NEW YORK STATE BUSINESS TAX CREDITS: ANALYSIS AND EVALUATION

A Report Prepared for the
New York State Tax Reform and Fairness Commission

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I. EXECUTIVE SUMMARY

In the 2013 tax year,[1] New York State (NYS) provided an estimated $1.7 billion in 50 business tax credits to encourage taxpayers to engage in specific activities.[2] The $1.7 billion includes the dollar value of credits taken by corporate entities as well as by sole proprietorships, members of partnerships, and S Corporation shareholders liable for the personal income tax (PIT).[3] Business tax credits and other incentives have laudable goals such as encouraging economic development statewide; promoting job growth in distressed areas; and furthering the state's social, housing, and environmental policies.

Economic development officials value business tax incentives as tools needed to compete with other states. There is, however, no conclusive evidence from research studies conducted since the mid-1950s to show that business tax incentives have an impact on net economic gains to the states above and beyond the level that would have been attained absent the incentives. In addition, business tax incentives violate principles of good tax policy and tenets of good budgeting.

Six widely accepted principles against which to judge tax policies are economic neutrality, equity, adequacy, simplicity, transparency, and competitiveness. An economically neutral tax does not influence economic behavior — individuals and businesses make decisions based on economic merit rather than tax implications. An equitable system treats similarly situated taxpayers similarly. An adequate tax system raises enough revenue to support desired government services and investments. A simple and transparent system is easy to understand, relatively inexpensive for taxpayers to comply with, and relatively inexpensive for the government to administer. A competitive tax system does not impede the ability of companies to compete with those located outside the state and does not limit the state's ability to attract new business.

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1 A "tax year" is an annual accounting period for keeping records and for reporting income and expenses. It can be either a calendar year or a fiscal year. All data for tax year 2013 included in this report are estimated and subject to revision.

2 The count of tax expenditures is based on the individual credits or discrete components within broader incentive programs. For example, each of the four components of the Excelsior Jobs Program is counted as a separate incentive. Two additional tax credits are scheduled to take effect after 2013, bringing the total to 52.

3 Although partnerships and S Corporations file NYS tax returns, partnerships do not compute and pay an entity level tax and S Corporations are liable for a fixed dollar tax based on NYS receipts. Credits are earned at the entity level, but are passed through proportionally to partners and shareholders to apply against their PIT tax liability.

Almost by definition, business tax incentives violate these principles. Their explicit goal is to alter decisions, encouraging more of a particular activity in a state or a given area than private markets would undertake absent the incentives. Depending on the activity, this may be appropriate, but it places great responsibility on public officials to understand how the market is "wrong" and how the tax system can fix it. By lowering taxes for some taxpayers while keeping them higher for others, incentives may treat similarly situated taxpayers differently and can make it harder to raise adequate revenue with minimum public resistance. Finally, myriad eligibility rules and credit calculations violate the simplicity principle for taxpayers and tax collectors.

In 2009, the latest year for which detailed data on credit users are available, just over 1 percent of general corporation tax filers, 0.6 percent of S Corporation filers,[4] and 1.2 percent of partnerships claimed one or more business tax credits. For S Corporations and partnerships, credits earned at the entity level are passed through proportionally to shareholders and partners to apply against their PIT tax liability. In 2009, there were more than five million partnership members and S Corporation shareholders. Less than 0.5 percent of all shareholders and partners used the credits.

Lower taxes for some taxpayers require higher effective tax rates for the vast majority of taxpayers for a given level of revenue. This is the "innocent bystander" effect of business tax incentives — those not benefiting pay higher taxes. If all NYS business tax credits were eliminated, the potential revenue gain could be used to reduce the top personal income tax rate, cut both personal and corporate income tax rates, lower the sales tax rate or reduce other tax rates. To the extent that credits are replaced by direct spending programs, less of the revenue gain from eliminating tax credits would be available for tax rate reductions.

Many business tax incentives also violate tenets of good budgeting. Refundable tax credits operate much like spending programs, in effect providing cash grants to recipients. A refundable credit entitles the taxpayer to a cash payment if the credit exceeds tax liability. If a taxpayer qualifies for a refundable credit and the amount of the credit exceeds tax liability, the government pays the difference to the taxpayer and treats it as an overpayment. These cash

[4] For U.S. federal income tax purposes, an S Corporation is a corporation that makes an election to be taxed under Subchapter S of Chapter 1 of the Internal Revenue Code. In general, S corporations do not pay any federal income taxes. In New York State, the income of S Corporations is not taxed until it is distributed to owners/shareholders with the exception of a fixed dollar minimum tax ranging from $25 to $4,500.

payments are made even if the taxpayer has not paid taxes in the past or will not pay taxes in the future.

Most credits are uncapped, whereas spending programs are limited by annual appropriations. Tax credits rarely are evaluated rigorously and independently against their goals. That is also true of many spending programs, but unlike tax credits they are subject to the annual budget process in which they compete against other priorities and need annual appropriations to continue. Some tax credits have sunsets, but most continue indefinitely. Also, because they are part of the tax code and not subject to the appropriations process, tax credits impose automatic budget obligations that constrain policymakers and reduce resources for other priorities, particularly in times of fiscal distress. Credit costs can only be curtailed with extraordinary measures, such as the temporary credit deferral program enacted by the state in 2010 in response to a fiscal crisis.

Because of the flaws in business tax credits discussed in this report and concerns with their escalating number and costs, the Commission has asked us to provide options for it to consider in its efforts to restructure them. In response, we have developed three broad categories of options: (1) major reform, (2) moderate reform, and (3) targeted reform. Major reform would eliminate all business tax credits. Moderate reform would scale back individual credits and eliminate most refundability provisions. Targeted reform is generally designed to eliminate underused credits and improve the workings of remaining credits. We provide a more detailed discussion of these reforms later in this executive summary and in the body of the report.

The reforms are directed at the credits, themselves, not at the underlying stated objectives that they address. The question is thus not whether the activity that is the subject of the credit is worthy, but whether it is best implemented through the tax code. In addition to the policy flaws inherent in the tax credits, there are indications, such as low tax credit utilization rates, unintended consequences, and compliance complexity that suggest few objectives are best addressed by tax credits in lieu of direct spending. Additionally, the decisions about whether to support a given activity and at what level through a tax credit are subjective. Without a mechanism to compel this discussion, such as that which occurs in the annual state appropriations process for spending programs or might occur with sunsets or specific annual allocations, credits begin to multiply as interested parties promote new credits for favored activities.

I.1 Business Tax Incentives in NYS

New York provides approximately $2 billion in business tax incentives through tax credits, tax exclusions, exemptions, deductions, and preferential tax rates. Although all tax incentives reduce the costs of doing business, they do not all work through the tax code in the same way.

- ✓ Exclusions, exemptions, and deductions reduce income subject to taxes. Their monetary value to the taxpayer depends on the prevailing tax rate and the proportion of taxable income allocated to the taxing jurisdiction. In NYS, for example, where the current corporation franchise tax rate is 7.1 percent, the value of a $1,000 exemption or deduction is equal to $71 ($1,000 x .071) of taxable income for a corporation allocating all of its income to the state.[5]
- ✓ Credits directly reduce taxes on a dollar-for-dollar basis, e.g., a $1,000 tax credit reduces taxes by $1,000.

Tax incentives and other preferential treatment of taxpayers are referred to as "tax expenditures" and can be thought of as government spending channeled through the tax code. They are directed at policy objectives similar to those of many state spending programs. Unlike direct spending, however, credits (and other tax incentives) are generally not scrutinized or subject to debate during the government's annual budget review because no affirmative action, such as an appropriation, is required unless the tax incentives include a legislated sunset (expiration) date. At present, there are 52 enacted business tax credits in New York State — the 50 referred to earlier plus the two that take effect in later years (see Table 1.1 for listing of credits). Of the 52 credits, there are 32 that have no sunset provisions that would compel the legislature to review whether they are worthy of statutory reauthorization and continued state funding.

I.2 Fiscal Impact of NYS Business Tax Credits

In this report, the fiscal impact on NYS of business tax credits is calculated using data published in the *New York State Annual Report on Tax Expenditures* that include estimates of the

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[5] For taxpayers that have a presence in NYS as well as other states, taxable income will be divided or apportioned among the states. The value of the exemption will be apportioned in the same manner.

costs (lost revenues) to the state of tax credits that have been or will be claimed.[6] Tax credits can also have indirect effects on state tax revenues through their impact on the economy. If the economic activity for which the taxpayer takes the credit would have occurred absent the credit, the result is foregone tax revenues for the state with no offsetting increases in economic activity and tax revenue. If a credit creates new economic activity, tax revenues generated by the activity may partially offset the direct cost to the state of the credit. The *Annual Report on Tax Expenditures* does not include estimates of whether, and by how much, a change in tax policy would affect the overall economy — i.e., the estimates in the report do not account for what is referred to as "dynamic scoring."

Table 1.1: NYS Business Tax Credits Enacted as of 2013

Economic Development Credits	Geographically Targeted Credits	Credits to Support NYS Social, Housing, and Environment Policies
Investment Tax Credits (ITCs)*	***Empire Zone (EZ) Credits***	***New York Youth Works Tax Credit****
a. Investment Tax Credit	a. Investment Tax Credit*	
b. Retail Enterprise Tax Credit	b. Employment Incentive Credit*	***Credit for Employment of Persons with Disabilities***
c. Rehabilitations Credit for Historic Barns	c. EZ/ZEA Wage Tax Credit*	
d. Employment Incentive Credit	d. EZ Capital Credit	***Minimum Wage Reimbursement Credit*****
	e. QEZE Real Property Tax Credit*	
Brownfield Redevelopment Tax Credits*	f. QEZE Reduction Credit	***Hire a Vet Credit*****
a. Brownfield Redevelopment Tax Credit	g. Financial Services ITC	
b. Remediated Brownfield Credit from Real Estate Taxes	h. Financial Services EIC	***Credit for Purchase of an Automated External Defibrillator***
c. Environmental Remediation Insurance Credit		
	Economic Transformation/ Facility Redevelopment Program Credits*	***Farmers' School Property Tax Credit****
Empire State Film Credit*	a. Job Tax Credit Component	
a. Film Production Credit	b. Tax Credit Component	***Low-Income Housing Credit***
b. Film Post Production Credit	c. Job Training Tax Credit Component	
c. Commercial Production Credit	d. Real Property Tax Credit Component	***Credit for Servicing SONYMA Mortgages***
· Incremental Cost Component		
· MCTD Component	***Empire State Jobs Retention Program Credit****	***Special Additional Mortgage Recording Tax Credit****
· Outside MCTD Component	a. Jobs Tax Credit	
	b. ITC	***Green Buildings Credit***
Investment Tax Credit for Financial Services*		
		Biofuel Production Credit*
Employment Incentive Credit for Financial Services		
		Land Conservation Easement Credit*
Excelsior Job Credits*		
a. Excelsior Job Credit		***Clean Heating Fuel Credit****
b. Excelsior Investment Credit		
c. Excelsior R&D Credit		***Rehabilitation of Historic Properties Credit****
d. Excelsior Real Property Tax Credit		
		Alternative Fuel Vehicle Refueling Property and Electric Vehicle Recharging Property Credit
Beer Production Credit*		
		Handicapped Accessible Taxicab Credit
Qualified Emerging Technology Company (QETC) Credit		
a. QETC Capital Tax Credit		
b. QETC Employment Credit*		
Security Officer Training Tax Credit*		

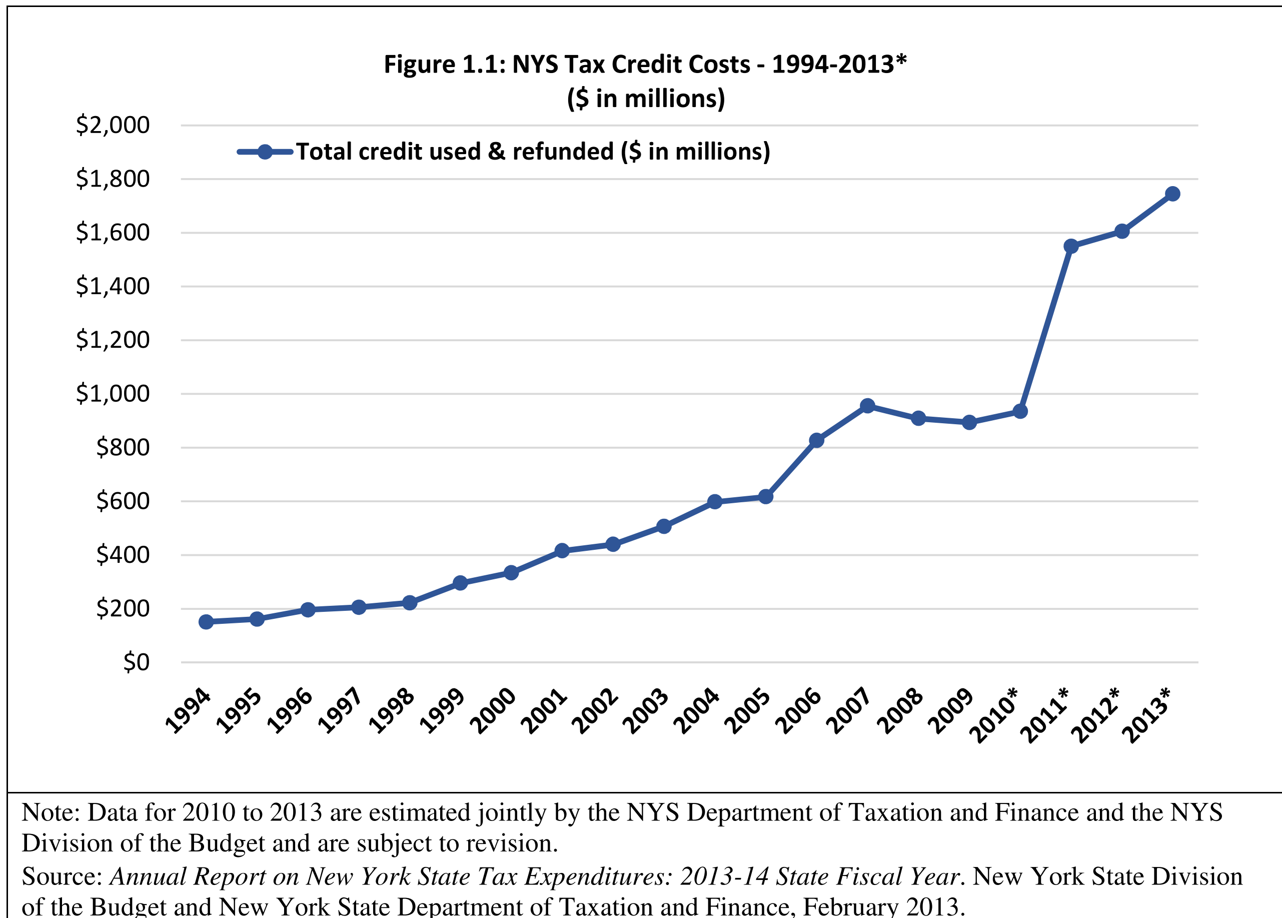
*Refundable credit. There may be some restrictions regarding which taxpayers are eligible for a refund.
** Credit enacted in 2013 but effective in subsequent years.

I.3 Cost Trends of Business Tax Credits

The number and costs of NYS tax credits available to businesses have increased significantly in recent decades (see Figure 1.1). In 1994, nine business tax credits were available

[6] These estimates are before considering the effect of the deferral program enacted in 2010.

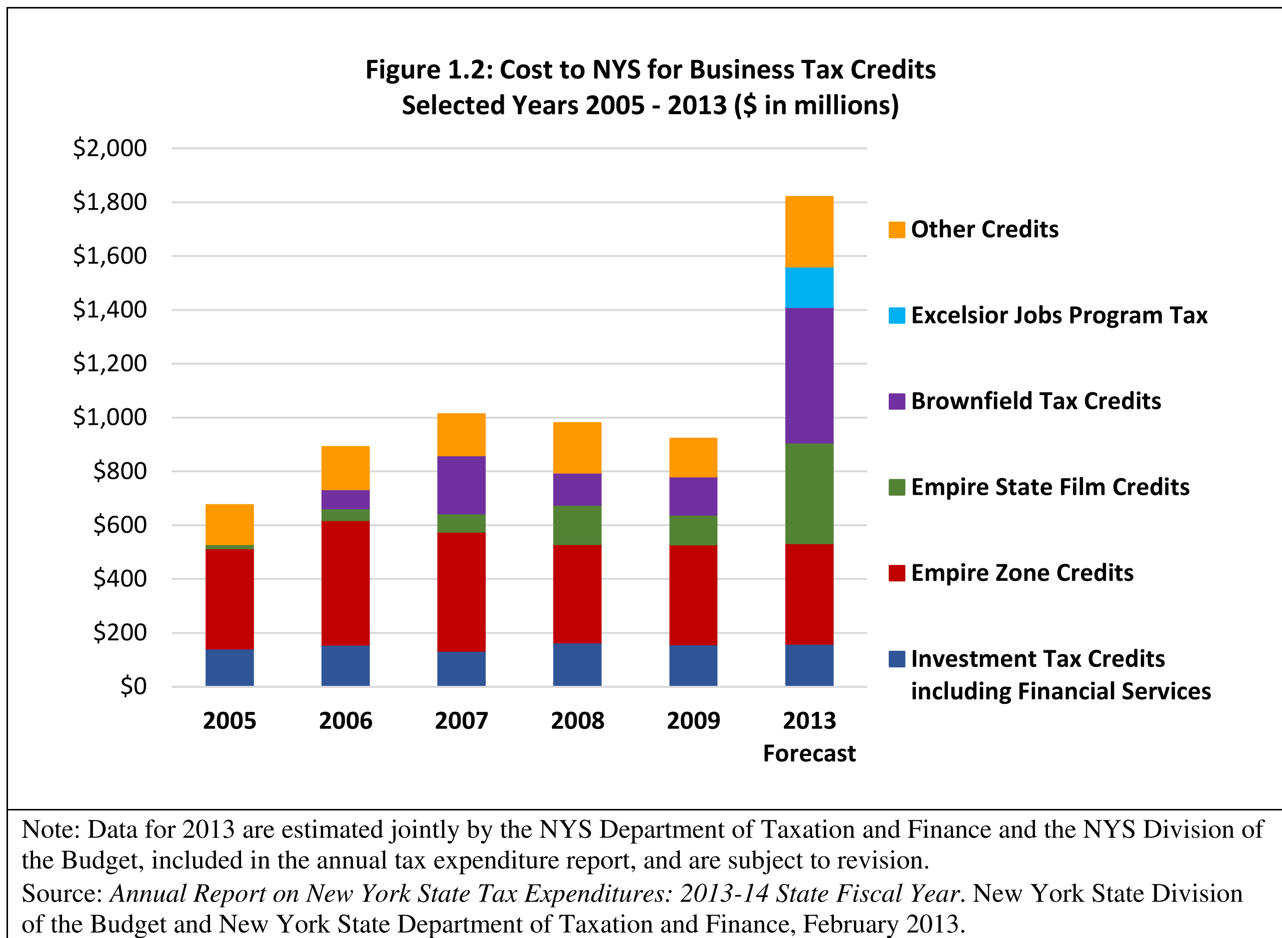
to taxpayers with a cost to the state of about $200 million. By 2005, there were 33 credits costing the state $673 million. In 2009, there were 38 credits costing the state $821 million. By 2013, the number of credits available to taxpayers had jumped to 50, costing the state an estimated $1.7 billion, close to triple the cost in 2005.



Note: Data for 2010 to 2013 are estimated jointly by the NYS Department of Taxation and Finance and the NYS Division of the Budget and are subject to revision.
Source: *Annual Report on New York State Tax Expenditures: 2013-14 State Fiscal Year*. New York State Division of the Budget and New York State Department of Taxation and Finance, February 2013.

Part of the cost increase from the mid-1990s to 2005 is due to the expansion in the total number of business tax credits, averaging more than two per year. The growth is also attributable to the addition of a few large new business tax credits, particularly the Qualified Empire Zone Enterprise (QEZE) real property tax credit (which is in the process of being phased out). The dramatic jump in estimated costs between 2009 and 2013 is largely explained by increases in three credit programs (see Figure 1.2) — film production, brownfield, and the Excelsior Jobs Program. These credits were initially made available to taxpayers in 2004, 2005, and 2010, respectively.

In 2009, brownfield tax credits cost the state $142.1 million, increasing to an estimated $503 million by 2013. Film credit costs more than tripled from $111.2 million in 2009 to an estimated $374.0 million in 2013. The Excelsior Jobs program credit is estimated to have cost the state $150 million in 2013. (Note: The cap on the film credit is $420 million annually; the cap on the Excelsior Jobs Program is $500 million per year when fully effective.)



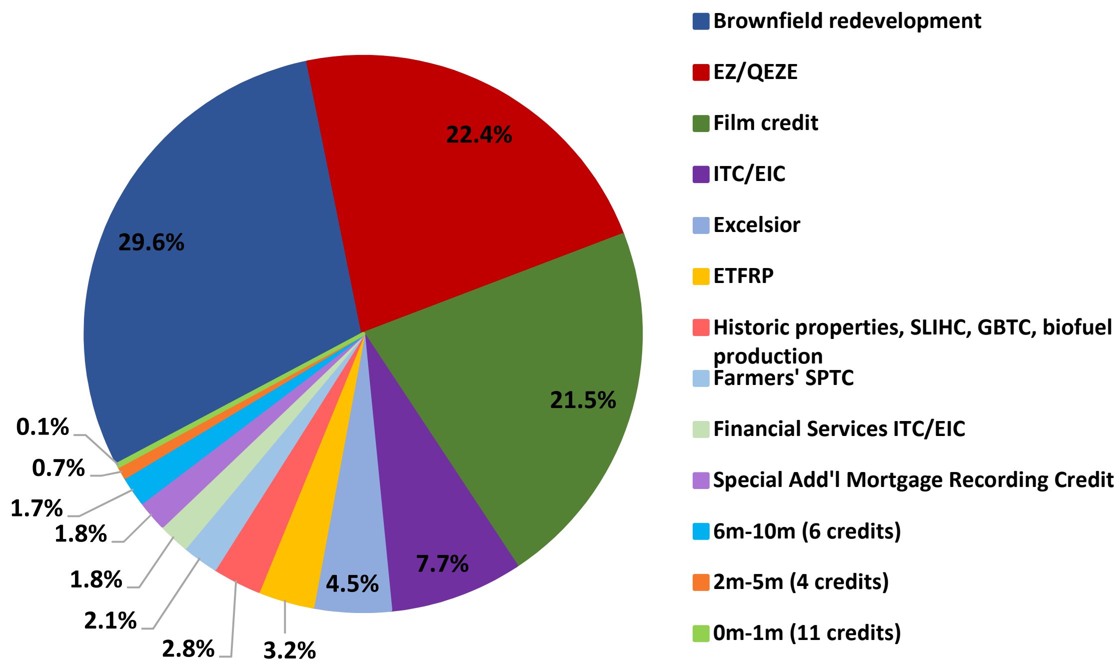
Note: Data for 2013 are estimated jointly by the NYS Department of Taxation and Finance and the NYS Division of the Budget, included in the annual tax expenditure report, and are subject to revision.
Source: *Annual Report on New York State Tax Expenditures: 2013-14 State Fiscal Year*. New York State Division of the Budget and New York State Department of Taxation and Finance, February 2013.

I.4 A Snapshot of NYS Business Tax Credits in 2013

Another way to look at NYS's spending on tax credits is to compare it to an alternative standard. One question to be asked, for example, is: "Does the current allocation of tax credit costs reflect the best use of state resources given desired policy outcomes and the geographic distribution of results?" Looking at the distribution of the costs attributable to NYS's 50 business tax credits available in 2013 helps to answer this question. In 2013, of the estimated $1.7 billion the state provided in tax credits, over half was committed to two purposes — cleaning up and redeveloping brownfield sites and promoting the film industry (see Figure 1.3). More than 20

percent of the fiscal impact of the business tax credits was accounted for by the Empire Zones Program (EZ) that has been roundly criticized and has technically expired. Yet the state continues to commit over a fifth of its tax credit spending to the program because of legislatively required benefit periods that will not end until 2020. Taken together, these three programs — brownfield, film, and Empire Zones — constituted almost 75 percent of the state's spending on business tax credits in 2013.

