

SEMICONDUCTOR RESEARCH AND DEVELOPMENT PROJECT PROGRAM

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§330.1. Purpose and general description.

The purpose of these regulations is to set forth the administrative process governing the Semiconductor Research and Development Project Program and specifically to establish an application process, standards for application evaluation, and procedures for businesses claiming the tax credit under this program. Chapter 59 of the Laws of 2025 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 credit.

§ 330.2. Definitions. For the purposes of this Part:

(a) "Certificate of eligibility" means the document issued by the department to an applicant that has completed an application to be admitted into the Semiconductor Research and Development Project 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.

(b) "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 Part. The certificate shall be issued annually over the full benefit term if such criteria are satisfied and shall specify the exact

amount of the tax credit under this Part that a participant may claim and shall specify the taxable year in which such credit may be claimed.

(c) "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; and,

(3) has demonstrated that it meets the eligibility criteria in section 359-d and subdivision 2 of section 359-e of the Economic Development Law.

(d) Physical research and development facility, for the purpose of this Part, means a separate and distinct building or section thereof which is separate and distinct from any manufacturing operations of a company.

(e) "Preliminary schedule of benefits" means the aggregate amount of the tax credit that a participant in the Semiconductor Research and Development Project Program may be eligible to receive pursuant to this Part. The schedule shall indicate the annual amount of the credit a participant may claim in each year of eligibility. The preliminary schedule of benefits shall be issued by the department upon approval of the application for admission into the program.

(f) "Qualified investment" means an investment in tangible property (including a building or a structural component of a building) owned by a business enterprise which:

(1) is depreciable pursuant to section 167 of the Internal Revenue Code;

(2) has a useful life of four years or more;

(3) is acquired by purchase as defined in section 179(d) of the Internal Revenue Code;

(4) has a situs in this state; and

(5) is placed in service in the State on or after the date the certificate of eligibility is issued to the business enterprise.

(g) Research and development means, for the purposes of this Part, the primary use of the facility must be research and development focused as described by Internal Revenue Code section 41(d)(1)(B)(i).

(h) "Semiconductor Research and Development Project" means a project for a physical research and development facility, deemed by the commissioner as being primarily aimed at supporting research and development within the semiconductor manufacturing and related equipment and material supplier sector. Such project shall incur at least \$100 million in qualified investment in New York State. Such project must lead to the establishment and operation of a research and development facility separate and apart from new or existing semiconductor or semiconductor supply chain manufacturing facility or facilities.

§ 330.3 Eligibility criteria.

(a) To be a participant in the Semiconductor Research and Development Project Program, a business entity shall be operating in New York State or planning to operate in New York State and be undertaking a semiconductor research and development project as defined in section 359-c of the Economic Development Law.

(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 or local property taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

(c) A not-for-profit business entity is not eligible to participate in the program.

§ 330.4 Evaluation standards.

(a) The evaluation standards which may be utilized by the commissioner when determining whether to admit an applicant to the program include the following:

(1) the degree of applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or

(2) the estimated return on investment that the project identified in the application will provide to the State; or

(3) the overall economic impact that the project identified in the application will have on a region, including, but not limited to, the impact of any direct and indirect jobs that will be created and the likelihood of attraction of additional ecosystem stakeholders as a result of the project; or

(4) the degree to which other State or local incentive programs are available to the applicant; or

(5) the likelihood that the project identified in the application would be located outside of New York State or would not occur but for the availability of State or local incentives; or

(6) academic and workforce development partnerships presented by the project; or

(7) the amount of overall research and development expenditures anticipated to be made in connection with the project.

§ 330.5. Application and approval process.

(a) A business enterprise must submit a completed application as prescribed by the commissioner.

(b) As part of such application, each business enterprise must:

(i) agree to allow the Department of Taxation and Finance to share the business enterprise's 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;

(ii) agree to allow the Department of Labor to share its 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;

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

(iv) provide to the department, upon request, a plan outlining the schedule for meeting the investment requirements as set forth in subdivision 6 of section 359-c of the Economic Development Law. Such plan must include the amount and description of projected qualified investments for which it plans to claim the semiconductor research and development tax credit;

(v) 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 Research and Development Project 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;

(vi) certify, under penalty of perjury, that it is in substantial compliance with all environmental, worker protection, and local, State, and Federal tax laws.

(c) After reviewing a business enterprise's completed application and determining that the business enterprise will meet the conditions set forth in subdivision 6 of section 359-c of the Economic Development Law, the department may admit the applicant into the program and provide the applicant with a certificate of eligibility and a preliminary schedule of benefits, 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.

