

New York Innovation Hot Spot Program Tax Benefits

From: New York State Department of Taxation and Finance Technical Memorandum (TSB-M-14(a)C, (1)I, (2)S

Eligible: An entity whose business enterprise (corporation, sole proprietorship, partnership, limited partnership, limited liability company, or New York S corporation) that is in the formative stages of development and is in New York State. It must be certified by a New York State innovation hot spot as being approved to locate in or be a part of a virtual incubation program operated by that innovation hot spot.

Not eligible:

- A corporation where more than 50% of the number of shares that entitle the holder to vote for the election of directors or trustees is owned or controlled (either directly or indirectly) by a corporation subject to tax under sections 183, 184, or 185 of Article 9 (corporation tax); Article 9-A (corporation franchise tax); Article 32 (franchise tax on banking corporations); or Article 33 (franchise tax on insurance corporations) of the Tax Law.
- A corporation, sole proprietorship, limited partnership, LLC, or New York S corporation that is substantially similar in operation and ownership to a business entity (or entities) that is now or has ever been subject to tax under sections 183, 184, 185, or former section 186 of Article 9; Article 9-A; Article 32; Article 33; or former Article 23 (the unincorporated business tax); or for which the business income or loss is or was includable under Section 22 (personal income tax) of the Tax Law.

New York innovation hot spot program tax benefits (section 38 of the Tax Law)

An innovation hot spot can certify certain clients as qualified entities. A qualified entity is eligible for New York innovation hot spot tax benefits under section 38 of the Tax Law. However, a taxpayer that claims any of these tax benefits is not eligible for any other New York State exemption, deduction, credit, or refund attributable to business operations in, or as part of a virtual incubation program operated by, an innovation hot spot. The election to claim any of the tax benefits available under section 38 of the Tax Law is not revocable.

In addition to any recordkeeping requirements imposed by Empire State Development (ESD), which authorizes New York State incubators, a qualified entity that is located within and without a New York innovation hot spot must keep books and records to disclose, to the satisfaction of the Tax Department, the amount of items of income, gain,

loss, and deduction attributable to operations in, or as part of a virtual incubation program operated by, the innovation hot spot. The books and records must accurately reflect the income, gain, or loss attributable to operations in (or as part of) the innovation hot spot.

Corporation franchise tax benefit

A corporation franchise tax benefit is allowed for five tax years beginning with the first tax year the qualified entity becomes a tenant in, or part of a virtual incubation program operated by, an innovation hot spot.

Fixed dollar minimum benefit. A qualified entity that is taxable under Article 9-A and is located completely within the innovation hot spot is only liable for the fixed dollar minimum tax under that Article (i.e., the qualified entity is not subject to the MTA surcharge or the tax on subsidiary capital). However, the entity is still subject to any tax imposed on the corporation by any other article of the Tax Law (e.g., the license fee under Article 9).

Subtraction modification benefit. A qualified entity that is taxable under Article 9-A and is located both within and without an innovation hot spot, or that is a corporate partner in a qualified entity, is allowed a subtraction modification benefit in computing entire net income (ENI) for the amount of income or gain included in its federal taxable income that is attributable to operations in, or as part of a virtual incubation program operated by, the innovation hot spot. The amount of the subtraction modification is determined using books and records, as explained above.

Note: A qualified entity that is filing as a member of a combined group is allowed only the subtraction modification benefit. Therefore, when a qualified entity is filing as a member of a combined group, the fixed dollar minimum benefit is **not** available.

Personal income tax benefit

A personal income tax benefit is allowed for five tax years beginning with the first tax year the qualified entity becomes a tenant in, or part of a virtual incubation program operated by, the innovation hot spot.

- An individual who is the sole proprietor of a qualified entity, or a member of an LLC treated as a partnership, a partner in a partnership, or a shareholder in a New York S corporation (where the LLC, partnership, or New York S corporation is a qualified entity) who is taxable under Article 22 is allowed a deduction (in the form of a subtraction modification) for the amount of income or gain included in his or her federal adjusted gross income, to the extent that the income or gain is attributable to the operations of the qualified entity in, or as part of a virtual subtraction modification is determined using books and records.

Sales and use tax benefit.

A qualified entity that is a tenant in, or part of a virtual incubation program operated by, an innovation hot spot is eligible for a credit or refund of the 4% state sales and use tax and the 3/8% tax imposed by the state in the Metropolitan Commuter Transportation District on the purchase of tangible personal property, certain utility services, and other services taxable under section 1105(c) of the Tax Law. The credit or refund will be allowed for 60 months beginning with the first full month after the qualified entity becomes a tenant in, or part of a virtual incubation program operated by, an innovation hot spot.

Note: A qualified entity that is a tenant in, or part of a virtual incubation program operated by, an innovation hot spot that makes sales subject to sales and use tax is still required to be registered as a sales tax vendor and to collect and remit the appropriate state and local sales tax on its sales.

Purchases eligible for a credit or refund. For purchases and uses of property and services to be eligible for a credit or refund, the property, or services (other than the section 1105(b) consumer utility services discussed below) must be directly and predominantly used or consumed by a qualified entity at its location in, or as part of a virtual incubation program operated by, an innovation hot spot. For purposes of the credit or refund, *predominantly* means more than 50%.

Consumer utility services (other than telephony and telegraphy, telephone and telegraph services, and telephone answering services) and prepaid telephone calling services must be used or consumed directly and exclusively (100%) by a qualified entity at its location in, or as part of a virtual incubation program operated by, an innovation hot spot. Consumer utility services include sales of gas, electricity, refrigeration, and steam, as well as gas, electric, refrigeration, and steam services of whatever nature.

Telephony and telegraphy, telephone and telegraph services, and telephone answering services must be delivered and billed to a qualified entity at an address at its location in, or as part of a virtual incubation program operated by, an innovation hot spot. Mobile telecommunications services purchased by a qualified entity will qualify for the credit or refund where the qualified entity's place of primary use is at its location in, or as part of a virtual incubation program operated by, an innovation hot spot.