



## — HIGHER EDUCATION LAW ALERT —

### **START-UP NY Designed to Encourage New Businesses in the State Using Certain Tax Incentives**

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On June 24, 2013, New York Governor Andrew M. Cuomo signed into law legislation creating the SUNY Tax-Free Areas to Revitalize and Transform Upstate NY program (**START-UP NY**). START-UP NY is derived from the Governor's proposed Tax-Free NY initiative and provides incentives designed to encourage certain types of new business in the State. The benefits and requirements of the law differ slightly for counties in the New York Metro area (Westchester, Nassau, Suffolk and New York City). This article will focus on the new law only as it affects the remaining counties in New York.

Under START-UP NY, Eligible Businesses will pay no sales, real property, or New York State income tax for 10 years. Employees of Eligible Businesses will pay no New York State income tax for the first 5 years of START-UP NY. During the second 5 years, employees will pay no taxes on income of up to \$200,000 in wages for individuals, \$250,000 for heads of household and \$300,000 for taxpayers filing a joint return.

#### **Eligible Businesses**

In order to participate in START-UP NY, a business must be aligned with the academic mission of an eligible college or university, as described below. The business must demonstrate that it will, in its first year of operation, create "Net New Jobs", defined as a job that has not been transferred from employment by another business located in the State and not transferred from a Related Person (as defined in the Federal Internal Revenue Code). At the time it applies for inclusion in START-UP NY, the business must be a "New Business", defined as a business not operating within the State at the time of the application, not moving jobs from another area of the State and not transferring jobs from a Related Person.

While in certain circumstances, the Commissioner of Economic Development (**Commissioner**) may grant permission to participate in START-UP NY to a business that fails to meet the New Business test, the following types of businesses are prohibited from participating in START-UP NY:

- Retail and Wholesale Businesses
- Restaurants
- Real Estate Brokers
- Law Firms
- Medical or Dental Practices
- Real Estate Management Companies
- Hospitality
- Finance and Financial Services
- Businesses providing personal services
- Accounting Firms
- Businesses providing utilities
- Businesses engaged in generation or distribution of electricity, natural gas or steam associated with the generation of electricity

Businesses providing administrative or support services are also prohibited from participating unless such a business has received permission from the Commissioner to apply to participate upon demonstrating that it would create no fewer than 100 Net New Jobs in the Tax-Free N.Y. Area.

START-UP NY is limited to 10,000 new jobs per year.

### **Tax-Free N.Y. Areas**

SUNY campuses and community colleges may submit a proposal to the Commissioner to have land or space on their academic campus designated as a Tax-Free N.Y. Area. The proposal must describe the type of business or businesses that may locate on the land or in the space and explain how those types of businesses align with or further the academic mission of the campus or college. The application should include a statement of how participation by those businesses in START-UP NY will have a positive community and economic development effect. Land or buildings (up to 200,000 square feet) located within 1 mile of the campus are also eligible.

Private colleges and universities may also make an application to designate up to a maximum of 3 million square feet of private college and university vacant land or space for START-UP NY. In addition, an incubator center may align itself with a State University campus and thereby become eligible to participate.

The Commissioner may designate up to 20 areas of State-owned land not currently associated with a State University campus as "Strategic State Assets". These locations may become Tax-Free N.Y. Areas, provided they receive the support of an affiliated SUNY campus or private university.

## **Designation and Compliance**

Once a location has been approved by the Commissioner, the campus, university or college that is sponsoring the Tax-Free N.Y. Area may accept and review applications from businesses to locate in the Area. After the academic institution approves a business application, it forwards the application and supporting documentation on to the Commissioner with its recommendation, and the Commissioner then determines whether to accept or reject the application. The legislation directs the Commissioner to promulgate regulations for this process.

There are extensive compliance and reporting provisions for both the academic institutions sponsoring the Tax-Free N.Y. Area and the businesses operating in the Areas. Benefits may be revoked or suspended for failure to meet employment criteria. There are both civil and criminal penalties for fraud made in connection with the application process, the reporting process or any other compliance provisions of START-UP NY.

The law requires payment of prevailing wages in certain circumstances. It also contains specific provisions required to be contained in any lease entered into by a SUNY campus or community college.

START-UP NY begins effective January 1, 2014. Details of the application process and locations of Tax-Free Areas are not yet available, but we will monitor them and provide updates on our website.

START-UP NY has received both praise and criticism. Its supporters embrace it as fostering an entrepreneurial spirit, especially among the hard hit Upstate New York communities. Its detractors cite a failure to relieve the tax burden from already beleaguered New York State taxpayers who might receive greater overall benefit from more broad-based tax relief. Only time will tell what degree of success will be achieved by START-UP NY.

**Richard W. Cook is a partner in Hancock Estabrook's Banking & Finance and Corporate Practices. He has also served as its Managing Partner. Mr. Cook has 38 years of experience in the areas of corporate and banking law. He represents clients in mergers and acquisitions, private equity transactions and general corporate matters. Please contact him at [rcook@hancocklaw.com](mailto:rcook@hancocklaw.com), if you are interested in learning more about participating in this initiative.**

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