Figure 1.3: Percentage Distribution of the Costs of NYS Tax Credits in 2013



Notes: EZ/QEZE — Empire Zone/Qualified Empire Zone Enterprise
ITC/EIC — investment tax credit/employment incentive credit
ETFRP — Economic Transformation and Facility Redevelopment Program
Farmers' SPTC — school property tax credit
SLIHC — state low-income housing credit; GBTC — green buildings tax credit
6m-10m credits — Brownfield real property tax credit; mortgage servicing credit; film post production credit; commercial production credit (3 components)
2m-5m credits — Youth Works; beer production credit; Qualified Emerging Technology Company (QETC) employment credit; conservation easement credit
0m-1m credits — EZ capital credit; QETC capital credit; clean heating fuel credit; EZ Financial Services Investment Tax Credit/Employment Incentive Credit (FS-ITC/EIC); employees with disabilities credit; defibrillator credit; security training tax credit; brownfield environmental remediation insurance credit; handicapped-accessible taxis credit; jobs retention credit (two components); historic barns and retail rehabilitation components of the ITC.
Source: *Annual Report on New York State Tax Expenditures: 2013-14 State Fiscal Year*. New York State Division of the Budget and New York State Department of Taxation and Finance, February 2013.

New York's two largest tax credits — brownfield credits and film production credits — disproportionately benefit economic activity in New York City (NYC) and other parts of what is

referred to as "Downstate" New York.[7] Close to 60 percent of brownfield credits claimed between 2008 and 2012 were for projects in NYC where 44 percent of the state's nonfarm jobs are located. Seventeen percent of brownfield credits were for projects in Westchester where (together with Putnam and Rockland Counties) 6 percent of NYS's nonfarm jobs are located. The remaining 24 percent of brownfield credits were claimed for projects in the rest of the state where 50 percent of the jobs are located.[8] For film credits, in 2011, more than 90 percent of qualified film production spending and tax credits were claimed for projects in NYC.[9] Even though the credits may have had a positive effect on the level of film and television production in the state, this raises the question of whether scarce economic development dollars are being spent where they are most needed.[10] Employment in NYC increased by 2.3 percent over the last year, accounting for 75 percent of the state's job growth; jobs in the rest of the state grew by 0.6 percent.

I.5 Concentration of Tax Credit Claimants

The latest information available on NYS taxpayers using business tax credits is for 2009 when there were 38 credits available to businesses.[11] The 2009 data show that not only are the NYS business tax credits concentrated among a few industries, they are also concentrated among a small number of taxpayers.

- ✓ More than 260,000 corporation franchise tax returns were filed; just over 1 percent claimed one or more business tax credits.
- ✓ Nearly 390,000 corporations filed as S Corporations; fewer than 2,500, or 0.6 percent, claimed one or more business tax credits. Credits are earned at the entity level but passed through proportionally to shareholders to apply against their PIT tax liability

[7] The term Downstate usually refers to NYC, Long Island, and the northern suburbs of NYC, generally consisting of Westchester and Rockland Counties. The northern boundary is extended by some definitions to include all or some of Putnam, Orange, and Dutchess Counties. Upstate refers to all other parts of New York.
[8] The authors' analysis of data from the New York State Department of Taxation and Finance.
[9] *Economic and Fiscal Impacts of the New York State Film Production Credit* (New York, NY: HR&A Advisors, Inc., December 3, 2012), http://www.mpaa.org/Resources/f83bf36c-04cb-44fe-aaa4-c06449eb5ec7.pdf.
[10] The authors' analysis of data from the New York State Department of Labor, http://labor.ny.gov/stats/pressreleases/pruistat.shtm.
[11] While the 2009 data are the best that are available to shed light on the concentration of credit takers, the distribution of tax credit claimants for 2009 may not be fully comparable to the 2013 distribution since the earlier data (1) do not include claimants for the Excelsior Jobs Program and (2) do not reflect the growth in brownfield and film production credits from 2009 to 2013.

- ✓ More than 217,000 partnership returns were filed; slightly over 2,600, or 1.2 percent, claimed one or more business tax credits that were earned at the entity level but passed through proportionally to partners to apply against their PIT tax liability.

In 2009, corporation franchise tax and other business taxpayers claimed 3,122 credits, including those that had been carried forward from previous years.[12] In addition, there were more than five million partnership members and S Corporation shareholders. Close to 25,000 credit claims were submitted on PIT returns related to these entities — less than 0.5 percent of all shareholders and partners. The average value of a credit for a PIT filer was $11,210, compared with the average of $189,846 for a corporate tax filer. A prime reason for this differential is that most PIT filers who take credits are one of several members of a partnership or Limited Liability Company (LLC) or are shareholders in an S Corporation. Each partner or shareholder filing a PIT return is eligible to claim a share of the total credit earned by the business entity.

Table 1.2: NYS Business Tax Credit Users, 2009

Type of Credit	Personal Income Tax			Corporation Franchise Tax & Other Business Taxes*			Total		
	Number of Claims	Fiscal Impact on NYS ($ m)	Average Claim per Taxpayer **	Number of Claims	Fiscal Impact on NYS ($ m)	Average Claim per Taxpayer **	Number of Claims	Fiscal Impact on NYS ($ m)	Average Claim per Taxpayer **
Credits to Promote Economic Development	7,740	$109	$14,134	1,370	$332	$242,409	9,110	$442	$48,463
Geographically Targeted Credits	11,079	$157	$14,207	1,390	$216	$155,683	12,469	$374	$29,978
Credits for Social, Housing, and Environmental Policies	6,113	$13	$2,078	362	$44	$122,099	6,475	$57	$8,788
All Credits	24,932	$280	$11,210	3,122	$593	$189,846	28,054	$872	$31,090

*Other business taxes include the corporation and utilities tax, the bank tax, and the insurance company tax.
** Average based on taxpayers claiming the credits.
Source: Calculated by authors from data supplied by NYS Department of Taxation and Finance.

Although almost half of the *number* of business tax credit claims in 2009 were targeted geographically at the state's distressed areas, credits for programs to promote economic development statewide accounted for the majority of credits in *dollar* terms.

[12] Other corporate business taxes include the corporation and utilities tax, the bank tax, and the insurance tax. The count of taxpayers includes S corporations that pay only a fixed minimum tax under the corporation franchise tax. This number is extrapolated from the *2007 New York State Corporate Tax Statistical Report* (Albany, NY: NYS Department of Taxation and Finance, August 2011), http://www.tax.ny.gov/pdf/stats/stat_corp/corp_stat/2007_new_york_state_corporate_tax_statistical_report.pdf.

- ✓ The brownfield redevelopment credit was claimed by 16 corporate taxpayers for an average benefit of over $4.2 million and by 92 PIT filers for an average benefit of $763,000.
- ✓ The film production credit was claimed by 36 corporate taxpayers for an average $2.8 million benefit and by 67 PIT filers for an average benefit of $116,716.
- ✓ The QEZE Real Property Tax credit was claimed by 471 corporate taxpayers for an average benefit of just under $300,000 and by 3,777 PIT filers for an average benefit of $22,000.
- ✓ Corporate tax filers claimed a $103,000 average ITC credit; PIT filers claimed an average $2,937 ITC credit. The ITC was the credit most widely used by corporate taxpayers (1,027) and by PIT filers (6,680).

I.6 Pros and Cons of Business Tax Incentives: What the Research Tells Us

New York is not unique in its use of tax incentives to promote economic development. All 50 states offer at least one tax incentive to businesses; most offer several, primarily to attract businesses from other states. As stated in a recent report by the Pew Center on the States, business tax incentives are often used "…as part of a bidding war between states over firms seeking to relocate or expand. If one state offers a tax credit, others often feel compelled to match it or risk being left behind."[13] This is especially true when states react to claims by businesses that taxes are a major factor in their location and expansion decisions. As mentioned earlier, there is no conclusive evidence from research studies conducted since the mid-1950s to show that business tax incentives create net economic gains to the states above and beyond what would have been attained in the absence of the incentives. Nor is there conclusive evidence from the research that state and local taxes, in general, have an impact on business location and expansion decisions.

In addition, almost by definition, business tax incentives violate widely accepted principles of good tax policy: economic neutrality, equity, adequacy, simplicity, transparency, and competitiveness.

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[13] *Evidence Counts: Evaluating State Tax Incentives for Jobs and Growth* (Washington, DC: Pew Center on the States, April 2012, http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/015_12_RI%20Tax%20Incentives%20Report_web.pdf.

No tax system can satisfy all good tax policy principles, but systems with broad tax bases and low rates can come closest. The broad base avoids complicated, distorting, and inequitable distinctions among similar activities and helps to keep overall rates low. Low rates reduce the extent to which taxes distort taxpayer choices and can contribute to the government's ability to raise sufficient revenue with the least public resistance.

I.7 Concerns About Business Tax Credits

New York's business tax credits often have flaws that are specific to their design or intent; *all* contain a common set of inherent flaws.

- ✓ They may reward activity that would have been undertaken absent the credit.
- ✓ They are similar to direct spending programs, but without the public visibility and legislative scrutiny of appropriated spending programs. Multiyear credits impose future spending obligations on the state that can be seen as the equivalent of "untouchable contractual obligations" in contrast to appropriations for spending related, for example, to education and Medicaid that is subject to annual legislative review and potential reductions.
- ✓ They require no annual appropriation so that they tend to remain on the books indefinitely with little or no evaluation of their benefits and costs. Refundable credits, in particular, potentially expose the state to significant unanticipated costs because the amount of the credit earned can exceed taxpayer liability, sometimes substantially.
- ✓ They may be subject to aggressive interpretation by taxpayers that can expand the use of credits beyond their original intent.
- ✓ It is difficult to evaluate their impacts on jobs and the economy because information on individual credit beneficiaries rarely is disclosed, often protected by taxpayer confidentiality rules.

A small percentage of taxpayers benefit from business tax credits, and a small fraction of those that claim them receive a disproportionate share of the benefits. The brownfield credits and the film credits, the state's two largest credit programs, embody several of the weaknesses identified above and are the subject of particular focus in this report.

I.8 The Brownfield and Film Credits

Brownfield Credits. A brownfield property is a site that is, or may be, contaminated by previous industrial or related uses but has reuse potential once remediated. Brownfield sites are located in cities with long histories of manufacturing activity and also in small towns and rural areas. Originally available in 2005, the NYS brownfield redevelopment tax credit was amended by the state in 2008, primarily out of concern for increasing program costs. The reforms limited credits for redevelopment for nonmanufacturing projects to the lesser of $35 million or three times the site preparation and groundwater remediation costs. For manufacturing projects, redevelopment credits were limited to the lesser of $45 million or six times the site preparation and groundwater costs. The reforms also *increased* the credit rates for clean-up activity. The caps on redevelopment credits and the increased rates for clean-up activity were intended to reduce the extent to which the credit was an incentive or reward for redevelopment, and increase emphasis on clean-up.

The three *refundable* brownfield tax credits are:

- ✓ a redevelopment credit dependent on remediation level, location, and type of taxpayer (personal or corporate);
- ✓ a credit for real property taxes for remediated brownfield properties based on the number of employees at the location. This credit can be equal to as much as 100 percent of real property taxes; and
- ✓ a one-time environmental remediation insurance credit for remediation insurance premiums.

Because information on credit-takers is disclosed under the brownfield program, it is possible to examine specific credits. Our analysis of this information revealed that the largest brownfield credit taken to date was the $114 million used to build a Ritz-Carlton Hotel in White Plains, for which the reported remediation costs were zero. The largest credit taken Upstate — an area in need of economic revitalization — was $87 million for a private power generation plant in Rensselaer. This project had been approved in substantial form by the Public Service Commission years before the brownfield program was enacted into law, suggesting that development was not induced by availability of the credit.

The combined costs of these two projects exceeded the initial annual cost estimate for the entire program. Both projects relied primarily upon local demand and likely needed little or no incentive to be built in their region. Although both credits were claimed prior to the 2008 amendments to the brownfield program, and would not be as large under the new rules, they illustrate many of the flaws discussed above that are inherent in business tax credits. The brownfield credits also present a cautionary tale about the consequences of trying to influence business behavior through the tax code, without sufficiently stringent rules to prevent unintended outcomes and to limit costs to the state.

- ✓ The brownfield credits were intended to remediate and restore blighted land, but they have functioned more as a real estate development program.
- ✓ The program's costs were initially estimated at $135 million annually, but increased to an estimated $503 million by 2013.
- ✓ Fewer sites have been remediated under the brownfield program than under the earlier Voluntary Cleanup Program that did not offer tax credits. In almost ten years, 133 sites have been remediated at a cost of more than $900 million, compared with 212 sites remediated under the voluntary program.

Despite reforms that were enacted in 2008, the credit will continue to cost hundreds of millions of dollars annually. The amount of expected credits not yet used exceeds $3.3 billion and will be a drag on future budgets. Credit-claiming is likely to remain highly concentrated and disproportionately focused in the downstate region.

The brownfield program is scheduled to sunset in 2015. A direct spending program might be a more effective way to clean up brownfield sites. Absent that, linking the credit more closely to the cost of clean-up would help refocus the program on its environmental goals and could contribute to upstate economic development efforts.

Film Credits. The Empire State film production tax credit, initially available in 2004, is designed to increase film production and post-production industry activities in the state. Expanded significantly in 2006 and in 2010, the credits provide incentives to qualified companies that produce feature films, television series, relocated television series, television pilots, television movies, and commercials and/or incur post-production costs associated with the original creation of these film productions. The three *refundable* film production credits are:

- ✓ The film production credit, which is the production credit available for companies that film a substantial portion of their project in NYS.
- ✓ The post-production credit is available for film production companies that film outside of NYS but contract their post-production work to a NYS company.
- ✓ There are three component commercial production credit programs — an upstate program, a downstate program, and a growth program

The film production credit, now generally 30 percent of qualifying costs, is large relative to industry profits and tax liability. Based on IRS industry-specific data, a 30 percent credit would equal about 55 percent of taxable income of a typical film production firm. In 2008 (the latest year for which detailed data are available), the credits received by 31 film production industry taxpayers exceeded the combined tax liability of the entire industry — all 1,600+ firms — in nine of the ten previous years. Because the credit exceeds tax liability many times over and is refundable, in effect it is a program of cash payments by the state to credit recipients.

The credit has caused film production to locate in NYS, as might a credit of similar magnitude for any potentially mobile industry. If a credit for 30 percent of costs were provided to other industries, it would eliminate tax liability many times over:

- ✓ For a company in the manufacturing sector that has been declining for several decades in New York State, such a credit could approximate 40 times the annual state tax liability — the equivalent of more than $12 billion annually for the sector. Whether credits of this size would be large enough to revive manufacturing in the state is not known.
- ✓ For companies providing professional, technical, and scientific services, such a credit could exceed 100 times annual tax liability — the equivalent of more than $23 billion annually.

Although the film credits do appear to boost in-state production, that does not mean that they "pay for themselves," as two recent consultant studies reported.[14] To reach their conclusions, both studies made several questionable assumptions, including:

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[14] The two studies are Ernst & Young, *Estimated Impacts of the New York State Film Credit: Prepared for the New York State Governors Office of Motion Picture and Television Development and the Motion Picture Association of America* February 2009, http://www.southwindsor.org/pages/swindsorct_IT/ct_studios/Credit_Study.pdf, and *Economic and Fiscal Impacts of the New York State Film Production Credit*.

- ✓ no credit-qualifying film would have been produced in NYS absent the credit despite the long-standing existence of a well-developed film production industry in the state; and
- ✓ credit-qualifying film productions would cause substantial credit-*ineligible* film production activity to locate in New York to take advantage of a film production industry cluster that would not exist but for the credit.

Using these assumptions, both studies concluded that the NYS film credits generated enough additional economic activity, and taxes on that activity, to offset the revenue loss to the state associated with the credits. It must, however, be noted that no determination can be made as to what level of film production activity and its associated impact is attributable to the credits.

As Section VI discusses, only under such assumptions would the economic activity created by the film production credit exceed the cost to the state in foregone revenues. The credit might, however, be judged appropriate if it contributes to the state's employment base. The film production credit accounts for 22 percent of the total cost of New York's business tax credits, but the industry accounts for less than one percent of the state's employment.[15] Even using the criterion of job creation, it is worth noting that many of the film industry jobs are temporary.

It is not clear from our analysis that there is sufficient justification for the size of the film credits. The state should consider scaling back the credits and monitoring the film industry closely to determine the impact on its activities of such a cutback. This appears to be the conclusion of other states such as Connecticut where state lawmakers voted in 2013 to put a moratorium on tax credits for the movie industry. Other states have not renewed film credits with sunset provisions or have suspended or declined to fund the credits.

I.9 Options for Restructuring New York State Business Tax Credits

Because of the flaws discussed above and concerns with their escalating number and costs, the Commission has asked us to provide options to restructure NYS's business tax credits. In response, we have developed three broad categories of options: (1) major reform, including the elimination of all business tax credits; (2) moderate reform, including significant scaling back of individual credits and elimination of most refundability provisions; and (3) targeted reform

[15] Source: Quarterly Census of Employment and Wages — Industry, Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC, http://data.bls.gov/cgi-bin/dsrv?en.

generally designed to eliminate underused credits and improve the workings of remaining credits.

Major Reform

1) ***Eliminate all business tax credits:*** Even if elimination of all business tax credits is unlikely, it is worth understanding how much this would allow overall tax rates to be reduced. In one sense, higher rates on the majority of taxpayers are the "price" for lower taxes for relatively few taxpayers. If NYS were to eliminate all business tax credits and use the resulting revenue to lower tax rates, it would be able to reduce the extent to which the tax system distorts economic decisions and simplify compliance for taxpayers and administration for tax collectors.

   If all New York State business tax credits were eliminated, the increase in tax revenues would approach $2 billion, when fully in effect (but see the discussion below of transition issues). The potential revenue gain could be used to reduce the corporate tax rate, cut the top personal income tax rate, cut both personal and corporate income tax rates, lower the sales tax rate or reduce other tax rates. To the extent that credits are replaced by direct spending programs, less of the revenue gain from eliminating tax credits would be available for tax rate reductions.

Moderate Reform

Moderate reform would include significant scaling back of individual business tax credits and the elimination of most refundability provisions. Options for moderate reform include:

1) ***Make "sunsets" the standard practice for credits.*** Just as spending programs are time-limited, credits should be as well so that periodic reviews are, in essence, required. At a minimum, the state should do this for newly enacted credits.
2) ***Cap additional credits.*** To increase visibility of the budgetary impact of business tax credits and to limit budgetary exposure from uncontrolled growth in their cost, the state could move further toward an aggregate budget for all business tax credits. This would involve extending the concept of a credit cap, currently used for the film, Excelsior, and several other credits, to additional credits where practical. At a minimum, a first-come, first-served cap could be established for brownfield credits.

3) ***Eliminate refundability for most credits.*** The state could eliminate tax credit refundability for most or all of the credits that are currently refundable, with transition rules to minimize restrictions on credits where taxpayers have made commitments, such as binding contracts, in the expectation of receiving the credits.

4) ***Provide time limitations on refundability.*** The state could limit the extent to which credits may be refunded in any single year so that a refundable credit might be paid out, for example, over five years rather than all in a single year.

5) ***Further reform the brownfield credits.***As mentioned earlier, the brownfield credit program is currently scheduled to sunset in 2015. If the state decides to continue encouraging brownfield remediation, it has several options. The most radical would be to convert the tax credit program to a direct spending program directed at remediation of sites that are, or that may be, contaminated. Such a reform would mean that an annual appropriation from the legislature would be required as part of the state's yearly budget process.

   A second option would be for the state to extend the brownfield tax credit program, but to limit the credits specifically to clean-up costs. This would put NYS more in line with other states that focus their brownfield programs on clean-up. For example, New Jersey provides a reimbursement to companies for up to 75 percent of clean-up costs to be paid by new state taxes generated by the brownfield project. If New York were to limit brownfield credits to a percentage of clean-up costs, it could focus the program more effectively on environmental protection, changing it from its current focus on economic development.

   If the tax credit program is extended, a third option is for the state to curtail the lengthy period of project eligibility (currently 10 years) for redevelopment activity to qualify for the credits. Credit for redevelopment could be limited to costs incurred in a preapproved redevelopment plan to reduce the potential for awarding credit for "overdevelopment."

   A fourth option would be for the state to extend the tax credit program, but to impose further restrictions on the tangible property credit — the portion that is not related to

remediation — so that it is limited to economically depressed areas. This could encourage a greater share of brownfield-related redevelopment upstate.

6) ***Reduce the film production credit.*** To limit the costs of the film credits, New York could reduce their annual allocation. For example, it could reduce the $420 million annual allocation currently allowed by $50 million. If New York were to implement this reform, we suggest that it monitor film industry activities to determine whether the level of production is affected

7) ***Restructure the Investment Tax Credit (ITC).*** There are several possible options to restructure the ITC. Given, however, the vast inventory of unused ITC carried forward from prior years (more than $1.2 billion), savings to the state from these options could take several years to materialize unless the carry-forwards are directly addressed. Options include:

   a) Target the ITC. Target the ITC to job-creating investments by requiring employment increases as a condition for credit qualification, by imposing an entity eligibility test instead of a property eligibility test, limiting or eliminating credit for used property, and/or by adding a requirement that ITC-eligible equipment must produce goods for final sale.

   b) Repeal the financial services investment tax credit. This credit is complicated, has multiple employment tests, few users (of the 25 corporate taxpayers taking $18.6 million in the ITC in 2009, six accounted for $17.4 million), and frequent property turnover requiring repeated recapture.

   c) Eliminate the refundable provisions in the ITC for new businesses. The definition of new business should exclude those that solely purchase the assets of an existing business.

Targeted Reform

Targeted reforms generally are designed to eliminate underused credits and improve the workings of remaining credits. The suggested options for targeted reform are as follows.

1) ***Repeal rarely used credits.*** The state has several credits that cost less than $5 million annually and are claimed by few taxpayers. Each of these rarely utilized credits requires an administrative structure, including guidance from the tax department, tax

forms, and training of tax auditors. Their success in achieving policy goals appears quite limited in relation to the costs of administering them. The main credits in this group are: Youth Works ($5 million), alternative fuel/electric vehicle refueling property credit ($3 million), historic home rehabilitation credit ($3 million), conservation easement credit ($2 million), Qualified Emerging Technology Company (QETC) employment credit ($1 million), QETC capital credit ($1 million), clean heating fuel credit ($0.5 million), defibrillator credit ($0.5 million), security officer training ($0.1 million), credit for employment of persons with disabilities ($0.1 million), handicapped accessible taxi credit ($0.1 million), brownfield environmental remediation credit ($0.1 million), and jobs retention credit ($0.1 million). Repealing these credits would generate about $15 million in revenue, while also delivering compliance and administration savings. Repeal of the recently enacted Hot Spots Program would add another $5 million in savings, bringing the total to $20 million; however, this program is too new to estimate its usage.

2) ***Repeal certain highly targeted tax credits.*** The state has a set of small and highly targeted credits that the Tax Commission may wish to consider as candidates for elimination. These include: the historic properties rehabilitation credit ($15 million), the Certified Capital Company Credit ($10 million), biofuel production credit ($10 million), the PIT solar credit ($10 million), and the brownfield real property tax credit ($8 million), which is in addition to the already generous brownfield redevelopment tax credit. In addition, the Economic Transformation and Facility Redevelopment credit ($55 million) has been narrowly targeted, had one known participant as of 2013, and is complex to comply with and administer.

