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## **New York's Agreement with Amazon.**

We are continuing our series on the details of the Amazon HQ2 incentive agreements with Virginia, New York, and Tennessee. This article examines the terms of New York's memorandum of understanding pertaining to \$1.7 billion in incentives from the Excelsior Jobs Program (tax credits) and Empire State Development (capital grant).

### **What is incentivized**

- The Excelsior Jobs Program offers up to \$1.2 billion in refundable tax credits over 10 years. The credit is based on actual wages of net new jobs and qualifying capital investments per year. The maximum credits allowable per year are specified, along with job and investment commitments. To obtain the full amount, Amazon must employ 25,000 net new full-time employees and invest \$2.3 billion by 2028.  
Amazon would also be eligible by-right for the NYS Investment Tax and Employment Incentive. However, it may not take this incentive if it takes the Excelsior Jobs Program credit. Amazon can choose which incentive it prefers.
- The Empire State Development grant offers up to \$505 million over 15 years to reimburse Amazon for capital costs associated with office buildout, site preparation, and infrastructure improvements. To obtain the full amount, Amazon would need to employ 40,000 by 2034 and jobs must be maintained through 2037.
- Full-time, permanent employees include employees on the payroll who work at the location at least 35 hours per week for at least 4 consecutive weeks and receive benefits. The definition also includes 2 part-time, permanent, private sector employees who work at the location for a combined minimum of 35 hours per week.
- It also appears that full-time contract employees who are not on the payroll but work exclusively for Amazon at the location for last least 35 hours per week in a year-round position will qualify for the incentive.
- The agreement specifies that qualifying positions can't be transferred from another location within the state.

### **Process**

- To claim the Excelsior Jobs Program tax credit, Amazon must submit evidence in an annual performance report that it satisfies job, investment and other eligibility requirements. If the evidence is found sufficient, Amazon will receive a Certificate of Tax Credit.
- Funds for the Empire State Development grant are disbursed annually in arrears each year for the 15 year term as specified investment milestones are achieved. Amazon must make the full investment for each project year and achieve 85% of the specified cumulative net new jobs. Funds may be withheld until disbursement criteria are met.
- If cumulative job numbers fall below the specified level from either of two preceding years, the state can recapture disbursed funds.
- However, if Amazon meets the jobs criteria for years 5, 10 and 15, the state agrees to make the full grant disbursement for those years and any disbursements the may have been previously withheld or recaptured.

Amazon agrees to pay a 1% (\$5 million) commitment fee to Empire State Development once the the Grant Disbursement Agreement is executed.

- The company also agrees to a good faith effort to achieve Minority- and Women-Owned Business Enterprise participation of 30% of the grant amount.

### **Reporting and Transparency**

- Amazon agrees to allow the Department of Taxation and Finance to share tax information with Empire State Development.
- The company also authorizes the Commissioner of Labor to disclose to Empire State Development all unemployment insurance reports and contributions for the purposes of compliance monitoring and performance review.
- The MOU does not address public disclosure or public records.

### **Smart Incentives**

by Ellen D. Harpel | Dec 2, 2018 | Incentive programs

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