(d) In order to become a participant in the program, an applicant must submit evidence that it satisfies the eligibility criteria specified in section 359-d of the Economic Development Law and subdivision (b) of this section in such form as the commissioner may prescribe. After reviewing such evidence and finding it

sufficient, the department shall certify the applicant as a participant and issue to that participant a certificate of tax credit for one taxable year. To receive a certificate of tax credit for subsequent taxable years, the participant must submit to the department a performance report demonstrating that the participant continues to satisfy the eligibility criteria specified in this Part.

(e) A participant may claim tax benefits commencing in the first taxable year that the business enterprise receives a certificate of tax credit. A participant may claim such benefits for up to nine additional consecutive taxable years, provided that the participant demonstrates to the department that it continues to satisfy the eligibility criteria specified in section 359-d of the Economic Development Law and subdivision (b) of this section in each of those taxable years.

§ 330.6 Powers and duties of the commissioner.

(a) The commissioner shall, in consultation with the Department of Taxation and Finance, develop a certificate of tax credit that shall be issued by the commissioner to participants. Participants must include the certificate of tax credit with their tax return to receive any tax benefits under this Part.

(b) The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any participant from the program for failing to meet any of the requirements set forth in subdivision 6 of section 359-c and section 359-d of the Economic Development Law.

§ 330.7 Semiconductor Research and Development Tax Credit.

(a) A participant in the Semiconductor Research and Development Project Program shall be eligible to claim a credit on qualified investments pertaining to research and development in semiconductor research and development projects in New York State. The amount of such credit shall be up to 15 percent of the cost or other basis for Federal income tax purposes of the qualified investment.

(b) The total amount of tax credits listed on certificates of tax credit issued by the commissioner shall be allotted from the funds available for Green CHIPS tax credits as provided under subdivision 4 of section 359 of the Economic Development Law.

(c) Election of credit. A participant who or which is qualified to claim the Semiconductor Research and Development Project Program tax credit and is also qualified to claim either the excelsior investment tax credit or the investment tax credit provided for by subdivision 1 of section 210-B or subsection (a) of section 606 of the Tax Law, may claim either the semiconductor research and development

credit or the excelsior investment tax credit or investment tax credit, but not more than one with regard to a particular piece of property or activity.

§ 330.8 Claiming credits

(a) After reviewing a participant's completed application and determining that the business enterprise will meet the conditions set forth in section 330.2(g) of this Part, the department may admit the applicant into the program and provide the applicant with a certificate of eligibility and a preliminary schedule of benefits 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.

(b) In order to become a participant in the program, an applicant must submit evidence that it satisfies the eligibility criteria specified in sections 330.3 and 330.5 of this Part in such form as the commissioner may prescribe. After reviewing such evidence and finding it sufficient, the department shall certify the applicant as a participant and issue to that participant a certificate of tax credit for one taxable year. To receive a certificate of tax credit for subsequent taxable years, the participant must submit to the department a performance report demonstrating that the participant continues to satisfy the eligibility criteria specified in this Part.

(c) A participant may claim tax benefits commencing in the first taxable year that the business enterprise receives a certificate of tax credit. A participant may claim such benefits for up to the next nine consecutive taxable years, provided that the participant demonstrates to the department that it continues to satisfy the eligibility criteria specified in sections 330.3 and 330.5 of this Part in each of those taxable years.

§ 330.9 Refundability

(a) The tax credit established in this Part 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 for that year.

(b) The event of such failure shall not extend the original 10-year eligibility period.

§ 330.10 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.

§ 330.11 Reporting

(a) Each participant must submit a performance report annually at such a time and in such form as the commissioner may require.

(b) The department, beginning February 2027, and annually thereafter provided program funds remain, shall submit a report to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly. Such annual report shall include, but need not be limited to: the number of participants approved for the program; names of business entities admitted to the program; regional economic development council region wherein the project resides; the total amount of benefits approved per business and in total for the program; total private sector co-investment provided by each approved business and in total for the program; total jobs created at the project location for all years in which the recipient is receiving benefits under the program, including the median wage paid to employees at the project location and types of jobs created; and such other information as the commissioner determines is necessary and appropriate. Additionally, in all years in which the program is fully operational, such report shall include noteworthy projects which serve to highlight the developments occurring in New York State as a result of the program. Such report shall be included on the department's website and all program participants shall also be included in the database of economic incentives.