It should be noted that these proposed reforms are directed at the credits themselves, not at the underlying stated objectives that they address. The question is thus not whether the activity that is the subject of the credit is worthy, but whether it is best implemented through the tax code. In addition to the policy flaws inherent in tax credits, there are indications, such as low tax credit utilization rates, unintended consequences, and compliance complexity that suggest few objectives are best addressed by tax credits in lieu of direct spending. Moreover, decisions as to whether to support a given activity and at what level through a tax credit are subjective. Without a mechanism to compel this discussion, such as that which occurs in the annual state

appropriations process for spending programs, or might occur with sunsets or specific annual allocations, credits begin to multiply as interested parties promote new credits for favored activities.

I.10 Transition Issues

Taxpayers have made commitments, such as binding contracts, based on their ability to use credits. Transition rules and phase-ins will be desirable to allow taxpayers to take advantage of credits for which they have already qualified and upon which they may have made business decisions. Further, taxpayers who previously earned nonrefundable credits should be entitled to carry them forward as under present law.

This means that the amount of cash revenue available for an overall tax rate reduction could be limited in the early years of a reform, as alluded to in the ITC proposal. Full rate reduction would have to wait until many taxpayers had exhausted much of their "legacy" claim to credits. There are options the Commission could consider to ensure that more cash revenue is available for overall rate reduction in the early years, such as instituting a minimum tax so that credits cannot reduce liability by more than a certain percentage or amount, with credits that go unused as a result of this change presumably carried forward to future years. This would increase the amount of revenue generated for rate reduction in early years, but extend the time it would take for the reformed system to generate its full potential for rate reduction.

I.11 Recommendations for Monitoring, Review, and Evaluation

Whether reforms are adopted or not, the state should strengthen its monitoring and evaluation of business tax credits so that it is better informed about the impacts of this substantial use of state resources. Our review of brownfield credits made clear the power of disclosure. When information about projects qualifying for the credits was made public, it was possible to examine them closely to estimate their impact on state resources.

Wherever practical, information on individual state business tax credits, but not on unrelated tax return data, should be made publicly available. Where detailed tax credit information is too closely tied to tax return data to be disclosed publicly, the data should be made available to government reviewers for purposes of evaluation, under nondisclosure agreements. Legislation should be developed that would expand upon the disclosure rules for existing credits

such as brownfield and Excelsior, extending credit disclosure to all credits on a prospective basis.

Periodic review of credits. It is not practical to review every credit in depth every year, but the state should establish a schedule for review that keeps the resource demands reasonable. One approach might be to review the two largest credits — brownfield credits and film credits — every year, other large credits every other year, and smaller credits every five years on a staggered schedule. As discussed in Section VII, Arizona and Washington have adopted staggered schedules for reviewing credits.

In the review, credits should be subject to rigorous evaluation criteria and state policymakers should consider eliminating credits that cannot meet the criteria. Several questions should be asked, including:

- ✓ What is the purpose of the tax credit?
- ✓ Assuming the purpose is achieved, is the tax credit good policy?
- ✓ How does the credit relate to other state programs? Is a credit more effective at meeting its goals than a spending program would be? Is a credit more effective at meeting those goals than more-general tax reduction would be?
- ✓ What are the consequences for the state budget of the credit?

The evaluation of business tax credits should not only be conducted on a credit-by-credit basis but also using a holistic approach. This will allow policymakers to see how spending on tax credits is being used to promote overall state objectives. For example, a frequently stated state policy objective is the economic revival of upstate New York, especially its manufacturing sector. Does the current allocation of tax credit spending address this objective? Does it make sense for the state to spend less than 10 percent of the total costs of business tax credits on the ITC, the one credit that is directly targeted towards manufacturing companies?

As described earlier, certain kinds of reviews, such as economic impact analyses, can result in widely varying conclusions depending upon assumptions and methods used. A quality control process should be created that (1) establishes model standards for these kinds of studies; (2) institutes a peer-review process for draft studies, including review by academic and industry experts; and (3) allows the public to have access to the results of the peer review process.

Determining the most appropriate agency to review most credits would be challenging. At the present time, in the executive branch, neither the Department of Taxation and Finance (DTF) — the agency with primary responsibility for administering tax credits — nor any other NYS agency administering one or more tax credits has the responsibility for evaluating the efficacy of the state's tax incentives. There are several reasons why DTF is not currently in a position to perform this function. Structural and data issues in the tax system and in the way businesses organize themselves complicate even basic evaluation.

To conduct a complete evaluation would require a retooling of how tax returns are processed including, for example, making data for evaluation available in a timely manner. At the present time, DTF generally does not have final, verified data until two or three years after the conclusion of a given tax year. Other reasons include:

- ✓ The level of resources needed to add additional functions to those already in place has not been made available to DTF.
- ✓ The expertise to evaluate all tax expenditures does not reside in DTF, especially for those incentives that are the responsibility of other agencies.

  - If the credit is as-of-right with no external agency involved (e.g., the investment tax credit), DTF monitors compliance.
  - If the credit is fully administered by an agency other than DTF, the agency that awards actual credit certificates (e.g., film credits and Excelsior credits) handles compliance.
  - When an agency other than DTF certifies eligibility, but DTF monitors compliance with the tax laws, administration is more complicated. An example is brownfield credits. DTF defers to the Department of Environmental Conservation (DEC) on all environmental criteria required to get a certificate of completion. Once the taxpayer files the credit, DTF ensures compliance with tax rules.

Even with the suggested staggered reviews, the state will need to reallocate resources for this purpose to ensure that the entity responsible for evaluation has sufficient staff time available. That agency will also have to strengthen its evaluation tools and expertise, both of which will take time. In addition, because of multiple agency coadministration of certain credits, evaluation

will require cross-agency cooperation. In addition, as discussed in Section VI, because tax data systems often do not provide information that is ideal for evaluation, the reviewing entity will have to either work within the limits of available data or, where warranted, collect additional data for purposes of evaluation.

II. INTRODUCTION

This report provides a review and analysis of the business tax credits provided by NYS as of 2013. The report begins with a brief summary of research studies relating to the pros and cons of tax incentives. This is followed by a description of NYS's 52 enacted business tax credits grouped by three implicit state objectives for offering tax incentives: (1) to promote economic development throughout New York; (2) to help revitalize economies in distressed areas throughout the state; and (3) to support the state's social, housing, and environmental policies (see Appendix Table X.1.1 for summary characteristics of the 52 credits). The following parts of the report look at the fiscal impact of NYS business tax credits; analyze the state's two largest business tax credits in depth — the brownfield credits and the film production credits; and compare NYS incentives against widely used tax policy evaluation standards. The final section of the report provides options for the Commission to consider that would reform New York State's business tax credits.

III. PROS AND CONS OF TAX INCENTIVES: WHAT THE RESEARCH TELLS US

NYS is not unique in its use of tax incentives to promote economic development. All 50 states offer at least one tax incentive to businesses; most offer several, primarily to attract businesses from other states.[16] Tax incentives are often used "as part of a bidding war between states over firms seeking to relocate or expand. If one state offers a tax credit, others often feel compelled to match it or risk being left behind."[17] This is especially true when states react to vociferous claims by businesses that taxes are a major factor in their location and expansion decisions. There is, however, no conclusive evidence from research studies conducted since the mid-1950s to show that business tax incentives have an impact on net economic gains to the states above and beyond the level that would have been attained in the absence of the incentives (see Appendix Table X.1.2 for illustrative studies). Nor is there conclusive evidence from the research that taxes, in general, have an impact on business location and expansion decisions.

Estimating the economic impacts of tax credits is difficult. First, it is necessary to estimate the extent to which the credit stimulates the activities that qualify for the credit as opposed to subsidizing activity that would have occurred in the absence of the credit. Second, it is necessary to determine how much of this activity replaces other, nonqualifying activity that would otherwise have taken place. For example, expansion by one business may come at the expense of attracting customers or workers away from other businesses, producing no increase in the size of the economic pie. It also difficult to estimate the so-called multiplier effects, i.e., the extent to which an initial increase in economic activity ripples through the economy as the additional income is spent on goods and services provided by other businesses in a state.

Researchers have used different methods to estimate the efficacy of tax incentives. Some, for example, have assumed that none of the economic activity for which a credit was claimed would have occurred in the absence of the credit. Almost by definition, these kinds of studies — and they are common — will conclude that the incentive has a significant economic impact. They assume the answer at the start. Other studies may not take into account the fact that lower taxes on one industry may require higher taxes on other industries or lower government spending on services. Studies may also look at the economic impact on the targeted industry, but ignore

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[16] Terry Buss, "The Effect of State Tax Incentives on Economic Growth and Firm Location Decisions: An Overview of the Literature. *Economic Development Quarterly* 15, 1(February 2001): 90-105.

[17] *Evidence Counts: Evaluating State Tax Incentives for Jobs and Growth*, 2012.

the costs to the state. Some researchers assume that the labor and capital used in the targeted activity would otherwise have been unemployed so that no adjustment need be made for reduced economic activity in unrelated industries. Instead, they typically assume that economic activity in the targeted industry creates a multiplier effect that increases economic activity in unrelated industries.

Using a wide range of assumptions and methodological approaches, research has thus led to mixed results. A few studies have reported a positive relationship between tax incentives and job growth, particularly when companies are deciding where to locate within a specific region.[18] Most, however, have found that tax incentives are a zero sum game for the states in aggregate and have little to no effect on aggregate job creation or other metrics of economic development.[19]

A 2008 review of research on business location decisions, for example, reported that most research shows incentives not to be worth the money spent by state and local governments.[20] One example describes Chicago's effort to attract the headquarters of Boeing, the world's leading aerospace company and the largest manufacturer of commercial jetliners and military aircraft. Included in the $63 million incentive package were $41 million in state tax credits and local property tax abatements. Boeing did locate its headquarters in Midway with Chicago's mayor declaring: "Today's decision confirms to the world that Chicago is a great place to live, work and do business."[21] There was, in fact, no evidence of local job creation associated with the Boeing relocation to Midway and the multiplier effect — the creation of additional jobs and income as spending from the Boeing headquarters rippled through the economy — was not significant.[22]

Even when different studies look at the same business incentive or set of incentives offered in a particular state, findings have been mixed. Studies of film credits in Louisiana and New Mexico — two states often cited as success stories with film incentives — illustrate this point. In Louisiana, according to a consultant's study prepared for the department of economic

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[18] See, for example, Peter S. Fisher and Alan H. Peters, "Tax and Spending Incentives and Enterprise Zones." *New England Economic Review* (March/April 1997): 109-37, http://geography.tamu.edu/class/bednarz/neer297f.pdf.

[19] See, for example, Robert S. Chirinko and Daniel J. Wilson, *State Investment Tax Incentives: A Zero-Sum Game?* Working Paper 2006-47 ((San Francisco, CA: Federal Reserve Bank of San Francisco, July 2008), http://www.frbsf.org/economic-research/files/wp06-47bk.pdf.

[20] Martin Saiz and Susan E. Clarke, "Economic Development and Infrastructure Policies," *Politics in the American State: A Comparative Analysis*, 9th ed. Virginia Gray and Russell Hanson, eds. (New York: Congressional Quarterly Press, 2008).

[21] Jack Lyne, "$63 Million in Incentives, Last-Second Space Deal Help Chicago Land Boeing," Site Selection Web Site, No Date, http://www.siteselection.com/ssinsider/incentive/ti0106.htm.

[22] Saiz and Clarke, 2008.

development, the credits have been successful, generating $4.80 of private sector sales in related industries for each dollar spent on the tax credit and 15,184 jobs from spending in related industries.[23] In contrast, a 2013 performance audit by the state's Legislative Auditor's Office reported that the incentive program was riddled with problems and resulted in a net cost to the state of close to $170 million.[24] In New Mexico, a report prepared by the University of New Mexico found that the state's film incentives were responsible for creating about 2,400 jobs at a net cost of about $13,400/job.[25] In contrast, a consultant's study of the same credits showed that about 9,200 jobs were created at a net cost of about $300 per job.[26] The conflicting findings for New Mexico and Louisiana point up an interesting outcome regarding the studies themselves — consulting firms generally report that the film production incentives pay for themselves; academic studies and reports prepared by the states are less sanguine.

Inconclusive and incongruent research results are explained by several factors including, but not necessarily limited to, the following.

- ✓ Other costs of doing business generally take precedence over taxes in business location/expansion decisions. These include the cost/quality of labor; the cost/reliability of utilities; proximity to markets, suppliers, and/or other company facilities; site availability; access to/cost of transportation; access to financing; the regulatory environment; and "quality of life" issues such as school quality and the availability/cost of housing.
- ✓ Tax incentives that reduce the costs of doing business are not offered in isolation from other state and local fiscal policies. When businesses make location/expansion decisions, they consider all state and local taxes, e.g., personal income taxes, and the availability/quality of government services. A company's decision to locate or expand

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[23] Loren C. Scott & Associates, Inc., *The Economic Impact of Louisiana's Entertainment Tax Credit Program* (Baton Rouge, LA: Loren C. Scott & Associates, Inc., April 2003), http://louisianaentertainment.gov/docs/main/2013_OEID_Program_Impact_Report_(FINAL).pdf.

[24] Louisiana Legislative Auditor, *Louisiana Department of Economic Development and Louisiana Department of Revenue Motion Picture Tax Credit Program Performance Audit* (Baton Rouge, LA: Louisiana Legislative Auditor, April 24, 2013, http://app1.lla.la.gov/PublicReports.nsf/5A685258D794067E86257B57005B8D58/$FILE/00032357.pdf.

[25] Anthony V. Popp and James Peach, *The Film Industry in New Mexico and the Provision of Tax Incentives*, a report submitted to the Legislative Finance Committee of the State of New Mexico. (Las Cruces, NM: Arrowhead Center, Office of Public Policy Analysis, New Mexico State University, August 26, 2008), http://arrowheadcenter.nmsu.edu/sites/default/files/uploadecd/filmindustryfinal.pdf.

[26] Ernst & Young, *Economic and Fiscal Impacts of the New Mexico Film Production Tax Credit*. Prepared for the New Mexico State Film Office and State Investment Council. (No Location: Ernst & Young, January 2009), http://www.frsm.se/wp-content/uploads/2012/07/NMFilmCreditImpactAnalysis.pdf.

can therefore be affected by the totality of state and local fiscal policy, not just tax incentives.

- ✓ If taxes imposed on a business can be passed on to consumers via higher prices or back to owners of the resources that it purchases (including wages paid to workers), they may not be a deciding factor in business location/expansion decisions.

A sufficiently large tax incentive may have positive effects on the growth of a targeted area or industry, but its overall impact on the state's budget and on its economic development may not be positive. If the incentive improves conditions for a single industry or location, the overall result may not be economic growth for the state. If it does not pay for itself, the incentive must be paid for by cuts in services/investment or increases in other taxes. In addition, an incentive that favors one industry or one region may undermine several "good tax policy" goals such as tax efficiency and simplicity, as discussed in Section VII of this report.

IV. NYS BUSINESS TAX CREDITS: AN OVERVIEW

> **Statutory vs. Discretionary Business Tax Credits**
>
> **Statutory credits, often referred to as "as-of-right" credits, are based on a statute or regulation. Taxpayers who meet the qualifications in the law are eligible to receive the credit.**
>
> **For discretionary tax credits, there is some type of negotiation and approval process between the taxpayer and the government offering the credit. This type of credit is often referred to as a negotiated credit.**

NYS provides business tax credits to meet three implicit state objectives. They are: (1) to promote economic development throughout the state by reducing the costs to businesses of investing and creating jobs in NYS; (2) to help revitalize economies in the state's distressed areas; and (3) to support the state's social, housing, and environmental policies. In 2013, NYS business tax credits cost the state an estimated $1.7 billion, of which credits to promote economic development cost the state $1.16 billion, or 69.5 percent of the total. Targeted credits cost the state an estimated $428 million, or 25 percent of the total, and credits to support state social and related policies cost an estimated $126 million, or 7.3 percent of the total.

Most credits are available "as-of-right"; other credits are discretionary. Until recently, NYS business tax credits have generally been as-of-right with virtually no negotiation between the state and taxpayers claiming the credit. A few newly created credit programs, including the Excelsior Jobs program, are discretionary. In some cases, the discretionary credits, again including the Excelsior Jobs program, are subject to statutory dollar caps to limit their costs.

Taxpayers must demonstrate eligibility for some credits before claiming them. For other credits, such as those that require employment increases, at the time of claiming taxpayers must show the calculations that support the credits claimed. Some credits have recapture provisions if certain requirements are not maintained even after the credit was granted. For example, if investment tax credit (ITC) property is disposed of prior to the end of its useful life, taxpayers must add back a proportionate share of the credit previously claimed to their tax liability. With certain credits based on property taxes paid, if the assessment is reduced during the life of the credit, the amount of the credit that was based on the higher assessment value will be recaptured.

Limitations on Credits

In some cases, NYS law limits the costs of individual credits taken by a single taxpayer, limits the aggregate cost of specific credits, and/or limits or stretches out over time total credit-

taking by individual taxpayers. For example, the state has imposed caps on individual brownfield credits so that the tangible property (development) component may not exceed $45 million for manufacturing projects and $35 million for other projects. The state has also established an annual allocation for film production credits and for Excelsior Jobs credits, so that the aggregate amount granted for all projects in a single year cannot exceed $420 million and $500 million, respectively.

New York limits usage of credits for individual taxpayers in other ways. For example, the state historically has tried to ensure that credits and other incentives do not completely eliminate tax liability for individual taxpayers so that businesses pay at least some taxes annually. The state has done this by creating "minimum taxes" to make certain that credit-taking does not reduce taxes in the current year below a minimum level, with unused credits carried forward to future years.

The dollar value of a credit used by a taxpayer in a given year includes both credits earned in prior years and carried forward as well as credits earned in the current tax year. Time limits on carry-forward provisions depend on the rules associated with each credit. In 2013, of the 50 tax credits available to businesses filing for New York's Corporation Franchise Tax (CFT), related business taxes, or the Personal Income Tax (PIT), 16 have carry-forward provisions. Ten of the 16 allow taxpayers an unlimited time horizon in applying the credit against future tax liability.

NYS has also placed limitations on overall usage of tax credits in response to budgetary problems. For example, in 2010, the state enacted a temporary provision as part of its annual budget that required taxpayers filing in tax years 2010, 2011, and 2012 to defer the use of most credits to tax years 2013 and later. The numbers used in this report reflect estimates of credits before considering the impact of any deferrals.

IV.1 NYS Business Tax Credits to Promote Economic Development

Most of New York's business tax credits were enacted in an attempt to make companies more competitive with their counterparts in other states where taxes and other costs of doing business are perceived to be lower. NYS began to use business tax credits to spur economic development in 1969 when it enacted the investment tax credit (ITC) for manufacturers as a replacement for an earlier tax deduction. Since then, the state has created 21 other tax credits to

stimulate statewide economic activity. Each is described below.

In 2013, the 22 NYS business tax credits to promote economic development cost the state an estimated $1.2 billion and accounted for 69.5 percent of the total cost of all business tax credits (see Table 4.1). Of the 22 credits,

- ✓ 21 are refundable. Of the 21 refundable credits, 15 are refundable to all businesses. For the remaining six, refundability is limited to new businesses as defined in each credit's enabling legislation;
- ✓ All the nonrefundable credits have carry-forward provisions that allow taxpayers to apply their unused credits against tax liability in later years; however, the carry-over periods vary by credit.

Table 4.1: NYS Business Tax Credits to Promote Economic Development, 2013*

Credit	Initial Year	$ in Millions	% of Total Business Tax Credits	Refundable	Number of Years for Carry Forward
Total Business Tax Credits		**$1,714.9**	**100.0%**		
Total Economic Development Tax Credits		**$1,191.7**	**69.5%**		
Brownfield Redevelopment Tax Credits		***503.0***	***29.4***		
a. Brownfield Redevelopment Tax Credit	2005	495.0	28.9	Yes	
b. Remediated Brownfield Credit from Real Estate Taxes	2005	8.0	0.5	Yes	
c. Environmental Remediation Insurance Credit	2005	0.0	0.0	Yes	
Empire State Film Credits		***374.0***	***21.8***		
a. Film Production Credit	2004	360.0	21.0	Yes over 3 yrs	
b. Film Post Production Credit	2010	7.0	0.4	Yes over 2 yrs	
c. Commercial Production Credit	2007	7.0	0.4	Yes over 2 yrs	
Investment Tax Credits		***129.0***	***7.5***		
a. Investment Tax Credit	1969	n.a.	n.a.	New Bus. ***	15 yrs
b. Retail Enterprise Tax Credit	1981	n.a.	n.a.	New Bus. ***	15 yrs
c. Rehabilitations Credit for Historic Barns	1997	n.a.	n.a.	New Bus. ***	15 yrs
Employment Incentive Credit	***1987***	***n.a.***	***n.a.***	***PIT New***	***PIT 10 yrs***
Investment Tax Credit for Financial Services	***1998***	***30.4***	***1.8***	***New Bus. ****	***15 yrs***
Employment Incentive Credit for Financial Services	***1998***	***n.a***	***n.a***	***New Bus. ****	***15 yrs***
Excelsior Jobs Programs Tax Credits		***150.0****	***8.7***		
a. Excelsior Jobs Tax Credit	2010	****	****	Yes	
b. Excelsior Investment Tax Credit	2010	****	****	Yes	
c. Excelsior R&D	2010	****	****	Yes	
d. Excelsior Real Property Tax Credit	2010	****	****	Yes	
Beer Production Credit	***2012***	***3.0***	***0.2***	***Yes***	
Qualified Emerging Technology Company (QETC) Credits		***2.2***	***0.1***		
a. QETC Capital Tax Credit	1999	1.0	0.1	No	Unlimited
b. QETC Employment Credit	1999	1.2	0.1	Yes	
Security Training Tax Credit	***2005***	***0.1***	***0.0***	***Yes***	

*Forecast estimates.

*** New businesses are specifically defined within the respective credit statutes.

**** New Program. Distribution of credit among the components is not available.

n.a. Data not available for individual programs but are included in Investment Tax Credit and Investment Tax Credit for Financial Services.

Source : Compiled by authors from New York State Division of Budget and Department of Taxation and Finance Annual Report on New York State Tax Expenditures 2013-14 State Fiscal Year and from information provided by Department of Taxation and Finance.

In 2013, the two largest credits — brownfield credits and film production credits — cost

NYS government an estimated $503 million and $374 million, respectively, and accounted for 51 percent of the cost to the state of all business tax credits. Both are analyzed in more detail in Section VI of this report.

Investment Tax Credit (ITC). The 1969 ITC permitted a manufacturing company to claim a stated percentage of its investment in capital goods as a credit against its NYS corporation franchise or personal income tax liability. It was modeled in many respects after the investment credit under the federal income tax, which had been enacted in 1962 and repealed in 1986. However, unlike its federal counterpart, the New York State ITC is available to plants as well as equipment, can be claimed for an unlimited amount of used property, and can be claimed for only certain kinds of investments made by public utilities. The ITC is available for certain nonmanufacturing activities such as the use of films stored in New York to generate television revenue regardless of whether the films were made in New York. The objective of the credit was to encourage capital investment by manufacturing businesses.

Because the ITC applies equally to new or used equipment, there was concern that it would provide benefits to taxpayers who did not modernize facilities but merely bought existing assets. Unlike the federal government, New York never adopted a provision to limit the amount of used property eligible for the credit. New York subsequently expanded its ITC to cover certain expenses of retail enterprises, rehabilitation of historic barns, and property used in qualified film production. It also enacted a separate ITC for certain physical investments of companies in the financial services industry. The volume and nature of the changes to the ITC demonstrate the tendency of governments to expand both the scope and cost of tax credits once enacted (see Appendix Table X.1.3 for a history of ITC changes). As of 2013, the ITC provided for:

- ✓ a credit equal to 5 percent of investment up to $350 million in buildings and tangible personal property acquired by purchase, with a useful life of four years or more and used in production,[27] qualified film production facilities, waste treatment and pollution control property, or research and development property (4 percent rate on amounts over $350 million and for PIT taxpayers); and
- ✓ an optional R&D rate of 9 percent of qualified investment (7 percent rate for PIT taxpayers).

