SEMICONDUCTOR MANUFACURING WORKFORCE TRAINING INCENTIVE PROGRAM

5 NYCRR Part 340

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Section 340.1 Purpose and general description

The purpose of these regulations is to set forth the application process for the Semiconductor Manufacturing Workforce Training Incentive Program. Pursuant to section 504 of the Economic Development Law, the Department of Economic Development has been granted the authority to promulgate regulations, to establish eligibility criteria for business entities desiring to participate in the program, procedures for the receipt and evaluation of applications from business entities to participate in the program, and such other provisions as the commissioner deems to be appropriate. The Department of Economic Development shall administer the program, including the issuance of tax credit certificates.

Section 340.2 Definitions

(a) *Business need* means the absence of a method, a process, or equipment related to revenue-generating activities of a business entity.

(b) *Certificate of conditional eligibility* means a certificate issued by the department which states that the authorized applicant has met the criteria set forth in section 340.3 of this Part and is being considered for the Semiconductor Manufacturing Workforce Training Incentive Program Tax Credit, pending successful completion and approval of the final application. Such certificate shall include, but not be limited to, the following information: name and address of the authorized applicant, effective date, taxpayer identification number, a statement that the initial application meets the criteria for conditional eligibility under section 340.7 of this Part and a disclaimer stating that actual receipt of the tax credit is subject to completion and approval of the final application.

(c) *Certificate of tax credit* means a certificate issued by the department which states the amount of the Semiconductor Manufacturing Workforce Training Incentive Program Tax Credit that a business entity has qualified for, based upon the department's analysis under sections 340.4 and 340.7 of this Part and article 28 of the Economic Development Law. Such certificate may include, but is not limited to, the following information: name and address of the business entity, the amount of the tax credit to be received by the business entity, and a disclaimer stating that actual receipt of the tax credit is subject to the statutory maximum amount of credits that are allocated for the program.

(d) *Commissioner* means the Commissioner of Economic Development.

(e) *Department* means the New York State Department of Economic Development.

(f) *Eligible training* means training provided to an employee hired within 12 months of the business entity applying for this program. Such training may be offered by the applicant, a third-party provider, or a New York State registered apprenticeship program that is:

(1) to upgrade, retrain or improve the productivity of employees;
(2) to satisfy a business need on the part of a participating business entity;
(3) not designed to train or upgrade skills as required by a Federal or State entity; and
(4) structured to result in measurable advancements in skills and competencies that will contribute to opportunities for advancement for employees who complete the training.

The department shall have the sole discretion to determine whether training is eligible for the purposes of this program.

(g) *Eligible training cost* means costs incurred after the eligibility date, as established by the certificate of conditional eligibility, associated with eligible training as defined in this section which may include, but need not be limited to, instructor fees or wages, curriculum development, training supplies, wages for the trained employees for the period of time in which they are in training, necessary transportation costs and other costs associated with training. Lodging and food and beverage expenses shall be excluded from eligibility. The department shall have the sole discretion to determine eligible training costs.

(h) Manufacturing business means a business that is engaged in the process of working raw materials into products suitable for use or which gives new shapes, new quality or new combinations to matter which has already gone through some artificial process by the use of machinery, tools, appliances, or other similar equipment. "Manufacturing" does not include an operation that involves only the assembly of components, provided, however, that the assembly of motor vehicles or other high value-added products shall be considered manufacturing. The department shall have the sole discretion to determine whether an applicant is a manufacturing business for the purposes of this program.

(i) Semiconductor manufacturing business means a business deemed by the commissioner to make products or develop technologies that are primarily aimed at supporting the growth of the semiconductor manufacturing and related equipment and material supplier sector. This shall include, but need not be limited to, semiconductor device manufacturing, producers of component parts, direct input materials and equipment necessary for the manufacture of semiconductor chips, machinery, equipment, and materials necessary for the operational efficiency of semiconductor manufacturing facilities, other such inputs directly supportive of the domestic production of semiconductor chips, and companies engaged in the assembly, testing, packaging and advanced packaging semiconductor value chain. This definition shall not include (1) business that generates inputs to manufacturing generally, but not direct inputs to semiconductor manufacturing in specific; or (2) the production of products or development of technologies that would produce only marginal and incremental benefits to the semiconductor manufacturing sector. The department shall have the sole discretion to determine whether an applicant is a semiconductor manufacturing business for the purposes of this program.

(j) *Training plan* means a plan submitted by the applicant that details the proposed training overview for eligible employees as specified in the application approved by the commissioner. This shall include, but need not be limited to, identification of a business need that the training addressees, proposed training curriculum, identification of the training provider, method and location of the proposed training, timeframe for implementation, identification of the specific skills and competencies that the trained employee is expected to acquire, and explanation of how the training plan meets the definition of an eligible training under these regulations.

(k) Wraparound services means transportation, childcare, case management and other services designed to maximize the economic impact of workforce development training for participants, and to provide the support services necessary to ensure trainees can access training. The department shall have the sole discretion to define wraparound services for the purposes of this program.

Section 340.3 Eligibility criteria

In order to participate in the program, a business entity must satisfy the following criteria:

(a) the business entity must operate in the State as a semiconductor manufacturing business or a manufacturing business as defined in this Part;

(b) the business entity must demonstrate that it is conducting eligible training as defined by section 340.2(f) of this Part, and as outlined in a training plan approved by the commissioner, provided by the business entity, a third-party, or a New York State registered apprenticeship program; and

(c) the business entity must be in compliance with all worker protection and environmental laws and regulations. In addition, the business entity may not owe past due State taxes or local property taxes.

