

Chapter XXI Empire State Jobs Retention Program (updated 12/29/25)

Section 210.1 Purpose and general description.

(a) The purpose of these regulations is to set forth the administrative process governing the Empire State Jobs Retention Program (program) and specifically to establish an application process, standards for application evaluation and procedures for businesses claiming the tax credit under this program. Chapter 56 of the laws of 2011 establishes the program and grants the Commissioner of the Department of Economic Development the authority to promulgate regulations to establish procedures for the allocation of the Empire State Jobs Retention Program tax credit. Chapter 50 of the laws of 2025 made certain amendments to the program.

Section 210.2 Definitions

As used in this regulation, the following terms shall have the following meanings:

- (a) Business entity means a for profit business duly authorized to do business in and in good standing in the State of New York.
- (b) Certificate of eligibility means the document issued by the department to an applicant that has completed an application to be admitted into the Empire State Jobs Retention Program and has been accepted into the program by the department. Possession of a certificate of eligibility does not by itself guarantee the eligibility to claim the tax credit.
- (c) Certificate of tax credit means the document issued to a participant by the department, after the department has verified that the participant has met all applicable eligibility criteria in this article. The certificate shall be issued if such criteria are satisfied and shall specify the exact amount of the tax credit under this article that a participant may claim, pursuant to section 213.1 of this Title, and shall specify the taxable year in which such credit may be claimed.
- (d) Employees shall mean, for the purposes of this program, those employed at least 10 hours per week by a business entity.
- (e) Impacted jobs means jobs at a business enterprise existing the day before an event leading to an emergency declaration by the governor at a location or locations which demonstrate substantial physical damage and economic harm caused by the event for which the emergency declaration was made.
- (f) Participant means a business entity that:
 - (1) has completed an application prescribed by the department to be admitted into the program;
 - (2) has been issued a certificate of eligibility by the department;
 - (3) has demonstrated that it meets the eligibility criteria in section 211.2 of this Title and the requirements in subdivision (c) of section 211.1 of this Title; and
 - (4) has been certified as a participant by the commissioner.
- (g) Preliminary schedule of benefits means the maximum aggregate amount of the tax credit that a participant in the Empire State Jobs Retention Program is eligible to receive pursuant to this Title. The schedule shall indicate the annual amount of the credit a participant may claim in its six months of eligibility. The preliminary schedule of benefits shall be issued by the department when the department approves the application for admission into

the program. The commissioner may amend that schedule, provided that the commissioner complies with the credit caps in section 359 of the Economic Development Law.

(h) Related person means a related person pursuant to subparagraph (c) of paragraph 3 of subsection (b) of section 365 of the Internal Revenue Code.

(i) Substantial physical damage and economic harm means the loss of ability to continue operations at the location(s) within the county in which an emergency was declared by the governor after June 1, 2025 for a period of at least five consecutive business days and, if a business entity employing three to 49 employees, incurring \$20,000 in damage; if a business entity employing 50 to 100 employees, incurring \$50,000 in damage; and if a business entity employing over 100 employees, incurring \$100,000 in physical damage.

Section 211.1 Application and review process.

(a) An applicant must submit a complete application as prescribed by the commissioner.

(b) Such completed application must be submitted to the commissioner within 180 days of the declaration of an emergency by the governor in the county in which the business enterprise is located; provided, however, that the eligibility period for the credit shall begin upon the date of declaration of an emergency by the governor covering the county in which the business entity is located.

(c) As part of such application, an applicant must:

(1) agree to allow the Department of Taxation and Finance to share its tax information with the department. Note that the form created by the department to effectuate this information transfer may only be executed by a person with authority to act on the business entity's behalf in this regard. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the State Freedom of Information Law; and

(2) agree to allow the Department of Labor to share its tax and employer information with the department. Note that the form created by the department to effectuate this information transfer may only be executed by a person with authority to act on the business entity's behalf in this regard. However, any information shared as a result of this agreement shall not be available for disclosure or inspection under the State Freedom of Information Law; and

(3) allow the department and its agents access to any and all books and records deemed relevant by the department to monitor compliance with the provisions of article 20 of the Economic Development Law; and

(4) agree to be permanently disqualified for empire zone benefits at any location or locations that qualify for empire state jobs retention benefits if admitted into the Empire State Jobs Retention Program for such location or locations; and

(5) provide, upon request by the department, all of the following information:

(i) a plan outlining the schedule for meeting the jobs retention requirements as set forth in section 211.2(a) of this Part (such plan must include details on job titles and expected salaries);