[27] Industries include manufacturing, processing, assembling, agriculture, refining, mining, extracting, farming, horticulture, viticulture, and commercial fishing.

The ITC is recaptured with interest if the property for which the credit was claimed is withdrawn from qualified use during a recapture period, which varies with the useful life of the property. It is generally not refundable; however, refunds are provided for an ITC generated by "new businesses." New businesses for this purpose include taxpayers who have not previously done business in New York who buy the assets of an existing business and may, therefore, claim an ITC on the eligible property owned by the target business.

ITC for the Financial Services Industry. Brokers or dealers in securities are eligible for an ITC for equipment and buildings used in broker/dealer activity. The credit is available to qualified general business corporations, banks, and insurance companies. To be eligible for this credit, the taxpayer's property must be principally used in qualifying activities and must be placed in service prior to October 1, 2015.

Although the property must be located in NYS, it is not necessary for the users of the property to be located in the state. For example, a computer system placed in service in NYS would qualify for the credit, even if the brokers accessing the system are located outside the state. Taxpayers must also meet one of three employment tests:

- ✓ the 80 percent current year test — 80 percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of the property must be located in NYS; or
- ✓ the 95 percent three-year back office test — the average number of back office employees resulting from or related to the qualifying uses of the property and are located in NYS during the tax year the credit is claimed is equal to or greater than 95 percent of the average number of back office employees that perform these functions and are located in NYS during the 36 months immediately preceding the tax year for which the credit is claimed.
- ✓ The number of NYS employees employed during the current tax year must be equal to or greater than 90 percent of NYS employees as of the end of 1998.
- ✓ The credit rate and rules are generally the same as for the ITC described above. The most significant claims for financial services ITC are situations where a broker/dealer builds or purchases an office building.

Employment Incentive Credit (EIC). In 1975, NYS enacted an employment ITC separate from the more general ITC. In 1987, this credit was replaced by the employment incentive credit (EIC) that is still in effect. The value of the EIC is based on the same qualifying investment as the ITC and is allowed for each of the two years immediately following the year the ITC was allowed. Currently, the EIC provides for:

- ✓ a credit from 1.5 percent to 2.5 percent of investment based on increased employment within NYS over the year prior to the investment (1.5 percent rate if less than 2 percent employment increase; 2 percent rate if less than 3 percent employment increase; 2.5 percent rate if 3 percent or greater employment increase).

Unlike the ITC, there is no recapture if the equipment for which the EIC is claimed is removed from qualified use or if employment subsequently falls below the threshold levels. The EIC employment test is based only on the New York employment growth for the specific corporation claiming the credit regardless of employment growth of certain other corporations in the same corporate family.

Employment Incentive Credit for the Financial Services Industry. In 1998, NYS enacted a credit for financial services taxpayers that qualified for the ITC and are taxed as general business corporations and under the personal income tax. (Banks and insurance firms are not allowed to claim the EIC even when they are eligible for ITC.) The rules for this credit are generally similar to the rules for the EIC.

Brownfield Credits. A brownfield property can be defined as a site that is, or may be, contaminated by previous industrial or related uses but has reuse potential once remediated. Brownfield sites are located in cities with long histories of manufacturing activity and also in small towns and rural areas. Originally available in 2005, the brownfield redevelopment tax credit was amended in 2008 primarily out of concern for its cost. While the remediation of brownfield sites contributes to NYS's objective to promote a cleaner environment, their reuse for revenue producing activities has made them a prime economic development tool. In addition, experience has shown that the overwhelming majority of the credit generating activity is for redevelopment rather than cleanup. Accordingly, they are classified in this report as economic development incentives.

The NYS brownfield program provides three *refundable* tax credits:

- ✓ a redevelopment credit dependent on remediation level, location, and type of taxpayer (personal or corporate);
- ✓ a credit for real property taxes for remediated brownfield properties based on number of employees at the location. This credit can be equal to as much as 100 percent of real property taxes; and
- ✓ a one-time environmental remediation insurance credit for remediation insurance premiums.

The brownfield program is the most expensive NYS tax credit program and one of its most controversial. Proponents of the program see it as a tool to help revitalize local economies. Critics contend that it has not worked as intended, with the main problem being the way in which credits are awarded and the types of reuses of the qualified properties. A detailed analysis of the brownfield credits is presented in Section VI of this report.

Film Production Credits. The Empire State film production tax credit, initially available in 2004, is designed to increase the film production and post-production industry activities in the state. Amended in 2006 (to add the commercial production credit) and in 2010 (to add the post-production credit), the credits provide incentives to qualified companies that produce feature films, television series, relocated television series, television pilots and television movies and commercials and/or incur post-production costs associated with the original creation of these film productions. There are three *refundable* film production credits. They are:

- ✓ The film production credit: The production credit is available for companies that film a substantial portion of their project in NYS.
- ✓ The post-production credit: The post-production credit is available for film production companies that film outside of NYS but contract their post-production work to a NYS company.
- ✓ The commercial production credit: The commercial production credit is available to qualified commercial production companies shooting commercials within NYS. There are three component credit programs — an upstate program, a downstate program, and a growth program.

The credits are awarded on a first come, first served basis with the total value of annual awards for film and post-production activity limited to $420 million between 2014 and 2019. Of

the annual amount available, $7 million was initially allotted to post-production credits, but the amount was increased to $25 million, effective in 2015. The separate commercial production credits are capped at $7 million a year and are available through 2014.

Film production credits are the second most expensive NYS tax credit program. Proponents of the credits see film production activities as job creators and assume that these jobs and the employment growth of businesses interacting with the film industry would not have occurred absent the credits. Critics see the jobs created by film producers as temporary with many going to out-of state residents. They believe that the credits (and other incentives) reward companies for film production that they would have done absent the credits. Further analysis of NYS's film credits is presented in Section VI of this report.

Excelsior Jobs Program Credits. The Excelsior Jobs Program was introduced in 2010 to replace the repealed Empire Zone Program (discussed below) and amended in spring 2013 to reduce the job creation thresholds required for companies to participate in the program. Excelsior provides incentives to firms in what are called strategic industries. The industries and the minimum employment requirements to participate in the program include:

- ✓ scientific research and development (R&D) firms creating at least five net new jobs;
- ✓ software development firms creating at least five net new jobs;
- ✓ agriculture firms creating at least five new jobs;
- ✓ manufacturing firms creating/retaining at least ten net new jobs;
- ✓ financial services (customer service) back office operations creating at least 50 net new jobs;
- ✓ back office firms creating at least 50 net new jobs; and
- ✓ distribution firms creating at least 75 net new jobs.

Also eligible for Excelsior credits are firms creating at least 300 net new jobs and investing at least $6 million and those in strategic industries that make significant capital investment and employ at least 25 people. Credits are offered in two tracks: a job growth track and an investment track. The job growth track comprises 75 percent of the program and is available to all firms in strategic industries that create new jobs in NYS. The remaining 25 percent is set aside for investment track companies with at least 50 employees that make

significant new capital investments in a NYS facility and meet a benefit-cost threshold of at least $10 of investment and new wages for every $1 of tax credits.

All four Excelsior credits are refundable. One is geographically targeted — the Excelsior real property tax credit — and is available to companies locating in certain distressed areas and to companies in targeted industries that meet higher employment and investment thresholds (referred to as Regionally Significant Projects). The other three credits are available to firms statewide. They are:

- ✓ a wage credit of 6.85 percent per new job to cover a portion of the associated payroll cost;
- ✓ a 2 percent credit for qualified investments; and
- ✓ a credit of 50 percent of the Federal Research and Development credit for up to 3 percent of research expenditures in NYS.

In addition to income tax credits, the Excelsior Program also authorizes utilities to offer discounted gas and electric rates.

Participation in the Excelsior Program and the amount of credits authorized is at the discretion of the Empire State Development (ESD), the state agency responsible for the program. Qualification for the program is based on the company's plan for job and investment growth. The value of the credit is stipulated in the agreement between the company and ESD and businesses are permitted to take the credits only after they have met annual program requirements. This pre-approval process was developed in an effort to ensure that the credits would be used for new, measurable activity. The 2013 amendments to the Excelsior Program mentioned above provided that if a business creates fewer than the contractually agreed number of net new jobs, the credits will be proportionately reduced based on actual performance provided that at least 75 percent of the net new jobs have been created. The total cap on excelsior program costs is set at $500 million annually. It was not yet reached in 2013, when credits taken by eligible companies totaled an estimated $150 million.

Qualified Emerging Technology Company Credits. The qualified emerging technology company (QETC) tax credits became effective in 1998 to encourage location/expansion in NYS of companies in emerging technology industries. Two tax credits are available:[28]

[28] The QETC facilities, operations, and training credit expired on January 1, 2012.

- ✓ an employment credit for job creation; and
- ✓ a capital tax credit for investors in QETCs.

Beer Production Credit. Effective in 2012, the beer production credit replaced an earlier excise tax exemption that was ruled unconstitutional. The purpose of the credit (and of the previous exemption) is to encourage the growth of small breweries in the state. Businesses are eligible for the beer production credit if they are registered distributors under the NYS tax law for alcoholic beverages and produce 60,000,000 or fewer gallons of beer in NYS in the tax year for which the credit is claimed.

- ✓ The credit is $0.14 cents/gallon for the first 500,000 gallons produced in NYS in a tax year plus $0.45 cents/gallon for each additional gallon over 500,000 (up to 15,000,000 additional gallons) produced in NYS in the same tax year.

Security Officers Training Tax Credit. The security officers training tax credit, effective as of 2005, provides a refundable credit for owners of large commercial buildings.

- ✓ The credit is $3,000 for each security guard who has taken training certified by the New York Division of Homeland Security and Emergency Services.

IV.2 Geographically Targeted Business Tax Credits

New York began to use geographically targeted business tax credits in 1968 when it enacted the Urban Job Incentive Program. Since then, the state created four other tax credit programs to encourage investment and job creation in economically distressed areas. They are: (1) the Economic Development Zones Credit Program that became the Empire Zones (EZ) Program in 2000 that, in turn, was phased out in 2010; the Economic Transformation and Facility Redevelopment Program Tax Credits; and the Empire State Jobs Retention Program Credits.

In 2013, the costs of the 14 geographically targeted credits totaled an estimated $428 million, accounting for 25.0 percent of the costs of all NYS business tax credits (see Table 4.2). Of these, Empire Zone credits valued at $374 million were attributable to a program that was phased out beginning in 2010. Businesses, however, are permitted to take their credits until 2020. The costs to the state of EZ credits will decline as companies complete their benefit periods. Of the 14 geographically targeted credits, five are refundable for new businesses; seven are

refundable for all businesses; and six of the credits have carry-forward provisions with an indefinite time horizon.

Table 4.2: NYS Geographically Targeted Business Tax Credits, 2013*					
Credit	**Initial Year**	**$ in million**	**% of Total Bus. Tax Credits**	**Refundable**	**Number of Years for Carry Forward**
Total Business Tax Credits		**$1,714.9**	**100.0%**		
Total Geographically Targeted Business Tax Credits		**$428.0**	**25.0%**		
Empire Zone Credits *		***374.0***	***21.8***		
a. Investment Tax Credit	1986	42.0	2.4	New Business 50%	Unlimited
b. Employment Incentive Credit	1986	****		PIT New Business	Unlimited
c. EZ/ZEA Wage Tax Credit	1986	38.0	2.2	New Business 50%	Unlimited
d. EZ Capital Credit	1986	1.0	0.1	No	Unlimited
e. QEZE Real Property Tax Credit	2001	212.0	12.4	Yes	
f. QEZE Tax Reduction Credit	2001	81.0	4.7	No	None
Economic Transformation and Facility Redevelopment Program Tax Credit		***54.0***	***3.1***		
a. Job Tax Credit Component	2011	54.0	3.0	Yes	
b. Tax Credit Component	2011	**	**	Yes	
c. Job Training Tax Credit Component	2011	**	**	Yes	
d. Real Property Tax Credit Component	2011	**	**	Yes	
Empire State Jobs Retention Program Credit	***2012***	*****	*****	***Yes***	
a. Jobs Tax Credit Component	2012	*****	*****	Yes	
b. Investment Tax Credit Component	2012	*****	*****	Yes	

* Forecast estimates.
**Less than $0.1 million.
*** Empire Zone program expired on June 30, 2010; existing participants can continue to earn credits.
**** Estimates for ITC and EIC include amounts of Empire Zone financial service ITC and EIC.
***** New Program. Distribution of credit among the components is not available.
Source: Compiled by the authors from the NYS Division of Budget and Department of Taxation and Finance Annual Report on NYS Tax Expenditures 2013-2014 State Fiscal Year and information provided by Department of Taxation and Finance.

Urban Job Incentive Program. Originally proposed as a pilot effort limited to the six largest cities in NYS, in 1971, the Urban Job Incentive Program was made available to businesses located in nine more cities and in 22 low-income rural counties. In 1975, the credit was extended to businesses in the entire state. The Urban Job Incentive Board (JIB), created to administer the program, gave the credit the name by which is has been known — the JIB credit. To qualify for the credit, businesses were required: (1) to build or expand a job producing facility in a targeted area; (2) to employ at least five people from the eligible area and provide a job training program approved by the JIB; and (3) to service an area larger than the eligible area. The third requirement was intended to limit eligibility to manufacturing and wholesaling firms and to exclude retail and hospitality businesses.

Despite these eligibility criteria, controversies surrounded the credit and its broad

availability. It came under fire after a series of newspaper articles exposed some credit recipients, notably Tiffany & Co. and several large foreign and domestic financial firms, and identified other cases where the credit did not function as intended. In the wake of the controversies caused by this and other negative publicity and general dissatisfaction with results of the credit, it was repealed by the state in 1983.

Economic Development Zone Credits. In 1986, NYS restarted its efforts to target tax incentives to economically distressed areas when it established the Economic Development Zone (EDZ) program. New York's EDZ Program was similar to zone programs being created in more than half the states in the U.S. and abroad in efforts to revitalize distressed urban and rural areas.[29]

In New York, EDZ legislation provided for 10 zones to be created in Census tracts with high poverty and unemployment rates. Benefits for qualified businesses located in the zones included tax credits on their personal income, corporate franchise, bank, insurance, and Article 9 corporation taxes. In 1993, the EDZ program was expanded to permit counties to create an economic development zone if they perceived a threat of "sudden and severe" job loss in the upcoming three years. The 1993 amendments also allowed for designation of land contiguous to existing zones if it had business development and job creation potential. As a result of these changes, the number of zones increased to 40 by 1995.

Empire Zones. In 2000, the name of the Economic Development Zone Program was changed to the Empire Zone (EZ) Program and new eligibility rules were adopted that facilitated the creation of additional zones and made it easier for businesses to qualify for benefits. Changes reflected, in part, the perception that existing benefits had not created the anticipated level of economic activity. The new criteria for zone designation completely eliminated the need for local jurisdictions to identify the threat of job loss when they were applying for zone designation. This change made just about all areas in NYS eligible for zone designation.

As of 2008, there were close to 10,000 qualified businesses in the program in 82 zones. Once certified by Empire State Development, businesses located in the EZs could claim tax benefits and other incentives as-of-right, such as an ITC and wage tax credit. Taxpayers meeting

[29] An enterprise zone is a government-designated geographic area in which qualified businesses are entitled to receive various types of financial aid (including tax benefits) to encourage job and capital creation in the zone.

additional job creation criteria could be designated as qualified Empire Zone enterprises, or QEZEs, and be eligible for additional benefits including:

- ✓ a *refundable* credit to be applied against business tax or PIT liability for real property taxes paid, later amended to be based on wages and benefits for net new jobs in the zone and capped at the amount of real property taxes paid;
- ✓ a credit equal to a percentage of income taxes associated with their economic activity in the zone; and
- ✓ a sales tax exemption for property used in the zone.

A key feature of the two new QEZE credits was that they were calculated on the basis of a taxpayer's job creation in the zone. If the base value was zero, any job creation was calculated as a 100 percent increase and made the taxpayer eligible for a full refund of property taxes. What resulted was a multitude of companies changing their business structure, e.g., from corporation to partnership, to create zero-base employment in the "new" enterprise to maximize the tax credit, a process known as "shirt-changing." This situation resulted in previously existing businesses generating few or no new jobs, but receiving millions of dollars in credit. Another problem was the redrawing of zone boundaries to include businesses located outside of the original zone area, disconnecting the program from its initial objective of creating jobs in economically distressed areas, and leading to accusations that zones were being gerrymandered to benefit well-connected taxpayers.

Repeated efforts to reform the Empire Zone program failed to address these and other flaws and loopholes adequately and instead created a complex set of rules and calculations. A 2007 consultant report referred to Empire Zones as:

> the best example of good economic development intentions gone wrong. Its original mission has been morphed by political patronage, legislative revision, and commercial manipulation, effectively repositioning it from a program primarily helping

distressed communities to one routinely offering tax relief for ongoing businesses.[30]

A 2008 audit by the NYS Comptroller showed that job targets were often not met and recommended that "…New York should take another look at the Empire Zones program…. If officials can't demonstrate that the program is working, and if local governments and taxpayers are not benefiting from a program that's supposed to generate economic development and create jobs, it calls into question the value of the program."[31] As was the case with the state's repeal of the JIB credit, in the wake of controversies and general dissatisfaction with results, the EZ Program was discontinued in 2010. While the phase-out legislation stipulated that no new businesses were to be accepted after June 2010, current program participants were permitted to continue using their EZ wage and ITC credits until the second half of 2014, and their QEZE tax incentives until 2020.

The history of the Empire Zone program illustrates two common issues associated with business tax credit programs. First, geographically targeted programs tend to expand in size as previously excluded communities make the case that they should be included in the program. Second, unless they are carefully drafted, tax credit programs can generate excessive benefits, as illustrated by the situations where substantial QEZE real property credits were generated for businesses that employed few people.

Economic Transformation and Facility Redevelopment Program Tax Credits. This program was initiated in 2011 to mitigate the economic consequences associated with the closing of state government facilities. Four refundable credits offer incentives to redevelop the closed facilities and to attract new businesses to impacted areas. To qualify, a company must: (1) be a new business located within one of the state's Economic Transformation Areas[32] and create at least five net new jobs; and (2) be in a high-tech, clean-tech, manufacturing, or other strategic

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[30] AT Kearney, *Delivering on the Promise of New York State: A Strategy for Economic Growth & Revitalization*. Prepared for Empire State Development (Albany, NY: Empire State Development, 2007), http://www.esd.ny.gov/Resources/atkearneyreport2007.pdf.

[31] Office of the NYS Comptroller. *The Effectiveness of Empire Zones: Follow-Up Report* (Albany, NY: Office of the NYS Comptroller, February 11, 2008), http://www.osc.state.ny.us/localgov/audits/swr/empirezones.pdf.

[32] An Economic Transformation Area is defined as an area limited to the site of a closed facility or an area within a certain radius of the facility. The size of the area depends on several factors including the facility's location, population density, poverty and unemployment rates, and job loss at the facility and in the region. Special rules apply for areas within the Metropolitan Commuter Transportation District and the Port Authority District.

industry identified in the applicable Regional Economic Development Council's strategic plan.[33] Retail, real estate development, and professional services may be included if located in a closed correctional or juvenile justice facility pursuant to a reuse plan. The program provides:

- ✓ a credit for each new job created;
- ✓ an ITC for investments made at the closed facility or within the economic transformation area;
- ✓ a credit for providing training for displaced facility employees; and
- ✓ a property tax credit for taxes on the property within the grounds of the facility and within the economic transformation area.

Empire State Jobs Retention Program. This program was established in 2012 to retain jobs in what are called strategic businesses that are at risk of leaving NYS due to the impact of an event leading to an emergency declaration by the governor for the county in which the business is located. To participate in the program, a company must be in certain industries.[34] They must demonstrate substantial damage and economic damage resulting from the event leading to the emergency declaration. It must also have had at least 100 full-time equivalent jobs in the county as of a specified date prior to the emergency declaration and retain at least that level of employment in NYS. Incentives include:

- ✓ A refundable credit for 6.85 percent of the gross wages paid for the impacted jobs. The business receives a certificate from the Empire State Development Corporation each year specifying the amount of the tax credit. The credit may be claimed for up to 10 consecutive tax years provided that the business continues to meet eligibility requirements.
- ✓ A 2 percent ITC for costs in excess of costs recovered by insurance.

Not included in Table 4.2 are costs attributable to the two geographically targeted programs adopted by NYS in 2013 — Innovation Hot Spots and START-UP NY. Although both are tax expenditures that channel state spending through the tax code, neither function as tax

[33] In 2011, Governor Cuomo created 10 Regional Councils to develop long-term strategic plans for economic growth for their regions.

[34] Specified industries include financial services data center or a financial services back office operation; manufacturing software development and new media; scientific research and development; and agriculture. Also eligible are companies engaged in the creation or expansion of back office operations in the state or located in a distribution center.

credits as discussed in this report, i.e., as subtractions from taxpayer liability.[35] Innovation Hot Spots will designate 10 high-tech innovation incubators at locations affiliated with higher education institutions. Companies in the incubators will be exempt from business and sales taxes for five years.[36]

The START-UP NY program will provide tax incentives for businesses locating on, or close to, college campuses throughout the state. College campuses and Empire State Development (NYS's chief economic development agency) will work together to designate eligible sites and certify participants. Participating companies will pay no taxes (e.g., business/corporate taxes, sales taxes, and property taxes) for 10 years. Employees in participating companies will pay no income taxes for the first five years. For the second five years, they will pay no taxes on income up to $200,000 of wages for individuals, $250,000 for a head of household, and $300,000 for taxpayers filing a joint return. The aggregate number of net new jobs eligible for personal income tax benefits cannot exceed 10,000 per year. Benefits will be available to new companies, out-of-state companies relocating to NYS, and in-state companies expanding into a new line of business or into a new facility. Companies must create and maintain new jobs and demonstrate that they are not relocating existing jobs from other parts of the state.

IV.3 Business Tax Credits to Support NYS Social, Housing, and Environment Policies

NYS provides tax incentives to businesses to encourage their support of the state's social, housing, and environmental policies. Once in place, however, these tax incentives are not reviewed in the annual budget process as is direct spending to fund state policies with similar social, housing, and environmental objectives.

In 2013, the cost to NYS of the credits to encourage businesses to support the state's social, housing, and environmental policies were an estimated $125 million, accounting for 7.3 percent of the total costs of NYS business tax credits (see Table 4.3). Of the 14 credits available in 2013, five have refundable provisions with no limitations; two have limitations. One is

[35] START-UP NY utilizes a credit as an alternative way to deliver a complete tax exemption rather than waiving the tax filing requirement.

[36] Innovation Hot Spots exempts corporate taxpayers from all tax bases except the fixed dollar minimum tax. Combined groups containing an Innovation Hot Spot client and businesses subject to tax under the PIT receive a subtraction modification equal to the income generated by the Hot Spot entity.

available for certain taxes paid (mortgage recording tax on residential properties) and one will be available beginning in 2015 (historic property restoration). Seven of the 14 have unlimited carry-forward provisions.