Section 340.4 Application process

(a) Initial application

(1) A business entity must submit an initial application, in such form and at such time as the commissioner shall determine, to the department prior to commencing eligible training. Such initial application must:

(i) be complete;

(ii) be made by a business entity operating in the State as a semiconductor manufacturing business or manufacturing business;

(iii) identify the third-party provider or registered New York State apprenticeship program provider, if applicable, from which the business entity proposes to obtain eligible training;

(iv) demonstrate the eligibility of the proposed training by providing a written training plan as defined by section 340.2(j) of this Part, and such other documentation as the commissioner may require;

(v) estimate the total costs attributable to providing the eligible training;

(vi) agree to allow the Department of Taxation and Finance to share its tax information with the department. 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;

(vii) agree to allow the Department of Labor to share its tax and employer information with the department. 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;

(viii) allow the department and its agents access to any and all books and records the department may require to monitor compliance; and

(ix) agree to allow the department and the Department of Taxation and Finance to share and exchange information contained in or derived from the applications for admission into the Semiconductor Manufacturing Workforce Training Incentive Program and the credit claim forms submitted to the Department of Taxation and Finance. 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.

(2) Upon receipt of a complete initial application, the department may approve such application based upon the criteria set forth in section 340.7 of this Part.
(3) After review of an initial application, the department will notify a business entity of its eligibility and may issue a certificate of conditional eligibility to the business entity.

(b) Final application

(1) A business entity must submit a final application. Such final application must:
(i) be complete;
(ii) demonstrate that the eligible training described in such business entity's initial application is complete;
(iii) not contain material misrepresentations; and
(iv) be submitted no more than 24 months from the date of the department's issuance of a certificate of conditional eligibility to the business entity.

(2) The department shall approve or disapprove the final application based upon the criteria set forth in section 340.4(b) of this Part. If the final application is approved, the department shall issue a certificate of tax credit to the business entity upon its demonstrating successful completion of such eligible training to the satisfaction of the commissioner. The department shall provide a copy of such certificate of tax credit to the Department of Taxation and Finance. The tax credit shall be claimed by the qualified employer as specified in subdivision 62 of section 210-B and subsection (rrr) of section 606 of the Tax Law. If the final application is disapproved, the department shall provide the business entity with a notice of disapproval, which shall state the reasons therefor.

Section 340.5 Calculation of the credit

For eligible training as defined by subdivision (f) of section 340.2 of this Part, the amount of the credit shall be equal to 75 percent of wages, salaries or other compensation, training costs, and wraparound services up to a credit of $25000 per employee receiving eligible training. The credit amount shall not exceed $1 million per eligible manufacturing business or $5 million per eligible semiconductor manufacturing business. Such credit limits shall apply to the lifetime of the eligible manufacturing business or semiconductor manufacturing business.

Section 340.6. Allocation of the credit

(a) The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed $20 million, and shall be allotted from the funds available for tax credits under the Excelsior Jobs Program Act pursuant to section 359 of the Economic Development Law.

(b) The credit allowed under this section for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision 1 of section 210 of the Tax Law. However, if the amount of credit allowed under this section for any taxable year reduces the tax to such amount, or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in that taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section 1086 of the Tax Law. Provided, however, the provisions of subsection (c) of section 1088 of the Tax Law notwithstanding, no interest will be paid thereon.

(c) If a certificate of conditional eligibility or a certificate of tax credit issued by the Department of the Economic Development under article 28 of the Economic Development Law is revoked by such department because the taxpayer does not meet the eligibility requirement set forth in subdivision 3 of section 503 of the Economic Development Law, the amount of credit described in this subdivision and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

Section 340.7 Criteria for evaluation of applications

The department shall evaluate the following criteria when reviewing initial applications and determining eligibility:

(a) The proposed training plan submitted by the applicant as defined by section 340.2(j) of this Part, provides career advancement opportunities to promote job retention rate post-training, including descriptions of future advancement options available to employees that complete the proposed training.

(b) Applicant demonstrates sufficient planning to implement the proposed training within the stated timeline as shown through the application materials, which will include a detailed training plan and timeline for implementation with proposed actions and deliverables.

(c) Applicant demonstrates ability to provide wraparound services or supports during training to address barriers to training completion or job retention.

(d) The applicant demonstrates how the proposed training plan will allow them to increase their current organizational capacity and how the training will make them more competitive as a manufacturer.

(e) The proposed training curriculum is technical in nature and will either produce an industry-recognized credential or is closely aligned with the skills needed to produce items manufactured by the applicant.

Section 340.8 Record retention and reporting

(a) The business entity must submit a report upon completion of the eligible training that specifies the total amount of eligible training costs covered, including a breakdown between training expenses, wages, and wraparound services; the total number of employees that begin training; the total number of employees that finish training; the skills or type of training provided, including a list of applicable transferrable credentialing opportunities that were provided and information on whether or not the program is a registered apprenticeship program; information on any formalized agreements or partnerships with community or labor organizations to support the training program; the name of the training provider; and whether the covered employee is retained one year after the completion of the funded training.

(b) The taxpayer shall attach to its tax return its certificate of tax credit issued by the Commissioner of Economic Development pursuant to section 340.4(b)(2) of this Part. Each business entity participating in the program shall maintain all relevant records for the duration of its program participation, plus three years.