(ii) the prior three years of Federal and State income or franchise tax returns, unemployment insurance quarterly returns, real property tax

bills and audited financial statements; and
(iii) the employer identification or social security numbers for all related persons to the applicant, including those of any members of a limited liability company or partners in a partnership; and
(6) provide a clear and detailed presentation of all related persons to the applicant to assure the department that jobs are not being shifted within the State; and
(7) certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, State, and Federal tax laws.
(d) The commissioner, upon receipt of a complete application from an applicant, shall determine whether the applicant meets the eligibility criteria set forth in section 211.2 of this Part. An applicant that does not meet the eligibility criteria set forth in section 211.2 of this Part shall not be accepted into the program.
(e) Having determined that an application is complete and that the applicant meets the eligibility criteria set forth in section 211.2 of this Part, the department may admit the applicant into the program and issue a certificate of eligibility as defined in section 210.2(b) of this Title and a preliminary schedule of benefits as defined in section 210.2(g) of this Title by year based on the applicant's projections as set forth in its application. This preliminary schedule of benefits delineates the maximum possible benefits an applicant may receive under this program but the commissioner may amend a preliminary schedule of benefits provided that the commissioner complies with the credit caps in section 359 of the Economic Development Law.

Section 211.2 Eligibility criteria.

(a) In order to participate in the Empire State Jobs Retention Program, on or after June 1, 2025, and a business entity must demonstrate evidence of substantial physical damage and economic harm at a location or locations within a county for which the governor has issued an emergency declaration and resulting from the event leading to the emergency declaration by the governor. At the time of application, a business entity shall submit to the department a plan to retain, restore or increase staffing levels within one year from the date of application to at least the staffing levels that existed at the site the day prior to the date of the applicable declaration of the state of emergency. Any recipient that does not adhere to its jobs retention plan, shall have its program award rescinded unless the recipient can demonstrate economic hardship to the commissioner, in which case any such program award may be reduced proportionally by the number of employees not restored or retained.
(b) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations. In addition, a business entity may not owe past due State taxes. In addition, a business entity must not owe local property taxes for any year prior to the year in which it applies to participate in the Empire State Jobs Retention Program; provided, however, in the case of a tax certiorari proceeding, a business entity would not be considered in arrears until a final decision is made with respect to such proceeding.
(c) For the purposes of this Part, statewide declarations of emergency shall not trigger eligibility for the program.

Section 212.1 Claiming credits.

- (a) A participant must submit evidence of retaining impacted jobs to the department in order to receive benefits under the program.
- (b) Such evidence may include, but not be limited to, submission of the NYS-45 form and such other evidence as the department shall require.
- (c) If a participant fails to demonstrate that it has satisfied the eligibility requirements set forth in section 211.2 of this Title, the department shall not issue such participant a certificate of tax credit.
- (d) After reviewing such evidence and finding it sufficient, the department shall calculate the appropriate amount of tax credit and issue a certificate of tax credit.

Section 213.1 Calculation of the tax credits.

- (a) The department shall calculate the amount of Empire State Jobs Retention Program credit for which the participant is eligible pursuant to section 211.2 of this Title.
- (b) A participant in the program shall be eligible to claim a credit for retention of the impacted jobs. For a participant that employs three to 49 employees, the amount of such credit per job shall be equal to the product of gross wages and 15 percent. For a business entity that employs 50 to 100 employees, the amount of such credit shall be equal to the product of the gross wages paid for the impacted jobs and 7.5 percent. For a business entity that employs greater than 100 employees, the amount of such credit shall be equal to the product of the gross wages paid for the impacted jobs and 3.75 percent. An eligible business entity may only receive up to \$500,000 in tax credits per event triggering an emergency declaration by the governor.

Section 213.2 Refundability of credits.

- (a) The Empire State Jobs Retention Program credit established in this section shall be refundable as provided in the Tax Law. If a participant fails to satisfy the eligibility criteria, it will lose the ability to claim credit.
- (b) The event of such failure shall not extend the original six month eligibility period.
- (c) The business enterprise shall be allowed to claim the credit as prescribed in section 36 of the Tax Law.
- (d) A participant may be eligible for benefits under this article as well as article 17 of the Economic Development Law, provided the participant can only receive benefits pursuant to subdivision 2 of section 355 of the Economic Development Law for costs in excess of costs recovered by insurance.

Section 214.1 Record retention.

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

(b) The Department shall have the right to inspect all relevant records upon reasonable notice to the Participant.

Section 214.2 Reporting.

(a) Each participant must submit a performance report, in such form as the commissioner may require.

(b) The commissioner shall prepare on a quarterly basis a program report for posting on the department's website. The first report will be due June 30, 2013, and every three months there-after. Such report shall include, but not be limited to, the following information: number of applicants; number of participants approved; names of participants; total amount of benefits certified; benefits received per participant; total number of retained jobs and such other information as the commissioner determines necessary.

Section 215.1 Removal from program.

(a) The commissioner shall remove any participant from the program for failing to meet any of the requirements set forth in section 211.1(c) of this Title, or for failing to meet the requirements set forth in section 211.2(a) or 211.2(b) of this Title.

(b) If the commissioner has removed the participant from the program pursuant to subdivision (a) of this section, the commissioner shall notify the participant of such removal in writing. Such notice of removal shall explain the reason or reasons for the removal from the program.