Table 4.3: NYS Business Tax Credits to Support Social, Housing, and Environment Policies, 2013*

Credit	Initial Year	$ in Million	% of Total Bus. Tax Credits	Refundable	Number of Years for Carry Forward
Total Business Tax Credits		**$1,714.9**	**100.0%**		
Total Credits to Support State Social, Housing, and Environment Policies		**$125.6**	**7.3%**		
Social Policies		**5.1**	**0.3**		
New York Youth Works Tax Credit	2012	5.0	0.3	Yes	
Credit for Employment of Persons with Disabilities	1998	**		No	Unlimited
Credit for Companies Who Provide Transportation to Individual with Disabilities	2006	**		No	Unlimited
Minimum Wage Reimbursement Credit	2014			Yes	
Hire a Vet Credit	2015			No	3 yrs
Credit for Purchase of an Automated External Defibrillator	2001	0.1	0.0	No	None
Housing Policies		**83.0**	**4.8**		
Farmers' School Property Tax Credit	1997	35.0	2.0	Yes	
Low-Income Housing Credit	2000	11.0	0.6	No	Unlimited
Credit for Servicing SONYMA Mortgages	1972	7.0	0.4	No	None
Special Additional Mortgage Recording Tax Credit	1979	30.0	1.7	Residential	Unlimited
Environmental Policies		**37.5**	**2.2**		
Green Buildings Credit	2001	10.5	0.6	No	Unlimited
Biofuel Production Credit	2006	10.0	0.6	Yes	
Land Conservation Easement Credit	2006	1.5	0.1	Yes	
Clean Heating Fuel Credit	2006	0.5	0.0	Yes	
Rehabilitation of Historic Properties Credit	2007	15.0	0.9	***	Unlimited
Alternative Fuel Vehicle Refueling Property and Electric Vehicle Recharging Property Credit	2013	**	0.0	No	Unlimited

* Forecast estimates.
**Less than $0.1 million.
*** Refund available for qualified rehabilitations placed in service on or after January 1, 2015.
Source: Compiled by the authors from the NYS Division of Budget and Department of Taxation and Finance Annual Report on NYS Tax Expenditures 2013-2014 State Fiscal Year and information from Department of Taxation and Finance.

IV.3.1 Social Policy

New York Youth Works Tax Credit. This fully refundable credit, effective in 2012 and expanded in 2013, was enacted to encourage businesses to hire low-income or at-risk youth. The NYS Department of Labor can grant $25 million for 2012 hires and $6 million annually for 2014 through 2017 hires. New hires must be paid equivalent wages for similar jobs with appropriate adjustments for experience; they cannot be used to replace terminated workers. Employers are ineligible if they replace their workforce solely for the purpose of accessing the tax credits.

Preference may be given to employers who offer advancement and employee benefit packages to qualified employees. Credits include:

- ✓ $500 per month for up to six months for each qualified employee in a full-time job;
- ✓ $250 per month for up to six months for each qualified employee in a part-time job, defined as 20 hours per week;
- ✓ $1,000 for each qualified employee who is employed for at least an additional six months by the employer in a full-time job; and
- ✓ $500 for each qualified employee retained an additional six months by the qualified employer in a part-time job of at least 20 hours per week.

Credit for Employment of Persons with Disabilities. This credit represents an effort by the state since 1998 to encourage businesses to hire workers with disabilities.

- ✓ The credit is 35 percent of the first $6,000 in first year wages paid for all qualified workers. There is no limit to the number of workers eligible for the credit.

Hire a Vet Credit. Enacted in 2013 but effective in 2015, businesses that hire recent veterans or encourage the employment of service members returning from combat will be eligible for this credit.

- ✓ Employers are eligible for a $5,000 maximum credit for hiring a veteran released from active duty by general or honorable discharge after September 11, 2001; a $15,000 maximum tax credit is provided for hiring a disabled veteran.

Credit for Companies Providing Transportation to Individual with Disabilities. Since 2006, businesses providing taxicab or livery services can claim a credit equal to the incremental costs associated with the purchase of a handicapped accessible vehicle or the conversion of a conventional vehicle to a handicapped accessible vehicle.

- ✓ The maximum credit is $10,000 per vehicle.

Minimum Wage Reimbursement Credit. Effective 2014, **t**his credit is available to employers for wages paid to eligible employees between the ages of 16 and 19. Eligible employees must be students employed in NYS who are paid the minimum wage rate.

- ✓ The credit is equal to the number of hours worked by eligible employees multiplied by a rate that increases over time from $0.75 in 2014 to $1.35 in 2016-2018.

This credit has been criticized for discouraging employers from paying student employees more than the minimum wage and for giving employers an incentive to replace nonstudent employees with student employees.

Credit for Purchase of an Automated External Defibrillator. Since 2001, businesses purchasing automated external defibrillators (other than for resale) are eligible for this credit.

- ✓ The credit is equal to the lesser of the purchase cost of the unit or $500.

IV.3.2 Housing Policy

Farmers' School Property Tax Credit. The credit was initially enacted in 1996 and amended several times to encourage farmers to maintain their land for agricultural uses. It entitles taxpayers to receive a refundable credit if they are engaged in the business of farming and pay school district property taxes on qualified agricultural property.

- ✓ The size of the credit depends on the number of qualified acres and the amount of school district property taxes paid. Phase-out of the credit occurs if the farmer's modified NYS adjusted gross income (AGI) or modified entire net income (ENI) is between $200,000 and $300,000, with no credit allowable if the taxpayer's modified AGI or ENI is over $300,000.

State Low-Income Housing Credit (SLIHC). Signed into law in 2000, the SLIHC provides a tax incentive to developers who acquire, build, or rehabilitate low-income rental housing.

- ✓ Credits are awarded competitively by the NYS Division of Housing and Community Renewal based on a number of factors such as the extent of community impact and revitalization, the use of other development funding sources, and developer experience.

Credit for Servicing State of New York Mortgage Agency (SONYMA) Mortgages. This credit has been available since 1972 to institutions that service mortgages of SONYMA. It was amended in 2013 to permit institutions to take advantage of the credit when the mortgage loan is not acquired by SONYMA directly from the originating lenders but is acquired pursuant to a SONYMA program that would involve Fannie Mae.

- ✓ The credit is 2.93 percent of the total principal and interest collected for each SONYMA mortgage secured by a one-to-four family residence and interest collected on each SONYMA mortgage secured by a five or more family residence.

Special Additional Mortgage Recording Tax Credit. Enacted in 1979, business taxpayers are entitled to the credit if their company paid a special additional mortgage recording tax other than on residential mortgages where the real property is located in Erie County or any of the counties within the Metropolitan Commuter Transportation District — New York, Bronx, Queens, Kings, Richmond, Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk, and Westchester.

- ✓ The amount of the credit is the qualifying special additional mortgage recording tax paid.

IV.3.3 Environmental Policy

Green Buildings Credit. In 2000, NYS enacted the country's first green building tax credit. It provided a credit for the design, construction, and operation of environmentally responsible buildings with a minimum of 20,000 square feet. Eligible types of buildings included multiple dwellings, business, assembly (e.g., religious), and institutional. Period I authorized $25 million for projects that were completed by 2004; Period II allowed for an additional $25 million in total credit with the size of the credit on any one project limited to $2 million. The amount of credit is determined by the Department of Environmental Conservation and allowed for five years.

Biofuel Production Credit. Businesses are entitled to this credit if they produced biofuel on or after January 1, 2006, and before January 1, 2020, at a biofuel plant located in NYS. Biofuel is generally biodiesel, ethanol, or any other alternative fuel meeting standards established by the New York State Energy and Research Development Authority.

- ✓ The credit is $0.15 per gallon of biofuel produced at a biofuel plant located in NYS after the production of the first 40,000 gallons per year presented to market. The credit limit is $2.5 million per entity per tax year and can be claimed for four consecutive tax years per biofuel plant.

Land Conservation Easement Credit. Effective 2006, this refundable credit is available to owners of conservation easement-restricted land, regardless of when the easement was

created, provided that the easement was wholly or partially donated to a public or private conservation agency (a governmental body or any qualified private or not-for-profit charitable corporation or trust). The credit is bound to the land so that successor owners will benefit from it as well as the original easement donors.

- ✓ The credit is 25 percent of the property taxes paid on the easement-restricted land up to $5,000 per year.

Clean Heating Fuel Credit. Starting in 2006, businesses that purchase bioheat to be used for space heating or hot water production for residential purposes within NYS are eligible for the credit.

- ✓ The credit is $.01/gallon for each percent of biodiesel included in the bioheat. The credit cannot exceed $0.20/gallon.

Rehabilitation of Historic Properties Credit. Effective 2007, businesses are allowed a tax credit for the rehabilitation of a certified historic structure if all or part of the rehabilitation project is either a targeted area residence or is located within a Census tract with family income at or below 100 percent of the NYS median family income.

- ✓ For tax years beginning on or after January 1, 2010, and before January 1, 2020, the credit is 100 percent of the federal credit amount allowed. The total amount of the NYS credit allowed may not exceed $5 million dollars per structure. Starting in 2015, the credit is refundable.

Alternative Fuel Vehicle Refueling Property and Electric Vehicle Recharging Property Credit. Effective 2013, the credit is for the installation of alternative fuel vehicle refueling property and electric vehicle recharging property placed in service in NYS before January 2018.

- ✓ The credit for each installation of alternative fuel vehicle refueling property and electric vehicle recharging property is the lesser of $5,000 or 50 percent of the cost of the property.

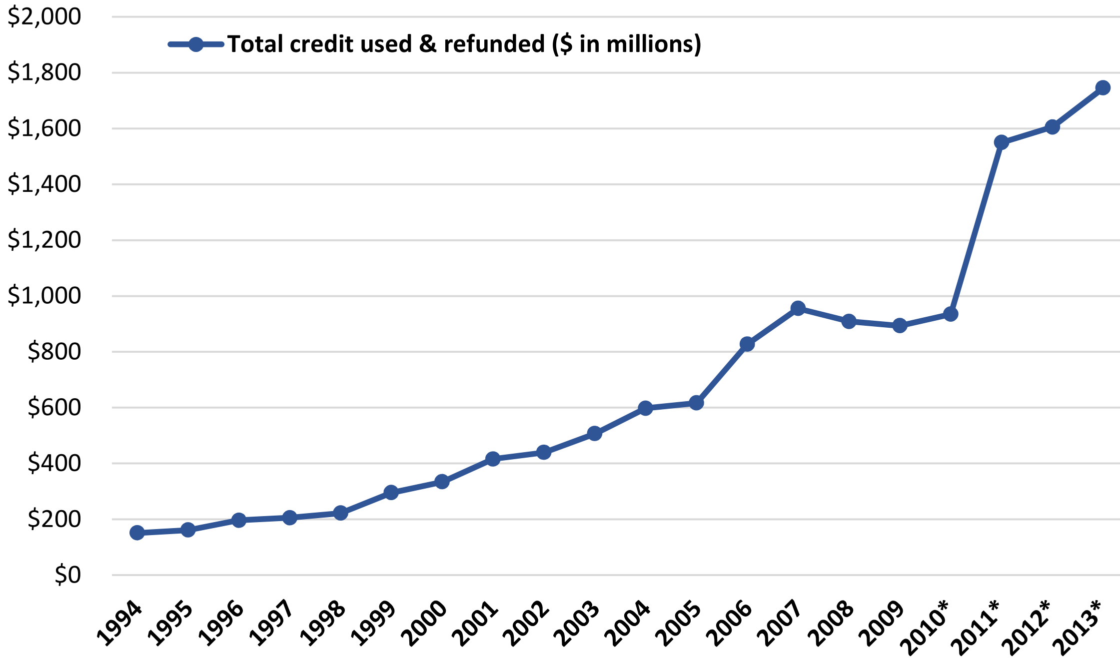
V. FISCAL IMPACT OF NYS BUSINESS TAX CREDITS

As mentioned earlier, unlike direct spending by government, credits (and other tax incentives) are generally not scrutinized or subject to debate during the annual budget review process because no affirmative action, such as an appropriation, is required. One possible way to focus legislative attention would be to incorporate sunset provisions, i.e., expiration dates, in the legislation authorizing or reauthorizing tax credits and other tax incentives. At the present time, of NYS's 52 enacted business tax credits, 32 have no sunset provisions that would compel the legislature to review whether they are worthy of statutory reauthorization and continued state funding.

If increased economic activity takes place that would have occurred absent the credit, the result is needlessly foregone tax revenues for the state. If a credit generates new economic activity, that activity will generate revenue for the state. Discerning where a credit falls on this spectrum is difficult; however, only under extreme assumptions does a credit "pay for itself" by generating revenues in excess of the amount of the credit. In this report, the costs to NYS of business tax credits are based on data published in the *New York State Annual Report on Tax Expenditures.* These data do not attempt to estimate whether, and by how much, a change in tax policy would affect the overall economy (i.e., they do not account for what is referred to as "dynamic scoring").

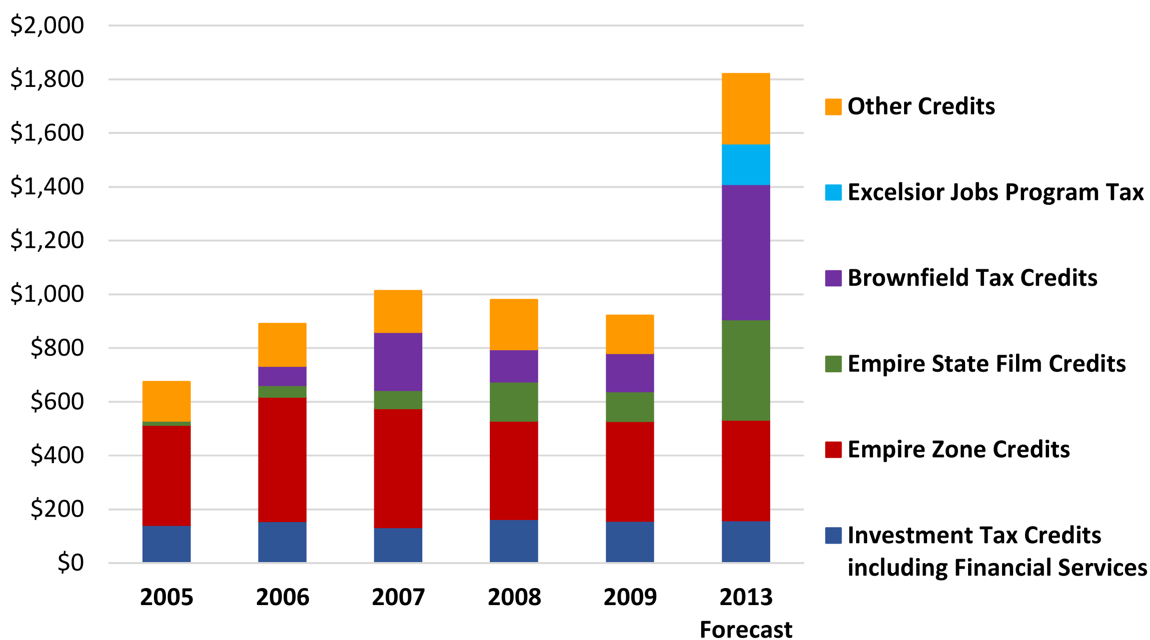
V.1 Trends in NYS Business Tax Credit Costs

The number and costs of NYS tax credits available to businesses have increased significantly in recent decades (see Figure 5.1). In 1994, nine business tax credits were available with a cost to the state of about $200 million. By 2005, there were 33 credits costing the state $673 million; in 2009 there were 38 credits costing the state $821 million. By 2013, the number of active credits had jumped to 50, costing the state an estimated $1.7 billion, close to triple the cost in 2005.



Note: Data for 2010 to 2013 are estimated jointly by the NYS Department of Taxation and Finance and the NYS Division of the Budget and are subject to revision.
Source: NYS Department of Taxation and Finance.

Part of the cost increase from the mid-1990s to 2005 is due to the expansion in the total number of business tax credits, averaging more than two per year. The growth is also attributable to the addition of a few large new business tax credits, particularly the Qualified Empire Zone Enterprise (QEZE) real property tax credit (which is in the process of being phased out). The dramatic jump in estimated costs between 2009 and 2013 is largely explained by increases in three credit programs (see Figure 5.2) — film production, brownfield, and the Excelsior Jobs Program. These credits were initially made available to taxpayers in 2004, 2005, and 2010, respectively. In 2009, brownfield tax credits cost the state $142.1 million, increasing to an estimated $503 million in 2013. Film credit costs more than tripled from $111.2 million in 2009 to an estimated $374.0 million in 2013. The Excelsior Jobs program credit is estimated to have cost the state $150 million in 2013. (Note: The cap on the film credit is $420 million annually; the cap on the Excelsior Jobs Program is $500 million per year when fully effective.)

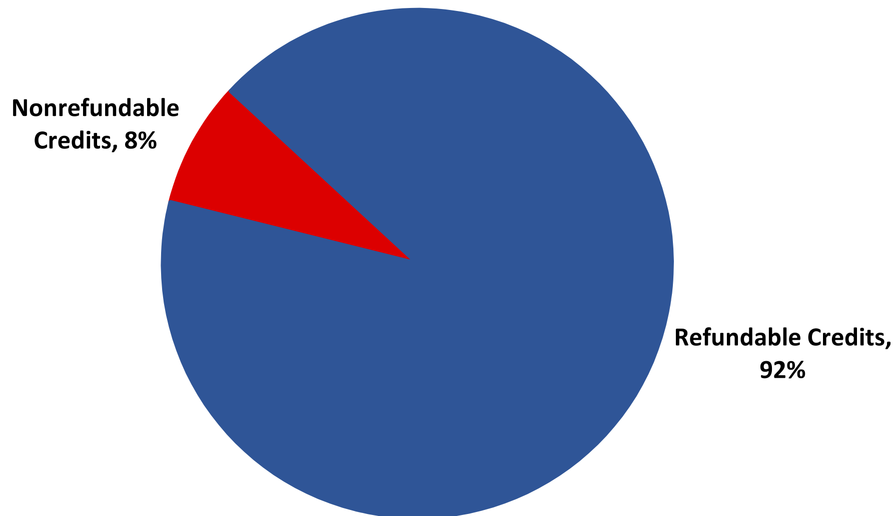


Note: Data for 2013 are estimated jointly by the NYS Department of Taxation and Finance and the NYS Division of the Budget, included in the annual tax expenditure report, and are subject to revision.
Source: *Annual Report on New York State Tax Expenditures: 2013-14 State Fiscal Year*. New York State Division of the Budget and New York State Department of Taxation and Finance, February 2013.

A major reason for the rapid growth in the cost of business tax credits in recent years is the increase in credits that have refundable provisions. Of the 11 credits that became effective between 1997 and 2000 and are still available today, one — the farmers' school tax credit — is refundable. Of the 29 credits that became effective after 2000, 22 are refundable. In 2013, of NYS's 50 available business tax credits, $1.2 billion (92%) of total costs to the state were from refundable credits (see Figure 5.3). Although six refundable credits cost $2 million or less,[37] three refundable credits cost over $200 million each.[38]

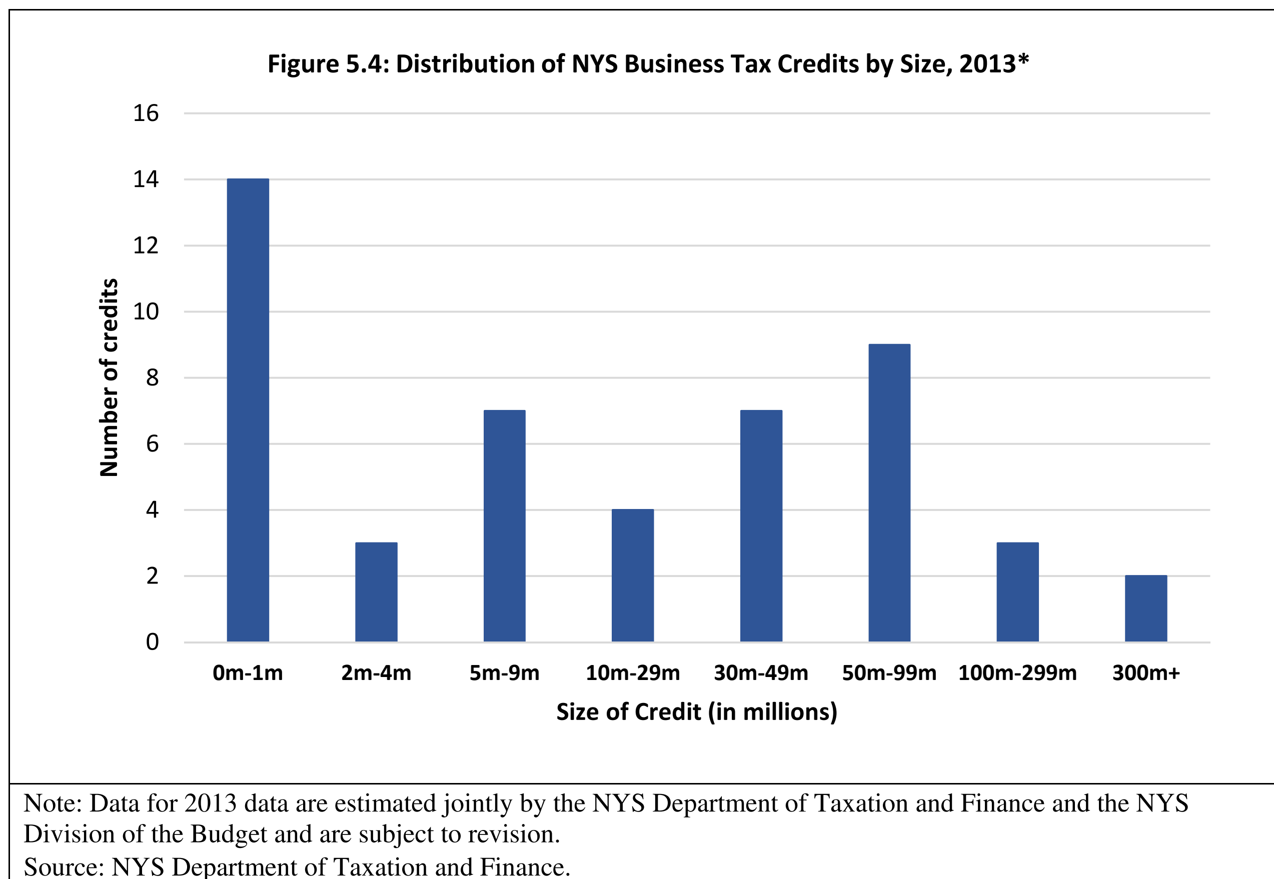
[37] QETC employment credit ($1.2 million); conservation easement tax credit ($1.5 million); clean heating fuel credit (less than $1 million); security officer training tax credit (less than $1 million); brownfield environmental remediation insurance credit (less than $1 million); Empire State jobs retention program credit (less than $1 million).
[38] Brownfield redevelopment credit ($495 million); Empire State film production credit ($360 million); QEZE real property tax credit ($212 million).

Figure 5.3: Refundable and Nonrefundable NYS Business Tax Credit Costs 2013*
(millions of dollars)



Note: Costs for 2013 are estimated jointly by the NYS Department of Taxation and Finance and the NYS Division of the Budget and are subject to revision. Excluded are credits that are "partially" refundable such as the ITC and EZ wage tax credit.
Source: NYS Department of Taxation and Finance.

In 2013, two credit programs — the brownfield redevelopment credits and the Empire State film production credits — accounted for more than half of the estimated $1.7 billion in costs associated with the 50 available business tax credits. Five credits accounted for 75 percent of the $1.7 billion — brownfield redevelopment, film, the QEZE real property tax credit, ITC-related credits, and the QEZE tax reduction credit. Twenty credits accounted for over 90 percent of the total costs. Of the remaining credits for which 2013 estimates are available, 17 cost NYS less than $5 million, with 14 (half refundable) costing $1 million or less (see Figure 5.4).



Note: Data for 2013 data are estimated jointly by the NYS Department of Taxation and Finance and the NYS Division of the Budget and are subject to revision.
Source: NYS Department of Taxation and Finance.

