment tests; sunset extended
	2010-11	financial services sunset extended
Land Conservation Easement Credit	2006-07	credit enacted
Long-Term Care Insurance Credit	2000-01	credit enacted
	2004-05	credit percentage doubled
Low-Income Housing Credit	2000-01	credit enacted
	2002-03	aggregate statewide credit amount doubled
	2004-05	aggregate statewide credit amount increased
	2005-06	aggregate statewide credit amount increased
	2006-07	aggregate statewide credit amount increased
	2007-08	aggregate statewide credit amount increased
	2008-09	aggregate statewide credit amount increased
	2009-10	aggregate statewide credit amount increased; eliminated bond in lieu of recapture provision
	2010-11	aggregate statewide credit amount increased
	2011-12	aggregate statewide credit amount increased
	2012-13	aggregate statewide credit amount increased

Credit	Budget Year	Object of Change
New York State Youth Works Credit	2011-12	credit enacted
Qualified Emerging Technology Company Credits	2004-05	credits expanded to cover biotechnology companies
	2005-06	facilities, operations, and training credit enacted
	2010-11	aggregate credit cap clarification
Security Training Tax Credit	2005-06	credit enacted

Note: The 2010-11 Executive Budget enacted a temporary tax credit deferral for certain tax credits. For a list of credits subject to the deferral, see page B-28.

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