In 2013, the two largest credit programs — brownfield and film production — disproportionately benefited economic activity in New York City and other parts of "Downstate" New York. Approximately 59 percent of brownfield credits claimed between 2008 and 2012 were for projects in NYC where 44 percent of the state's nonfarm jobs are located. Seventeen percent of brownfield credits were for projects in Westchester where (together with Putnam and Rockland Counties) six percent of NYS's nonfarm jobs are located. The remaining 24 percent of brownfield credits were claimed for projects in the rest of the state where 50 percent of the jobs are located.[39] For film credits, in 2011, approximately 92 percent of qualified film production spending and tax credits were claimed for projects in NYC.[40] Given that employment in NYC increased by 2.3 percent over the last year, accounting for 75 percent of the state's job growth,

[39] The authors' analysis of data from the New York State Department of Taxation and Finance.
[40] *Economic and Fiscal Impacts of the New York State Film Production Credit* (New York, NY: HR&A Advisors, Inc., December 3, 2012), http://www.mpaa.org/Resources/f83bf36c-04cb-44fe-aaa4-c06449eb5ec7.pdf.

while jobs in the rest of the state grew by 0.6 percent, the question arises as to whether the state is putting scarce economic development dollars where they are most needed.[41]

V.2 A Snapshot of New York State Business Tax Credits in 2013

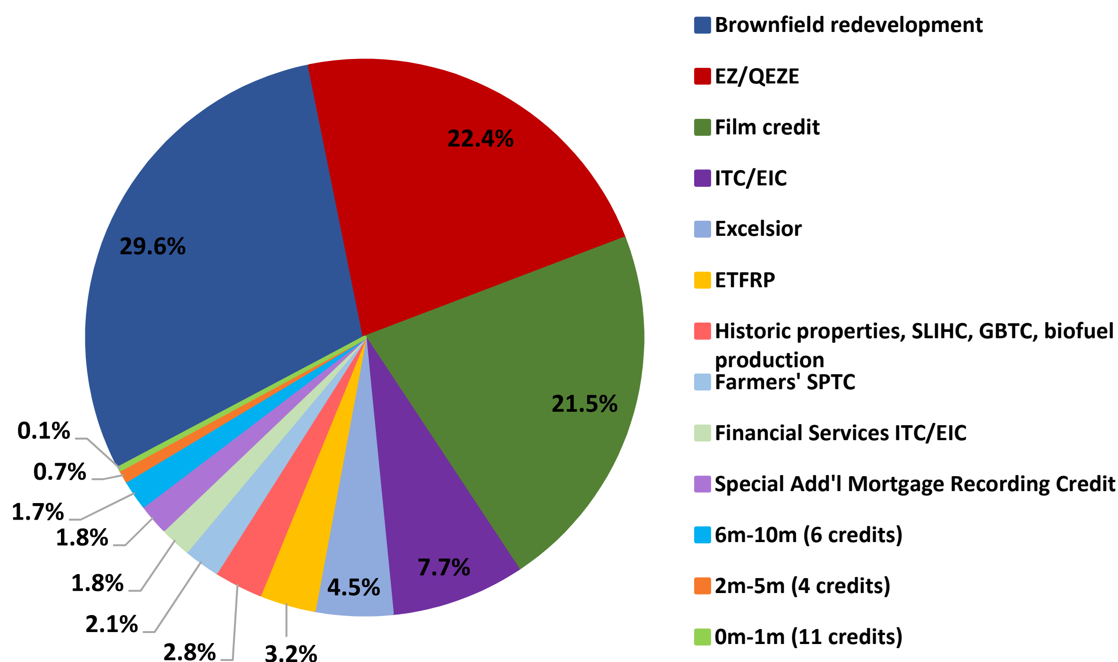
Another way to look at New York's spending on tax credits is to compare it to an alternative standard. One question to be asked, for example, is: "Does the current allocation of tax credit costs reflect the best use of state resources given desired policy outcomes and the geographic distribution of results?" A way to address this question is to look at the distribution of the costs attributable to New York's 50 business tax credits available in 2013.

More than half of the state's spending on business tax credits is committed to two purposes — cleaning up and redeveloping brownfield sites and promoting the film industry (see Figure 5.5). More than 20 percent of the fiscal impact of credits is accounted for by the Empire Zones Program that has been roundly criticized and has technically expired. Yet the state continues to commit over a fifth of its tax credit spending to the Program because of lengthy benefit periods; the last credits will end in 2020. Taken together, these three programs — brownfield, film, and Empire Zones — constitute almost 75 percent of the state's spending on business tax credits.

V.3 Concentration of Tax Credit Claimants

Not only are the NYS business tax credits concentrated among a few industries that are granted preferential treatment, they are also concentrated among a small number of taxpayers who account for the vast majority of tax credits claimed. The latest information available on taxpayers using business tax credits is for 2009 when there were 38 credits available to businesses. Although the number of credits increased substantially between 2009 and 2013, the 2009 data are the best that are available to shed light on the concentration of taxpayers taking advantage of the credits. It should be noted that the distribution of tax credit claimants for 2009 may not be fully comparable to the 2013 distribution of tax credit claimants. The 2009 data do not include claimants for the Excelsior Jobs Program and do not reflect the growth in brownfield and film production credits from 2009 to 2013.

[41] The authors' analysis of data from the New York State Department of Labor, http://www.labor.ny.gov/stats/pressreleases/prtbjd.pdf, accessed October 31, 2013.



Notes: EZ/QEZE — Empire Zone/Qualified Empire Zone Enterprise
ITC/EIC — investment tax credit/employment incentive credit
ETFRP — Economic Transformation and Facility Redevelopment Program
Farmers' SPTC — school property tax credit
SLIHC — state low-income housing credit; GBTC — green buildings tax credit
6m-10m credits — Brownfield real property tax credit; mortgage servicing credit; film post-production credit; commercial production credit (3 components)
2m-5m credits — Youth Works; beer production credit; QETC employment credit; conservation easement credit
0m-1m credits — EZ capital credit; QETC capital credit; clean heating fuel credit; EZ FS-ITC/EIC; employees with disabilities credit; defibrillator credit; security training tax credit; brownfield environmental remediation insurance credit; handicapped-accessible taxis credit; jobs retention credit (2 components); historic barns and retail rehabilitation components of the ITC.
Source: *Annual Report on New York State Tax Expenditures: 2013-14 State Fiscal Year*. New York State Division of the Budget and New York State Department of Taxation and Finance, February 2013.

V.4 Tax Credit Users

The latest information available on taxpayers using business tax credits is for 2009 when there were 38 credits available to businesses.[42] The 2009 data show that not only are the NYS business tax credits concentrated among a few industries, they are also concentrated among a small number of taxpayers.

[42] While the 2009 data are the best that are available to shed light on the concentration of credit takers, the distribution of tax credit claimants for 2009 may not be fully comparable to the 2013 distribution since the earlier data (1) do not include claimants for the Excelsior Jobs Program and (2) do not reflect the growth in brownfield and film production credits from 2009 to 2013.

- ✓ More than 260,000 corporation franchise tax returns were filed; just over 1 percent claimed one or more business tax credits.
- ✓ Nearly 390,000 corporations filed as "S corporations; fewer than 2,500, or 0.6 percent, claimed one or more business tax credits. Credits are earned at the entity level but passed through proportionally to shareholders to apply against their PIT tax liability
- ✓ More than 217,000 partnership returns were filed; slightly over 2,600, or 1.2 percent, claimed one or more business tax credits that were earned at the entity level but passed through proportionally to partners to apply against their PIT tax liability.

In 2009, there were more than five million partnership members and S Corporation shareholders. Close to 25,000 credit claims were submitted on PIT returns related to these entities — less than 0.5 percent of all shareholders and partners. Corporation franchise tax and other business taxpayers [43] claimed 3,122 credits, including those that had been carried-forward from previous years. The average value of a credit for a PIT filer was $11,210 compared with the average of $189,846 for a corporate tax filer. A prime reason for this differential is that most PIT filers who take credits are one of several members of a partnership or Limited Liability Company (LLC) or are shareholders in an S Corporation. Each partner or shareholder filing a PIT return is eligible to claim a share of the total credit earned by the business entity.

[43] Other corporate business taxes include the corporation and utilities tax, the bank tax, and the insurance tax. The count of taxpayers includes S corporations that pay only a fixed minimum tax under the corporation franchise tax. This number is extrapolated from the *2007 New York State Corporate Tax Statistical Report* (Albany, NY: NYS Department of Taxation and Finance, August 2011), http://www.tax.ny.gov/pdf/stats/stat_corp/corp_stat/2007_new_york_state_corporate_tax_statistical_report.pdf.

Table 5.1: NYS Business Tax Credit Users, 2009									
Type of Credit	Personal Income Tax			Corporation Franchise Tax & Other Business Taxes*			Total		
	Number of Claims	Fiscal Impact on NYS ($ m)	Average Claim per Taxpayer **	Number of Claims	Fiscal Impact on NYS ($ m)	Average Claim per Taxpayer **	Number of Claims	Fiscal Impact on NYS ($ m)	Average Claim per Taxpayer **
Credits to Promote Economic Development	7,740	$109	$14,134	1,370	$332	$242,409	9,110	$442	$48,463
Geographically Targeted Credits	11,079	$157	$14,207	1,390	$216	$155,683	12,469	$374	$29,978
Credits for Social, Housing, and Environmental Policies	6,113	$13	$2,078	362	$44	$122,099	6,475	$57	$8,788
All Credits	24,932	$280	$11,210	3,122	$593	$189,846	28,054	$872	$31,090

*Other business taxes include the corporation and utilities tax, the bank tax, and the insurance company tax.
** Average based on taxpayers claiming the credits.
Source: Calculated by authors from data supplied by NYS Department of Taxation and Finance.

Almost half of the number of business tax credit claims was for credits targeted at the state's distressed areas. The largest fiscal impact on the state, however, was for programs to promote economic development statewide.

- ✓ The brownfield redevelopment credit was claimed by 16 corporate taxpayers for an average benefit of over $4.2 million and by 92 PIT filers for an average benefit of $763,000.
- ✓ The film production credit was claimed by 36 corporate taxpayers for an average $2.8 million benefit and by 67 PIT filers for an average $116,716 benefit.
- ✓ The QEZE Real Property Tax credit was claimed by 471 corporate taxpayers for an average benefit of just under $300,000 and by 3,777 PIT filers for an average benefit of $22,000.
- ✓ Corporate tax filers claimed a $103,000 average ITC credit; PIT filers, an average $2,937 ITC credit. The ITC was the credit most widely used by corporate taxpayers (1,027) and by PIT filers (6,680).

V.5 Concentration of Credit Users

Of the 38 credits available in 2009, there were five that accounted for 85 percent of total costs to the state — the brownfield redevelopment credit, the film production credit, the ITC, and the two credits associated with the now expired Empire Zone program — the QEZE real property tax credit and the QEZE tax reduction credit. As mentioned earlier, taxpayers can claim

QEZE credits until 2020. Excelsior jobs credits, the fifth largest NYS business tax credit in 2013, was not yet available in 2009.

- ✓ Brownfield redevelopment credits. Of the 108 claims, 92 (85%) were made by PIT filers and 16 (15%) by corporate taxpayers. The largest five PIT claimants and the five largest business tax claimants together accounted for 97 percent of the total cost to the state of the brownfield credits.
- ✓ Film production credits. Of the 103 claims, 67 (65%) were made by PIT filers and 36 (33%) by corporate taxpayers. The 10 taxpayers claiming the largest dollar value of the credits accounted for 63 percent of its total cost to the state.
- ✓ Investment Tax Credits. Of the 7,516 claims, 6,489 (86%) were PIT filers and 1,027 (14%) corporate taxpayers. The 10 taxpayers with the largest claims accounted for 44 percent of its total costs to the state.
- ✓ QEZE real property tax credit. Of the 4,248 claims, 3,777 (89%) were PIT filers and 471 corporate taxpayers (11%). The ten largest claims for the QEZE Real Property Tax Credit represented 31 percent of the total credit costs to the state
- ✓ QEZE Tax Reduction credit. Of the 2,658 claims, 2,382 (90%) were PIT filers and 276 corporate taxpayers (10%), with the largest 10 claims accounting for 31 percent of the total cost of these credits.

The above analysis shows that the benefits of the credit programs are highly concentrated in a relatively small number of taxpayers, both corporate and personal. In fact, fewer than 1 percent of businesses claim any tax credits at all. In the next section of this report, a detailed analysis will be presented of the two largest credit programs — brownfield and film production credits.

The high concentration of the credit programs raises the issue of whether they represent an effective economic development policy for New York State and, specifically, whether New York's economic development objectives would be better served if the money spent on the credit programs should be redeployed to general tax reductions that could improve the climate for all businesses. With the credits, New York is picking winners and losers. With tax reduction targeted to all businesses, the marketplace would determine which businesses expand and which do not.

Table 5.2: Major NYS Business Tax Incentives: Claims by Top 5 CFT and Top 5 PIT Taxpayers, 2009*			
Tax Credit	**Claims in Millions**		
	PIT	**Corp**	**Total**
Investment Tax Credit (ITC)	**$17**	**$107**	**$124**
Amount Claimed by Top 5	$1	$53	$54
Share of Credit for Top 5 Claims	5.9%	49.5%	43.5%
Total Number of Claims	6,489.0	1,027.0	7,516.0
Brownfield Redevelopment Tax Credit	**$70**	**$68**	**$138**
Amount Claimed by Top 5	$67	$67	$134
Share of Credit for Top 5 Claims	95.7%	98.5%	97.1%
Total Number of Claims	92.0	16.0	108.0
QEZE Real Property Tax Credit	**$83**	**$140**	**$223**
Amount Claimed by Top 5	$8	$61	$69
Share of Credit for Top 5 Claims	9.6%	43.6%	30.9%
Total Number of Claims	3,777.0	471.0	4,248.0
QEZE Tax Reduction Credit	**$41**	**$40**	**$81**
Amount Claimed by Top 5	$4	$21	$25
Share of Credit for Top 5 Claims	9.8%	52.5%	30.9%
Total Number of Claims	2,382.0	276.0	2,658.0
Empire State Film Production Credit	**$8**	**$103**	**$111**
Amount Claimed by Top 5	$3	$67	$70
Share of Credit for Top 5 Claims	37.5%	65.0%	63.1%
Total Number of Claims	67.0	36.0	103.0
Source: Calculated by authors from data supplied by NYS Department of Taxation and Finance.			

VI. AN ANALYSIS OF THE BROWNFIELD CREDITS AND THE FILM CREDITS

The Commission has asked us to review the state's two largest business tax incentive credits, the brownfield credits and the film credits.

The brownfield and film credits together accounted for half of the cost to the state associated with the 50 business tax credits available in 2013. The two credit programs are similar in some ways, but different in others (see Table 6.1). Both are large and refundable. Brownfield credits have limits for individual projects[44] but no statewide cap, whereas the film credits are subject to an annual statewide allocation cap. Both programs are scheduled to expire under current law, but previous scheduled expirations have been extended. Policy changes have been moving in opposite directions for the two credit programs — the state imposed limits on the brownfield credits while expanding the film credits.

Table 6.1: Comparison of New York State Brownfield Credits and Film Credits

Credit Characteristic	Brownfield credits	Film credits
Estimated fully effective annual cost	$503 million in 2013	$420 million annually through 2019
Enacted and effective dates	Enacted 2003, effective for projects completed April 2005 or later	Enacted 2004, effective for tax years beginning on/after January 1, 2004
Refundable?	Yes	Yes
Caps?	Portions of credit for individual projects accepted on/after June 23, 2008 are capped, but no aggregate cap	No caps on individual credits, but utilization is spread over 1, 2, or 3 years depending on credit size; aggregate credits are subject to a first-come, first-served annual allocation of $420 million.
Expiration date	Project must be certified and completed by December 31, 2015	Annual allocations expire after tax year 2019
Disclosure of information on recipients	Required by 2008 legislation	Restricted release required by 2013 legislation

VI.1 The Brownfield Tax Credit Program

A brownfield is generally defined as an abandoned industrial or commercial property that is contaminated, or perceived to be contaminated, in a way that complicates redevelopment.[45] Typical examples of brownfield sites include former gas stations, dry cleaners, and abandoned factory sites. They often are located in the industrial sections of cities and towns, frequently in poorer neighborhoods. While estimates of the number of brownfield sites vary, there does not

[44] Caps apply to the tangible property component of the redevelopment credit for projects accepted into the Brownfield Clean-up Program on or after June 23, 2008.

[45] See http://www.dec.ny.gov/chemical/brownfields.html.

appear to be an authoritative source. One estimate is that there are more than 10,000 brownfield sites in NYS.[46]

In an effort to spur cleanup and redevelopment of brownfield sites and to reduce development pressure on "greenfields," such as farmland and other undeveloped land, many states adopted comprehensive brownfield clean-up programs in the 1990s.[47] These programs often include expedited approval processes, flexible remediation standards, relief from liability for nonresponsible parties, and financial incentives such as grants, technical assistance for assessing contamination, and tax incentives. Every state now has one or more brownfield programs; 23 states have tax incentives for clean-up and, in some cases, redevelopment.[48]

VI.1.1 New York's Brownfield Cleanup Program

New York's first brownfield program was the Voluntary Cleanup Program (VCP) that the Department of Environmental Conservation (DEC) created administratively in 1994. It offered liability protection and clean-up standards based on the proposed use of a site, but no tax credits or grants.[49] In October 2003, New York adopted the Brownfield Cleanup Program (BCP) to be administered by the DEC. [50] BCP was intended to mitigate threats from contamination, promote redevelopment of contaminated property to help revitalize blighted communities, and create an alternative to greenfield development by removing barriers to brownfield redevelopment.[51,52] The BCP created more streamlined procedures for selecting remedies, provided potential legal liability protection for program participants, and tax credits for clean-up and redevelopment —

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[46] Daniel Schlesinger, "Revisiting New York's Brownfield Cleanup Program: An Analysis of a Voluntary Cleanup Program That Lost Its Way," *Albany Government Law Review* 3 (2010): 403.

[47] Michael B. Gerrard, "N.Y. Brownfields Program Buffeted by Legislature, Courts," *New York Law Journal* 240, 18 (July 25, 2008): 1-2, http://aporter.net/resources/documents/NYLJ_Article_072508.pdf.

[48] See *State Brownfields and Voluntary Response Programs: 2013* (Washington, DC: United States Environmental Protection Agency, March 2013), http://www.epa.gov/brownfields/state_tribal/2013_brownfields_state_report_508_web_050913.pdf. Three states do not have formal brownfield programs (Nebraska, Tennessee, and West Virginia — pp.142-3), but have programs that apply to brownfield sites.

[49] Gerrard, "N.Y. Brownfields Program Buffeted by Legislature, Courts."

[50] Al Baker, "Senate Approves Plan to Clean Polluted Sites, Ending 10-Year Impasse," *The New York Times*, September 17, 2003, accessed September 19, 2013, http://www.nytimes.com/2003/09/17/nyregion/senate-approves-plan-to-clean-polluted-sites-ending-10-year-impasse.html.

[51] *Brownfield Restoration in New York State: Program Review and Options* (Albany, NY: NYS Office of the State Comptroller, April 2013): 6, http://www.osc.state.ny.us/reports/environmental/brownfields_restoration13.pdf; Gerrard, "N.Y. Brownfields Program Buffeted by Legislature, Courts."

[52] Gerrard, "N.Y. Brownfields Program Buffeted by Legislature, Courts."

arguably a stronger incentive than the release from liability and streamlined procedures provided under the earlier VCP, under which 212 sites had been cleaned up.[53]

The DEC announced that "the new Brownfield Cleanup Program (BCP) will foster cleanup of thousands of contaminated properties while encouraging new investment and redevelopment of these sites across New York State."[54] Cleaning up thousands of contaminated properties, however, remains an elusive goal. As of September 2013, DEC reported issuing 133 certificates of completion for sites remediated under the BCP since its inception 10 years earlier.[55]

The BCP established substantial corporate and personal income tax credits for brownfield redevelopment and lesser credits for real property taxes and environmental remediation insurance. To qualify for tax credits, property owners are required to enter into the Brownfield Cleanup Program, comply with a Brownfield Cleanup Agreement, and ultimately receive a Certificate of Completion (COC) from DEC that attests to successful clean-up. The brownfield redevelopment credit has three components, originally structured as follows:

- ✓ Credit for groundwater remediation: calculated as a percentage of capital costs related to a site's qualification for a COC, remediation of on-site groundwater contamination, and implementation of requirements in the remedial work plan.
- ✓ Credit for site preparation: calculated as a percentage of capital costs for items such as excavation, temporary electric wiring, scaffolding, demolition, and fencing and security facilities. These costs need not be related to site clean-up, although in practice many of the costs may be related to cleanup and some may not.
- ✓ Credit for tangible property costs: calculated as a percentage of costs that generally are for depreciable buildings, structures, and equipment placed in service on a site that has received a COC.

Initially, each component had the same credit rate structure. The basic credit percentage was 12 percent for corporate tax filers and 10 percent for PIT filers who qualified for credit by

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[53] *Brownfield Restoration in New York State: Program Review and Options*.; Gerrard, "N.Y. Brownfields Program Buffeted by Legislature, Courts."

[54] According to Schlesinger, "Revisiting New York's Brownfield Cleanup Program," which cited *DEC Accepting Applications for New Brownfield Cleanup Program, ENVIRONMENT* DEC (Albany, NY:: NYS Department of Environmental Conservation, January 2004), http://www.dec.ny.gov/environmentdec/18548.html. The cited link no longer appears to work.

[55] *Brownfield Site Certificates of Completion: One Hundred and Thirty-Three Sites in New York State's Brownfield Cleanup Program Deemed Complete*, http://www.dec.ny.gov/chemical/30360.html, accessed September 19, 2013.

virtue of being partners in a partnership, shareholders in an S Corporation, or sole proprietors. Sites located primarily in high-poverty "EnZones" qualified for an 8 percent credit bonus, and sites remediated to the highest environmental standard qualified for an additional 2 percent bonus. If combined, these could bring the maximum credit rate to 22 percent for corporate filers and 20 percent for PIT filers.

The credit as enacted was entirely refundable: If a taxpayer did not have sufficient liability to use the full credit, it was eligible for a cash payment from the state, reported as a refund of tax (although tax might not, in fact, have been paid).

VI.1.2 Amendments to Control Costs of the Brownfield Credits

The NYS credits as originally structured made it likely that they would become expensive:

- ✓ Eligibility for credits was not limited to economically struggling areas of the state, or to projects that seemed unlikely to occur without the credits.
- ✓ Actual contamination was not required; the perception of contamination was sufficient, if it might complicate redevelopment. The advantage was that properties would qualify if fear of liability would hamper redevelopment, but it contributed to expense.
- ✓ Unlike credits in most other states, they were not limited to a percentage of clean-up costs, but instead extended to virtually all site preparation costs and costs of buildings and equipment.
- ✓ There was no requirement that the credit be deemed necessary for the redevelopment of a site.
- ✓ There were no caps on individual credits or on credits in aggregate.
- ✓ The credits were refundable.

Not long after the credit program was enacted, the press noted instances of large credits associated with little remediation, or in areas that were healthy economically, or that were used by firms or people believed to be well connected, or that appeared unnecessary to induce redevelopment. For example, the retailer Ikea redeveloped a former Navy shipyard in Brooklyn and received a $19.8 million credit. The head of real estate for the company was quoted as

saying, "From the Ikea point of view, it didn't really change anything for us. We were going to do the cleanup anyway, the tax breaks are just a nice bonus."[56]

In 2008, the Office of the NYS Comptroller compared the New York brownfield credits to those in Connecticut, Massachusetts, New Jersey, Pennsylvania, and Vermont. Each of these states, except Connecticut, limited its credit to clean-up costs and did not provide a redevelopment credit specifically for brownfields. The state offered a generous redevelopment credit for 100 percent of costs, with a $100 million cap, but it was not refundable. None of the other states' credits was refundable.[57]

The governor's proposed budget submitted in January 2008 included legislation to scale back the credit. Among other things, the legislation would have: (a) authorized DEC to reject an application if reuse or redevelopment would likely occur without tax credits, (b) limited the tangible property credit to $15 million for any single site, and (c) enriched the credit percentages (but with the tangible property credit capped). The memorandum in support said that the structure of the credit "has resulted in excessively large tangible property credits for developers who invest relatively little to remediate a site, or would redevelop a site in the absence of tax credits.… Even with these reforms, the State's BCP will still be among the most generous brownfield remediation programs in the nation."[58] In June 2008 a report by the NYS Comptroller noted that the potential costs of the brownfield credit, while quite uncertain, were likely to be large, and that the "outstanding tax credit liability for all projects currently enrolled in the BCP is estimated to be potentially as high as $3.1 billion."[59]

[56] Julie Satow, "Skeptics Charge Misuse of Tax Incentive Program," *The New York Sun*, September 30, 2004, Real Estate section.
[57] *Overview of the New York State Brownfields Cleanup Program* (Albany, NY: New York State Office of the State Comptroller, June 2008), http://www.osc.state.ny.us/reports/environmental/brownfields08.pdf.
[58] "2008-09 New York State Executive Budget, Revenue Article VII Legislation, Memorandum in Support, http://www.budget.ny.gov/pubs/archive/fy0809archive/eBudget0809/fy0809artVIIbills/REVENUEConsBMwtoc.htm, accessed September 19, 2013.
[59] *Overview of the New York State Brownfields Cleanup Program.*

The legislature did not adopt the governor's proposed amendments but it imposed a 90-day moratorium on accepting new sites into the BCP and subsequently passed legislation to scale back the credit for sites admitted into the program on June 23, 2008 or later:

- ✓ For any given commercial and residential site the tangible property component was capped at the lesser of $35 million or three times the combined value of the groundwater remediation and site preparation costs
- ✓ For manufacturing sites the tangible property component was capped at the lesser of $45 million or six times the combined value of the groundwater remediation and site preparation costs.

The Difficulty of Controlling Tax Credit Costs

The governor's proposed brownfield legislation in 2008 illustrated a technical issue that contributes to the political difficulty of controlling all tax credit costs. The legislation assumed that the bill would have no impact on tax receipts in its first year because of the effective date, although it would generate substantial savings in future years. Put differently, legislators were being asked to incur the political cost of cutting the credit in 2008, but would not receive any fiscal benefit — resources that could be used for other priorities — until future years. In tax programs it is tradition, and in some cases, constitutionally required, to make changes that are adverse to taxpayers fully prospective. Combined with lags between tax law changes and tax payments, it is difficult for cuts in tax credits to increase tax revenue in the year in which they go into effect. By contrast, when elected officials cut an appropriated spending program, they incur the political cost but also typically free up resources right away for other purposes. This political incentive in favor of keeping tax credits also works in favor of adopting them: a new credit usually will have little cash impact on the budget in the year it is adopted; most of the fiscal impact will occur after tax credits are applied for and tax returns are filed.

The 2008 legislation also restructured credit percentages with different and generally higher rates for the cleanup relative to the redevelopment components. It created seven new credit rates for the groundwater and site preparation components, ranging from 22 percent to 50 percent depending upon intended site use and level of clean-up achieved.[60] It maintained the existing rates for the redevelopment component, but added a new 2 percent bonus rate for the tangible property component for sites located in a "brownfield opportunity area," or BOA, established by the Department of State.[61]

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[60] Gerrard, "N.Y. Brownfields Program Buffeted by Legislature, Courts."

[61] *Brownfield Restoration in New York State: Program Review and Options*.

VI.1.3 Costs of the Brownfield Credits and Their Distribution

A provision of the 2008 reforms required the DTF to produce a brownfield credit report by January 31st of each year that includes information identifying brownfield projects and their related costs and credit. This makes it possible to know more about brownfield credits and their distribution than is possible for most other business tax credits.[62] Data from reports available for the five years from 2008 through 2012 are summarized below, focusing on the redevelopment credit, which is by far the largest of the brownfield credits. Although the analysis is based on the 2008 through 2012 filing years, most of the credits are likely to have been approved under the pre-2008 law since it takes about three years on average for a project to move from application to certificate of completion.

Table 6.2 summarizes information on credits based on the public reports filed with DTF for 2008 through 2012. The total credit value of $839 million shown in the table is a subset of the total credit cost to date — at least an additional $71 million in credits were granted before the public reporting mandate was enacted; detailed data on those claimants are not publicly available.[63] The table shows credit-eligible costs and the credit amount for the three main components of the redevelopment credit: groundwater remediation, site preparation, and tangible property As discussed earlier, groundwater remediation costs are clearly for site clean-up, tangible property costs usually are for buildings and equipment and generally will be for development costs rather than clean-up, and site preparation costs may include clean-up costs and other costs to prepare a site for development.

Table 6.2: Brownfield Redevelopment Credits, Eligible Costs, and Projects, 2008 Through 2012, Millions of Dollars

	Credit Eligible Costs	Credit Amount	Credit Component as % of Credit Total
Groundwater Remediation	$22	$4	0.4%
Site Preparation	350	49	5.9%
Tangible Property	5,472	786	93.7%
Total	**$5,844**	**$839**	**100.0%**

Source: Authors' analysis of Brownfield Credit Report, Department of Taxation and Finance, for credit years 2008 through 2012.

[62] The data should be used with care. As the Department notes in the report, "The data appear exactly as reported by the taxpayer. No validations or error corrections were performed by the Department."

[63] For the $71 million, see p.12 of *Brownfield Restoration in New York State: Program Review and Options*.

The first conclusion from the table is that for the $839 million the state “spent” over five years, $22 million of groundwater remediation was reported. Site preparation costs were $350 million, but it is not possible to know from these data how much of the $350 million was for clean-up and how much was for other expenses for development. The vast bulk of credit-eligible costs, and of credit granted, was for tangible property. The credit does not appear to be an efficient means of achieving remediation. Even if all site preparation costs were related to clean-up, the redevelopment component of the credit would have been more than twice as large as clean-up costs. A direct expenditure program reimbursing a portion of remediation and other clean-up costs might be a more effective way of maximizing remediation of brownfield sites.

In some respects, brownfield credits may be more problematic in upstate NYS than downstate. Higher property values downstate mean that sites are more likely to be valuable enough after clean-up to justify the costs of remediation, relative to upstate where property values generally are lower. In 2003, two state senators from Buffalo made exactly this argument with one saying that 40 percent of downtown Buffalo is brownfields.

Table 6.3 shows the distribution of credits for the counties that had the most credits. Approximately 58 percent of brownfield credits claimed between 2008 and 2012 were for projects in NYC where 44 percent of the state’s nonfarm jobs are located. Seventeen percent of brownfield credits were for projects in Westchester where (together with Putnam and Rockland Counties) six percent of NYS’s nonfarm jobs are located. The remaining 24 percent of brownfield credits were claimed for projects in the rest of the state where 50 percent of the jobs are located.

Table 6.3: Brownfield Redevelopment Credits 2008 Through 2012, Millions of Dollars		
	Total Credit	**% of Total**
New York City	485.7	57.9%
Westchester County	144.7	17.2%
Subtotal	***630.4***	***75.1%***
Rensselaer County	87.0	10.4%
Onondaga County	60.7	7.2%
Erie County	33.9	4.0%
Rest of State	27.0	3.2%
Subtotal	***208.6***	***24.9%***
Total	**839.0**	**100.0%**
Source: Authors' analysis of Brownfield Credit Report, Department of Taxation and Finance, for credit years 2008 through 2012.		

The credit is also concentrated among a few projects. For the 2008-2012 period as a whole, seven projects (8 percent of credit users) claimed $529 million, or 63 percent of the total. The largest projects achieved relatively less clean-up than did smaller projects. The top 10 percent of projects (each claiming more than $21 million of credit) had combined costs for groundwater remediation and site preparation combined — the upper limit for clean-up costs — equal to 2.9 percent of total project costs. For the bottom 10 percent of projects, these costs were 7.9 percent of total project costs.[64]

VI.1.4 Brownfield Credit Policy Conclusions

The brownfield credits present a cautionary tale about the dangers of trying to influence behavior through the tax code without stringent rules to prevent unintended consequences and to limit costs.

The credit as designed was almost destined to grow out of control. It was available to projects regardless of whether they were likely to occur absent the credits. It was not limited or targeted to economically struggling areas of the state. Actual contamination was not required; the perception that contamination might complicate redevelopment was sufficient. Unlike brownfield credits in most other states, New York's credit was based not just on clean-up costs, but instead extended to most site preparation costs and costs of buildings and equipment. The credits were refundable, even for projects that might never generate tax revenue. The estimated annual costs of the program have more than tripled from the initial estimate of $135 million.

[64] The authors' analysis of brownfield tax credit reports from the Department of Taxation and Finance.

Despite an early goal of cleaning up thousands of sites, only 133 sites have been completed in nearly 10 years — fewer than the 212 sites completed under the previous program, which did not offer tax credits. The brownfield credits program, instead, has become an expensive incentive for real estate development with little relationship to the cost of clean-up; 94 percent of the brownfield redevelopment credit has been for the costs of buildings, equipment, and other tangible property, rather than for remediation or site preparation.

Three quarters of the brownfield redevelopment credits have been claimed in New York City and Westchester, two areas that are among the fastest growing economies in the state; only one-quarter of brownfield credits were claimed for projects in upstate, where economic development needs are greatest. The credits have been highly concentrated among a few projects. Seven projects accounting for 8 percent of credit claimants received $529 million, or 63 percent, of all brownfield credits claimed in the 2008-2012 period. Recipients of the largest credits did much less clean-up relative to project size than did recipients of smaller credits. The two projects we examined in detail, a luxury hotel and a power generation plant amounting to more than a fifth of all brownfield credits claimed, appear likely to have been undertaken in their respective regions even in absence of the credit. Planning for the power plant had been long underway before the credit was even enacted.

Despite reforms that were enacted in 2008, the credit will continue to cost the state hundreds of millions of dollars annually. The value of expected credits not yet used exceeds $3.3 billion and will be a drag on future budgets. Unless changes are made to the program, credits are likely to remain highly concentrated and disproportionately focused in the downstate region.

The brownfield program is scheduled to sunset in 2015. A direct spending program might be a more effective way to clean up brownfield sites. Absent that, linking the credit more closely to the cost of clean-up would help refocus the program on its environmental goals and could contribute to economic development efforts in upstate New York.

VI.2 The Film Tax Credit Program

New York State enacted its film production tax credit in 2004 and has increased and broadened it several times. Under current law, film production and post-production credits are the state's second most expensive credit and will cost approximately $420 million per year on average through 2019, after which they are scheduled to sunset. These credits are large compared

to industry activity. Because they are refundable, they are akin to cash grants for film-making activities. This section recounts the history of New York's film credit program and considers claims that the film credit "pays for itself."

VI.2.1 Film Production as a Potentially Mobile Activity

Governments often target economic development efforts on mobile industries and activities that produce goods or services for national or international markets and do not rely primarily on local demand. These activities generally locate where labor force, infrastructure, utility costs, government services, taxes, and other factors are most attractive. Manufacturing industries are a common target of economic development efforts. A single manufacturing plant may produce goods sold all over the world, may employ many local residents, and may spur a network of in-state suppliers and activities. One benefit of attracting a manufacturing plant is that once opened, it is likely to remain operating and employing workers for years.

Some nonmanufacturing industries, particularly film production, have also been targeted by the states. Many film productions are developed for national and international audiences, and may be produced in a location with the best combination of support services and costs, making film production relatively mobile. This has been made easier by the decline decades ago of the studio system that gave Hollywood near monopolistic control over movie making, and more recently by technology that makes it increasingly possible to shoot outside of large Hollywood studios. Substantial film production incentives by other countries and most states have further encouraged "runaway production," the industry term for film production flight. Unlike manufacturing plants, film production tends to be quite episodic, so that attracting production is a year-by-year endeavor. After a film is produced, more credits are needed in subsequent years to retain and attract new activity.

California and New York have long dominated film production, and continue to do so. In 2012, California was home to 52 percent of United States film production employment, and New York had 21 percent, accounting for over 47,000 jobs. Florida was a distant 3rd with only 2 percent of U.S. film production jobs.[65]

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[65] The authors' analysis of the Quarterly Census of Employment and Wages, from the U.S. Bureau of Labor Statistics. The film production industry was defined as motion picture and video production (NAICS 51211), motion picture and video distribution (NAICS 51212), and post-production and other motion picture and video industries (NAICS 51219).

VI.2.2 The Rise of Film Production Incentives

Other countries and many states have enacted incentives in an effort to capture the mobile film production industry. Louisiana was the first state to adopt a film tax credit incentive, in 1992, for "investment losses in films with substantial Louisiana content," but it was relatively small.[66] The real competition began in 2002 when Louisiana enacted a tax credit of up to 15 percent of certain expenditures plus an additional 20 percent based on Louisiana payroll.[67,68] New Mexico adopted a major credit in 2004, as did Pennsylvania and New York. By 2009, 44 states had adopted some form of film production credit, up from five in 2002.[69]

The competition appears to have peaked and may even have waned slightly as some states scaled back credits in response to the 2007 recession, accompanied by reports challenging the credits' benefits. Arizona's tax credit expired in 2010, Iowa repealed its film credit in 2012, and Connecticut suspended its credit earlier this year.[70]

VI.2.3 The New York Film Production Credit

One impetus for the NYS film production credit was the March 2003 announcement that Steiner Studios would build a $118 million studio complex in the Brooklyn Navy Yard, significantly expanding production capacity in New York and addressing industry concerns that NYC did not have adequate soundstage or post-production facilities.[71] The studio, which opened in November 2004, was reported to have received an investment tax credit under August 2005 legislation that extended the ITC to qualified film production facilities.[72] According to press

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[66] William Luther, "Movie Production Incentives: Blockbuster Support for Lackluster Policy," *Tax Foundation Special Report* 173 (January 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1538687.

[67] Loren C. Scott & Associates, *The Economic Impact of Louisiana's Entertainment Tax Credit Programs*.

[68] Tim Mathis, *Louisiana Film Tax Credits: Costly Giveaways to Hollywood* (Louisiana Budget Project, August 2012), http://www.labudget.org/lbp/wp-content/uploads/2012/08/LBP-Report.Louisiana-Film-Tax-Credits.pdf.

[69] Luther, "Movie Production Incentives."

[70] See "Entertainment Partners-Result," http://www.entertainmentpartners.com/result/?nid=7072 and "FilmUSA," http://www.filmusa.org/index.php/news?start=42, both accessed September 22, 2013. Also, Austin John and Lyman Stone, "Connecticut Hits Pause on Film Tax Credit," Tax Foundation, *The Tax Policy Blog*, June 20, 2013, http://taxfoundation.org/blog/connecticut-hits-pause-film-tax-credit.

[71] *Brooklyn: Economic Development And the State of Its Economy* (Albany, NY: New York State Office of the State Comptroller, February 2004), http://www.osc.state.ny.us/press/releases/feb04/bkln2050rpt.pdf.

[72] Investment tax credit was described in Rosemary Scanlon and Catherine Lanier, *Arts as an Industry: Their Economic Impact on New York City and New York State* (New York: Alliance for the Arts, December 2006), http://www.nyc-arts.org/pdfs/ArtsIndustry_2007.pdf.) For additional incentives in support of the studio, see New York City Regional Center, "Brooklyn Navy Yard — Steiner Studios Expansion Project, n.d., http://www.nycrc.com/pdf/NYCRC-BNY-SteinerProjectSummary.pdf and Jill Goldsmith, "N.Y. Welcome Mat," Daily Variety, August 13, 2004, http://www2.steinerstudios.com/wp-content/uploads/Variety.NYWelcomeMat.8.13.04.pdf.

accounts and an interview with the chairman of the studio, the company helped design the film production credit.[73]

In August 2004, NYS adopted a credit against the corporate franchise tax and the personal income tax for 10 percent of qualifying film production costs in the state, effective for tax years beginning in 2004.[74] The credit applied to feature films, television films, and TV series. Documentaries, news shows, talk shows, commercials, and certain other productions did not qualify.[75] Qualifying costs were limited primarily to what the industry terms below-the-line costs, and did not include above-the-line costs for story rights, producers, actors (except for on-location shooting), and various preproduction costs. Generally, employee compensation expenses must be for jobs in NYS and purchases of goods and services must be from registered NYS sales tax vendors. In this regard it is less broad than credits in some other states, although the credit rate applied to production costs is competitive with credits in other states.

The credit was refundable over a two-year period — if it exceeded tax liability, the state would pay the taxpayer the excess over two years. The total credit was capped at $25 million annually and was scheduled to expire on August 30, 2008.[76] The cap is implemented by making the credit available to taxpayers on a first-come, first-served basis.

Amended in 2006 to add the commercial production credit and in 2010 to add the post-production credit, other significant amendments to the original film credit legislation were:

- ✓ 2006: The annual cap was raised to $60 million and extended through 2011.
- ✓ 2008: (a) The credit rate was increased from 10 percent to 30 percent; (b) the $60 million cap was increased to $65 million in 2008, gradually reaching $110 million by 2013; and (c) it was made fully refundable in a single year (the requirement to stretch refunds over two years was eliminated).

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[73] The chairman reported, "Our studio spearheaded the programme. The tax break was designed in part by Steiner Studios and structured with the city in mind." Heather-Annie McCalden, "The BIG Interview: Still Running... (Interview with Douglas C. Steiner, Chairman of Steiner Studios)," *Regional Film & Video*, August 2008, http://www2.steinerstudios.com/wp-content/uploads/FilmVideo-Still-Running.8.08.pdf. A report in *Variety* also noted that the film production credit was "spearheaded by the folks behind the Brooklyn Navy Yard's new Steiner Studios." See Goldsmith, "N.Y. Welcome Mat."

[74] *Report on the Empire State Film Production Tax Credit* (Albany, NY: New York State Department of Taxation and Finance and New York State Governor's Office for Motion Picture & TV Development, December 2011), http://www.nylovesfilm.com/tax/report_on_the_empire_state_film_production_credit_december_2011.pdf.

[75] In 2012, New York adopted a commercial production tax credit.

[76] The description of the credit and subsequent amendments are based primarily on Ibid.

- ✓ 2009: (a) An additional $350 million for 2009 was authorized; and (b) taxpayers were required to claim the credit over one, two, or three years depending upon the size of the credit.
- ✓ 2010: $420 million per year was made available under the cap for 2010 through 2014.
- ✓ 2013: (a) the $420 million annual allocation was extended through 2019; (b) an additional 10 percent credit was established for certain upstate counties raising the potential total credit to 40 percent; (c) the credit was expanded to cover relocated talk or variety shows; and (d) the post-production credit was liberalized and increased to 35 percent for upstate New York.

To understand the significance of a credit equal to 30 percent of a film production's operating costs, consider the impact a similar credit would have for other industries. Based on Internal Revenue Service data and analysis from the Department of Taxation and Finance, if a credit of the magnitude of the film credits were provided to taxpayers in other industries, it would eliminate tax liability for companies in most industries many times over:

- ✓ For manufacturing companies, such a credit could approximate 40 times the annual state tax liability — the equivalent of more than $12 billion annually.
- ✓ For companies providing professional, technical, and scientific services, such a credit could exceed 100 times annual tax liability — the equivalent of more than $23 billion annually.

As with the brownfield credit, it is a misnomer to call film credits *refundable:* payment will be made to the qualifying business even if it never paid any taxes and never will. The credit is essentially a spending program subsidizing the costs of producing films in New York. In 2008, the latest year for which detailed data are available, the motion picture and sound recording industries had New York corporate franchise tax liability of $6.7 million after credits.[77] Of the $137 million in film credits available to firms that year, they used $10.3 million to reduce tax liability directly.[78] The remaining $127 million of credits were taken as refunds.

[77] *2008 New York State Corporate Tax Statistical Report* (Albany, NY: New York State Department of Taxation and Finance, December 2012), http://www.tax.ny.gov/pdf/stats/stat_corp/corp_stat/2008_new_york_state_corporate_tax_statistical_report.pdf.

[78] *Analysis of Article 9-A General Business Corporation Franchise Tax Credits for 2008* (Albany, NY: New York State Department of Taxation and Finance, June 2012), http://www.tax.ny.gov/pdf/stats/stat_corp/article_9a/analysis_of_article_9-a_general_business_corporation_franchise_tax_credits_for_2008.pdf.

- ✓ Payments to 31 firms in the film production industry were so large that they exceeded the entire tax liability of all 1,600+ firms in the industry in nine out of 10 previous years.[79] Thus, it is unlikely that the payments were truly refunding past payments of tax. As stated earlier in this report, refundable credits are best thought of as cash payments made through the tax system that avoid the need for an annual appropriation that ordinary spending programs require, rather than as refunds of taxes paid.

VI.2.4 Other Film Production Incentives in New York

In addition to the film production credits, NYS has several other incentives for film production in New York. The cost of creating program master tapes stored in New York can qualify for the investment tax credit (ITC), based on costs capitalized into these master tapes, which can be extensive.[80] The ITC is available for films that produce recurring revenue if those films are stored in New York, regardless of whether the films were actually made in New York. Because the film production credit subsidizes film production within New York, it is redundant to make the ITC available for film master tapes. Furthermore, as noted above, in 2005 the ITC was expanded to include property used in a qualified film production facility by taxpayers who provide three or more services, such as a studio lighting grid, lighting and grip equipment, or industrial scale electrical capacity to qualified film productions, essentially film studios.[81]

Finally, there is a sales tax exemption for tangible personal property used or consumed directly and predominantly in the production of a film for sale, including feature films, documentary films, shorts, television films, television commercials, and similar productions. The exemption also applies to services performed in relation to the exempt property and to fuel and utility services used directly and exclusively in production.[82]

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[79] Refundable film credits to firms in the film production industry (NAICS 522) were $58 million, according to data from DTF (the remaining refundable film credits were paid to diversified firms classified in other industries). This exceeded the liability reported for firms in industry 512 in nine of 10 previous years. Depending on the year, the number of firms ranged from 1,789 to 1,592. See *New York State Corporate Tax Statistical Report* (Albany, NY: New York State Department of Taxation and Finance, Various Years).

[80] Office of Tax Policy Analysis Technical Services Division, *Advisory Opinion Petition No. 020206A* (Albany, NY: State of New York Commissioner of Taxation and Finance, July 26, 2006) states that eligible costs can include production studio costs, production and post-production services, graphics costs, news-gathering costs and equipment, studio rents and equipment rental costs, print costs, stock footage costs, props, and travel, salaries and benefits for talent and production employees, telecommunication costs, music license fees, and various other costs.

[81] *Annual Report on New York State Tax Expenditures: 2013-14 State Fiscal Year*.

[82] Ibid.

VI.2.5 The Impact of Film Production Incentives on Film Industry Employment

One reason that tax incentives often have little impact on the location of economic activity is because interstate differences in state and local taxes, and by extension differences in tax incentives, generally are small compared to interstate differences in labor costs, energy costs, and harder to measure characteristics such as quality of workforce and infrastructure.

Even though costs of production are high in New York, film production incentives are so large, it is not surprising that they affect where activity is located. Industry employment and production appears to have increased, and sometimes decreased, when states make big changes in credits. Since state-specific film production employment is well measured, while the number of productions and their value are not as well measured, the analysis focuses on employment.[83] Evidence from several states suggests that film tax credits do have a discernible impact on film industry employment.[84] Furthermore, ongoing film production employment appears to vary in response to states' changing the generosity of their credits. These observations also highlight another unique aspect of a credit targeted to a potentially mobile industry. Unlike credits based on capital investment, which reward more permanent activity, film credits must be granted repeatedly to maintain the state's level of activity. Moreover, states must adopt successive increases in credits in an effort to avoid losing industry share in response to credit developments in competing states.

Next, we turn to New York, focusing on its actual level of film production employment. Figure 6.1 shows the level of film production employment for the roughly 14 years before the credit became effective and the subsequent eight years. NYS film production employment grew considerably during the 1990s, and then fell sharply between 2001 and 2004. One study suggested the decline was related to the 2001 recession and the September 11th terrorist attacks.[85] After the initial 10 percent credit was enacted, film production employment began to rise and several studies attributed the increase to the film incentive and to a smaller New York City incentive that also was temporarily available.[86] New York, however, was recovering from the September 11th attacks and some production that appears to have retreated to California may

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[83] The data source is the U.S. Bureau of Labor Statistics' Quarterly Census of Employment and Wages. We define the film production industry as motion picture and video production (NAICS 51211), motion picture and video distribution (NAICS 51212), and post-production and other motion picture and video industries (NAICS 51219).

[84] Analysis available upon request.

[85] Scanlon and Lanier, *Arts as an Industry*.

[86] The number of films produced in New York increased as well. For example, see Ibid.

have begun to return to NYS. Later in the decade, following several dramatic increases in the New York credit, film production employment rose much more substantially, and again anecdotal evidence strongly suggests that the credits spurred much of this growth.

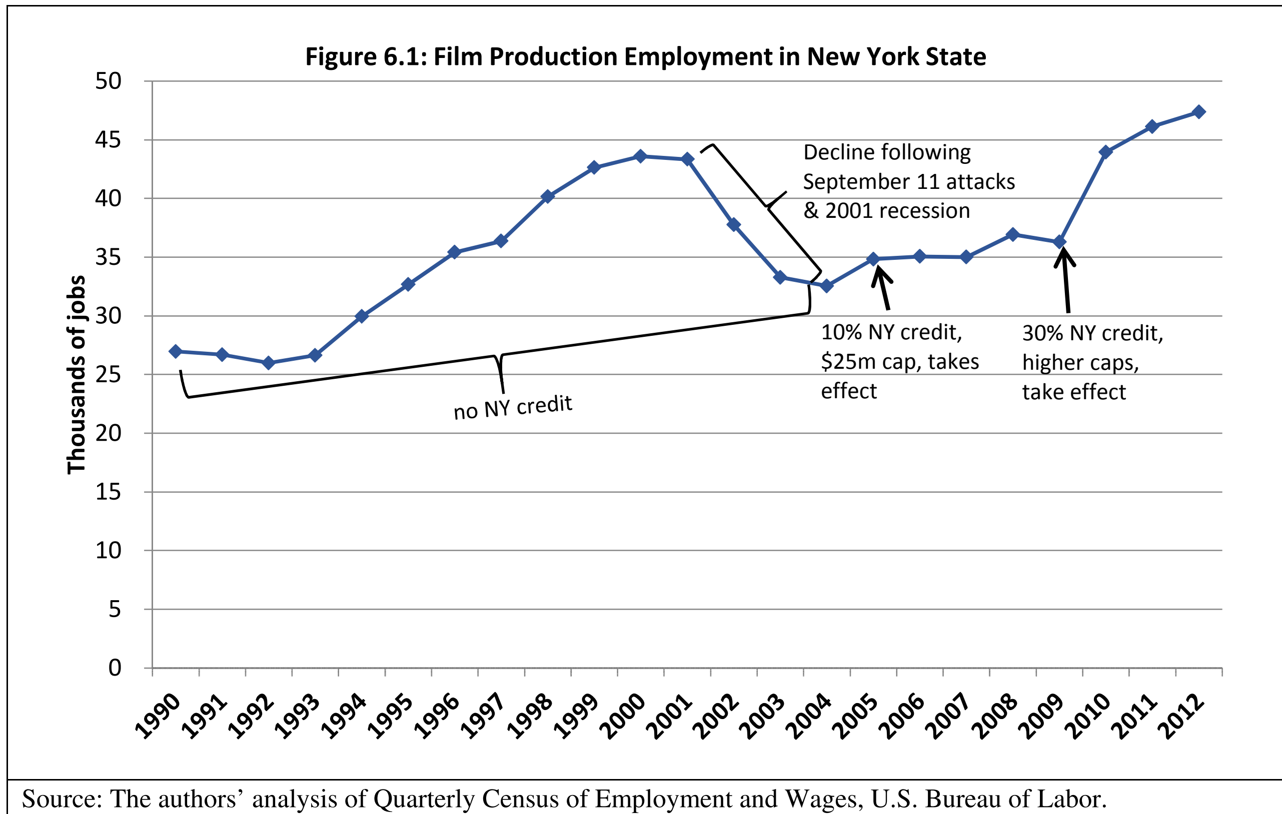

Figure 6.1: Film Production Employment in New York State

Source: The authors' analysis of Quarterly Census of Employment and Wages, U.S. Bureau of Labor.

The drop in NYS employment between 2001 and 2004 was accompanied by similar but smaller declines in other states outside of California, and by a sharp rise in film production employment in California, suggesting that the New York decline probably was not the result of credit enhancements in other states.

From the above discussion, several points are clear:

- ✓ Film production employment in individual states appears to have responded to tax incentives; film credits are large enough to influence production location. Other costs of production, including labor costs, also have an impact on these decisions.
- ✓ Despite large swings in film production employment from state to state over the last decade, overall national employment has changed little. Since the credit competition started, NYS, and other states to a lesser extent, have gained share at the expense of California.

- ✓ NYS has had a sizeable film production industry for decades, and remains the second largest in the nation by far. It grew rapidly prior to 2001, fell sharply for three years, and then rose after the film production credit was enacted in 2004. Industry employment rose significantly after credits were extended and enhanced in 2008 and later years.
- ✓ Film production is potentially mobile. States that do not maintain their incentives are likely to lose some production to other states.

VI.2.6 Geographic Distribution of Film Production in New York

Film production in New York is dominated by New York City. In 2011, approximately 92 percent of qualified film production spending and tax credits were in NYC.[87] Approximately 88 percent of industry employment in 2012 that the Bureau of Labor Statistics assigned to individual counties was in NYC.[88] Nassau County accounted for 35 percent of employment outside of New York City, followed by Suffolk, Westchester, and the upstate counties that have large cities or urbanized areas, including Erie, Monroe, and Albany.

VI.2.7 Does the Film Credit Pay for Itself? Two Earlier Analyses

Does the New York film production credit boost in-state film industry production enough to pay for itself as a 2009 study by Ernst and Young and a 2012 study by HR&A Advisors argued, in contrast to most other studies of film credits?[89] The Ernst & Young study concluded that the film production credit generated $1.13 in state tax revenue for every dollar granted in tax credits, and the HR&A study concluded that it generated $1.09 per dollar of credit.[90] (Neither study analyzed the impact of reducing New York's credit rate to a percentage lower than the current 30 percent.) It is unknown what the impact of a lower credit rate would be.

Both studies assumed that substantial film production activity that was ineligible for the credit was nonetheless attracted or retained by credit-eligible projects. Ernst & Young described

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87 *Economic and Fiscal Impacts of the New York State Film Production Credit*.

88 Source: United States Department of Labor, Bureau of Labor Statistics, *Quarterly Census of Employment and Wages,* http://data.bls.gov/cgi-bin/dsrv?en.

89 Ernst & Young, *Estimated Impacts of the New York State Film Credit*and *Economic and Fiscal Impacts of the New York State Film Production Credit*.

90 Both studies also estimated that the tax credits would generate substantial additional local government tax revenue, mostly in New York City. This is certainly relevant for examining the overall benefits of the credit, particularly if a policy goal is for the entire state to subsidize New York City, but it is excluded here to focus on the narrower question of whether from a state budget perspective the tax credit pays for itself.

this as (1) post-production activity that would have left New York if not for the credit-eligible projects, and (2) general film production declines that would have occurred if not for an industry cluster supported by credit-eligible projects. The HR&A study described it as nonqualifying productions, such as commercials, music videos, and reality television shows, that take advantage of the clustering effect of film and television production incentivized by the credit, including production facilities, equipment, service suppliers, and industry labor.

Other studies rarely make such assumptions. The effect of this assumption on the numbers is large, nearly doubling the spending by eligible projects in the Ernst & Young study, and more than doubling it in the HR&A study. Because New York had a vibrant film production industry prior to enactment of the credit, the assumption that no activity in the industry would have occurred in the absence of the credit is implausible. Again, however, it is now known what the impact would be on a reduction in the NYS credit rates.

To estimate how much new revenue would be raised by credit-caused economic activity, the studies assume that all income will be taxed at the highest marginal rate in New York, which overstates the case because many film employees are paid wages that fall below the top tax bracket. Also, they overstate the sales tax paid on film activity because they do not take into account the sales tax exemption for goods used predominantly in film production. As a result, both studies use effective tax rates for state government taxes that are about 25 to 50 percent too high.

Organizations that often disagree about tax-related issues are in agreement about the conclusions of the consultants' film tax credit studies. The John Locke Foundation, a think tank in North Carolina focused on individual liberty and limited, constitutional government, examined 11 economic impact studies of film credits, three by Ernst & Young (New York, New Mexico, and North Carolina) and eight by other organizations including four state government revenue or fiscal offices, two economic development offices, one university, and one private consultant. The average state fiscal impact estimate for the Ernst & Young studies was 90 cents of revenue raised per dollar of credit granted; the average for the non-Ernst & Young studies was 17 cents raised per dollar of credit granted (in other words, 83 cents of revenue lost per dollar of credit).[91] A report by the Center on Budget and Policy Priorities, a Washington, D.C., think tank focused on

[91] Coletti and Burgdorf, *Not the Best of Both Worlds*.

the needs of low-income families and individuals, examined a similar set of studies, with some overlap, and concluded “estimates of revenue gains range from $0.07 to $0.28 cents per dollar of awarded subsidy. The only studies claiming that a state film subsidy pays for itself were financed by the Motion Picture Association of America and/or a state office of film and tourism.[92] Finally, the Federal Reserve Bank of Boston examined New Mexico and New York Ernst & Young studies and concluded that several problems led them to question their accuracy. They also concluded that assuming all credit-eligible projects were induced by the credit may be least justifiable in New York, given that New York City is a long-established film production center.[93]

Ernst & Young has since published a report commissioned by the Motion Picture Association of America, *Evaluating the Effectiveness of State Film Tax Credit Programs: Issues That Need to be Considered*. It argues, among other things, that “From an economic development perspective, the relevant policy question in evaluating film credits should be, ‘Do the residents of the state get a good return for their investment?’ and not simply, ‘Does the investment pay for itself in terms of additional state tax collections?’ Film credit programs could still be relatively effective economic development programs even though the public sector is not a net beneficiary.”[94]

VI.2.8 Film Credit Policy Conclusions

The film credit, under which the state essentially shares in 30 percent of qualifying film production costs without sharing in the profits from those films, is large enough to equal 55 percent of net taxable income of a typical firm in the industry. The magnitude of the credit is illustrated by the fact that 31 credit recipients in the film production industry received credits in 2008 that exceeded the combined tax liability of the more than 1,600 firms in the industry for nine out of the 10 previous years.

As a practical matter, the “refundable” credit is so large that it eliminates tax liability and amounts to a program of cash payments by the state to credit recipients. It has definitely caused film production to locate in New York, as would a credit of similar magnitude for any potentially

[92] The studies referred to were the New Mexico and New York Ernst & Young studies. Tannenwald, “State Film Subsidies: Not Much Bang for Too Many Bucks.”.

[93] Weiner, *Memorandum to Shelley Geballe*.

[94] Andrew Phillips, Robert Cline, and William Fox, *Evaluating the Effectiveness of State Film Tax Credit Programs: Issues That Need to Be Considered*, Commissioned by the Motion Picture Association of America (Ernst & Young, May 9, 2012), http://www-deadline-com.vimg.net/wp-content/uploads/2012/05/Motion-Picture-assoc.-film-credit-study__120510071748.pdf.

mobile industry. Nonetheless, that activity is not large enough to cause the credit to pay for itself. It would take implausible assumptions to reach that conclusion. Furthermore, it likely will take more and more credit-spending to maintain this activity, given the tendency of states to increase their own credits in response to increases in other states.

Whether a credit pays for itself should not be the only criterion to judge it and few, if any, credits could pass such a test. But if a credit does not pay for itself, policymakers need other good reasons to select an industry for favorable treatment. Because film credits involve substantial expenditure of state resources they deserve special evaluation. It is possible, for example, that the use of New York as a backdrop for films encourages tourism, or that the existence of a film industry contributes to New York's reputation as a place where prominent people like to live or visit. A positive tourism effect is not necessarily a direct result of subsidized films. For instance, depending on the subject matter, a film could make New York appear less attractive. Furthermore, even though another city may be a stand-in for New York, viewers may not notice and still be drawn to the state.

In the case of the film production credit, the growth in the industry comes at the expense of higher taxes for other taxpayers or lower spending on state services and investments, possibly reducing activity in other sectors of the economy. There are also other problems with the credits. For example, many of the jobs involved in film production are temporary and the state can only maintain those jobs and the level of activity in the industry if it continues to offer the credits. Retaining the jobs could become more of a challenge if other states were to increase their credits and other incentives.

If New York were to reduce the film credit allocation by, for example, $50 million, it could monitor the effect on film production and the impact on the state's competitive standing. In fact, states collectively would benefit if they engaged in multilateral reduction or elimination of their film credit programs since they do not appear to have increased overall film production and employment in the U.S., but rather affect its location within the U.S. The fundamental policy issue underlying New York's film credit is whether such a large expenditure should be devoted to a single industry that is predominantly located in the most prosperous region of the state.

VII. EVALUATING BUSINESS TAX CREDITS

A 2012 report by the Pew Center on the States assesses how states evaluate their tax incentives for jobs and growth. The report emphasizes that: "Tax incentives are policy choices with significant implications…. If states do not base decisions on evidence, they could have less money to spend on other critical services."[95] Evidence comes from evaluation. This section of our report summarizes principles for evaluating tax credits and looks at examples of best practices in the states to provide evidence of the worth of the incentives. Information from this section will be used to make recommendations to be used by the Commission in reforming business tax credits.

VII.1 Tax Evaluation Principles

Several widely accepted principles of sound tax policy can be used to evaluate business tax credits. They include:

- ✓ **Equity**: Similarly situated taxpayers should be taxed similarly.
- ✓ **Neutrality:** A tax should not encourage taxpayers to make economic decisions based solely upon tax consequences.
- ✓ **Revenue Adequacy**: An adequate tax system raises enough money to pay for public services and investments.
- ✓ **Simplicity**: A simple tax system is one that is relatively straightforward and easy to comply with for the taxpayer and relatively easy and inexpensive for government to administer.
- ✓ **Transparency**: A good tax system requires informed taxpayers who can clearly see how tax assessment, collection, and compliance works.
- ✓ **Competitiveness:** A competitive tax system does not impede the ability of companies to compete with those located outside the state and does not limit the state's ability to attract new business.

Business tax credits undermine all of these principles (see Table 7.1) with the exception of competitiveness, where their impact is more ambiguous. As discussed in Section III of this

[95] *Evidence Counts: Evaluating State Tax Incentives for Jobs and Growth.*

report, taxes — and, by extension, tax credits — are but one of several factors considered by businesses in their expansion/location decisions.

Table 7.1: Business Tax Credits: Their Effect on Tax Policy Principles	
Tax Principle	**Effect on Tax Policy Principles**
Equity	Tax credits and other tax incentives ***undermine*** equity. They favor one set of taxpayers over another, and, in industries producing similar products, one set of companies over another. For example, an incentive for solar energy panels would be perceived as inequitable by producers of wind turbines. Geographically targeted tax credits favor otherwise identical taxpayers solely on the basis of location.
Neutrality	Tax credits and other tax incentives ***undermine*** economic neutrality when they distort economic decisions that would have been made absent the tax credit. For example, a business may decide to install solar power if there is a tax credit to do so, rather than insulate their building, which might be more efficient.
Revenue adequacy	Because tax incentives narrow government's revenue base — rarely with a compensating rate increase — they ***undermine*** revenue adequacy. By narrowing the tax base, tax incentives may make the tax more volatile, further undermining revenue adequacy. Tax credits (and other incentives) also "lock in" state spending regardless of economic conditions. For example, during the economic downturn in 2008, NYS could not prevent revenue losses due to tax credits without resorting to extraordinary measures. To mitigate revenue losses from the credits, the state implemented a tax credit deferral plan that, although it resulted in short-term savings, increased administrative complexity, as well as fiscal impacts in later years.
Simplicity	Tax incentives ***undermine*** simplicity. Tax credits (and other incentives) make the tax code more complex for taxpayers to understand and more difficult for government to administer. The incentives also create opportunities for avoidance, e.g., a business could characterize its investment as one that qualifies for the ITC even if it would not do so but for the credit.
Transparency	Tax incentives ***undermine*** transparency. Taxpayers and the general public should know that a tax incentive exists, how it is imposed, and who receives it. With few exceptions, there is limited publicly available information as to who is getting the incentives and how much each is costing the government. In the case of negotiated credits, special arrangements made between the state and individual taxpayers are usually not revealed to other taxpayers or to the public.
Competitiveness	It is ***unclear*** how tax credits affect a state's competitive position since business location/expansion decisions are made based on several factors, including the mix of taxes and the provision of public services.

VII.2 Evaluating Business Tax Credits: the GAO Framework

Every year, after extensive review of the governor's budget, the NYS legislature decides how much to allocate to education, health care, infrastructure, and other public services. Tax incentives, however, once in place are rarely reviewed as part of this process. But, unless an incentive "pays for itself," it reduces revenues available for government to use to fund direct spending or to lower overall tax levels. This is true for the federal government as well as for NYS and other states.

The U.S. Government Accountability Office (GAO) has created a framework to evaluate federal tax expenditures that closely resembles its approach to evaluating spending programs.[96] The mandate to evaluate spending programs is predicated on the Government Performance and Results Act (GPRA) of 1993 and its 2010 update. The 1993 act established a statutory framework for performance management and accountability, including the requirement that federal agencies set goals and report annually on progress towards those goals and program evaluation findings. In response to this and related management reforms, federal agencies have increased their attention to conducting program evaluations. The GPRA Modernization Act of 2010 (GPRAMA) raised the visibility of performance information by requiring quarterly reviews of progress towards meeting agency and government-wide priority goals. GPRAMA also requires that tax expenditures be included in reports where activities contribute to goals that cut across agency lines.

In response to the need to evaluate the effectiveness of tax expenditures in meeting agency and government goals, the GAO has suggested questions to be asked in assessing tax expenditures. An adaptation of these questions can be applied to the evaluation of NYS's business tax credits.

1. What is the purpose of the tax credit?
   - ✓ For some credits, the purpose is clear from the enabling legislation; for others, the purpose is not clear and may need to be inferred.
   - ✓ Are there performance measures established to monitor success in achieving the intended purpose of the credit? Performance measures should be part of the

[96] *Tax Expenditures: Background and Evaluation Criteria and Questions*, GAO-13-167SP (Washington, DC: United States Governmental Accountability Office, November 29, 2012).

enabling legislation and should be monitored annually and included in budget reviews and deliberations.

2. Even if the purpose is achieved, is the tax credit good policy?
   - ✓ Is the credit fair and equitable? Who benefits from it?
   - ✓ Are similarly situated taxpayers treated similarly?
   - ✓ Is the credit simple and transparent? Is there periodic public reporting of credit recipients?
3. How does the credit relate to other state programs?
   - ✓ Does the credit duplicate or overlap other state objectives?
   - ✓ Is the credit coordinated with other state activities?
   - ✓ Is the incentive a cost-effective way of achieving the policy goal?
4. What are the consequences for the state budget of the credit?
   - ✓ Are there options for limiting the credit's revenue loss?
   - ✓ Can taxpayer's eligibility be limited?
   - ✓ For eligible taxpayers, can the value of the credit be reduced?
   - ✓ Are there sunset provisions for the credit?
5. How should evaluation of the credit be managed?
   - ✓ What agency or agencies should evaluate the credits?
   - ✓ How often should the credit be evaluated?
   - ✓ What data are needed to evaluate the credit?

VII.3 Managing Tax Incentives

In New York State, the DTF is responsible for the administration of credits and all other business tax incentives by accepting and processing tax credit claim forms, applying payments against liability, and/or issuing refund checks. DTF is also generally responsible for interpreting the law and providing assistance to taxpayers. There are some credits that are predominantly administered by another NYS agency that reviews credit applications, determines eligibility, and issues credit certificates filed with tax returns.

Credits predominantly administered by other agencies are:

- ✓ the low-income housing credit (Division of Housing and Community Renewal — DHCR);
- ✓ the brownfield credits and the green buildings credit (Department of Environmental Conservation — DEC);
- ✓ the film, commercial, and post-production credits (Governor's Office for Motion Picture and Television Development — MP/TV);
- ✓ the security officer training credit (Division of Homeland Security and Emergency Services — DHSES);
- ✓ the Excelsior Jobs Program credits; the Empire State Jobs Retention Program credit; and the Economic Transformation and Facility Redevelopment Program credits (Empire State Development — ESD); and
- ✓ the New York youth works credit (Department of Labor — DOL).

Neither DTF nor any other NYS agency responsible for one or more tax credits has the responsibility for evaluating the efficacy of the state's tax incentives. There are several reasons why DTF is not currently structured to perform this function.

- ✓ The level of resources needed to add additional functions to those already in place has not been made available to DTF. This is because DTF's core mission is processing over 25 million tax returns, not administering tax incentives. Therefore, resources are devoted to ensuring returns are calculated and processed properly and the correct amount of tax or refund is computed.
- ✓ The expertise to evaluate all tax expenditures does not reside in DTF, especially for those incentives that are the responsibility of other departments.
    - If the credit is as-of-right with no external agency involved (e.g., ITC), DTF monitors compliance.
    - If the credit is fully administered by an agency other than DTF and that agency awards actual credit certificates (e.g., film credits and Excelsior credits), that agency handles compliance.

    - When an agency other than DTF certifies eligibility, but DTF monitors compliance with the tax laws, administration is more complicated. An example is brownfield credits. DTF defers to DEC on all the environmental criteria required to get a certificate of completion. Once taxpayers file for the credit, DTF ensures that they are in compliance with tax rules.

- ✓ Structural and data issues in the tax system and in the way businesses organize themselves complicates even basic evaluation. To do a complete evaluation would require a retooling of how tax returns are processed including, for example, making data for evaluation available in a timely manner.
- ✓ Taxpayer filing timelines complicate when information is received. The PIT and corporate taxes have different filing dates and many taxpayers obtain extensions, file late returns, or amend returns. Further, many businesses have multiple locations, only some of which may earn a credit, and they use various structures and pass-throughs that complicate the analysis of who benefits from the credit.

VII.4 Best Practices in Evaluating Tax Credits: Experiences from the States

According to the 2012 report by the Pew Center on the States referred to above, states that successfully use tax incentives to promote job creation and economic growth do so because they know whether or not their efforts are working. Pew recommended that evaluations of tax incentives for businesses achieve four key objectives:

- ✓ Inform policy choices. States should incorporate evaluation of tax incentives into policy and budget deliberations to ensure that policymakers use the information in their decision-making process.
    - ***Pew Best Practices***: In Oregon, tax credits expire every six years unless lawmakers extend them. In 2011, during budget deliberations, leaders of the state legislature established a spending cap on some incentives so that decisions had to be made based on evaluations as to which incentives should be subject to the caps.
- ✓ Evaluate all major tax incentives. States should establish a schedule so that all incentives are reviewed periodically.

- ***Pew Best Practices***: The state of Washington began a 10-year process in 2007 to review every tax incentive it offers. Currently, nonpartisan analysts work with a citizen commission each year to analyze some incentives and to make recommendations as to whether and how they should change. Lawmakers review the recommendations at hearings.
- Arizona has a schedule for reviewing tax incentives on a five-year cycle. The Joint Legislative Income Tax Credit Review Committee has reviewed tax credits every year since 2002 and made formal recommendations to the Legislature.

✓ Measure the economic impact of incentives. States should ask the relevant questions and use the best data and analysis.

- ***Pew Best Practices:*** In calculating the number of jobs a tax incentive was creating, Louisiana's economic development agency took into account that some businesses receiving the incentives competed with other businesses in the state. The agency concluded that some newly created jobs merely displaced existing positions.

✓ Draw clear conclusions. States should determine whether tax incentives are achieving the state's goals.

- ***Pew Best Practices***: In 2010, Connecticut's economic development agency assessed the state's major tax credits, using sophisticated analysis techniques. The agency concluded that although some incentives were not meeting the state's goals, others were beneficial and cost-effective. In 2013, state lawmakers voted to put a moratorium on tax credits for the movie industry.

The evaluation of business tax credits should not only be conducted on a credit-by-credit basis but also using a holistic approach. This will allow policymakers to see how spending on tax credits is being used to promote overall state objectives. For example, a state objective is the revival of upstate New York, especially its manufacturing sector. Does it then make sense for the state to spend less than 10 percent of the total costs of business tax credits on the ITC, the one credit that is used to a great extent by manufacturing companies? Even the ITC is not without its weaknesses. A taxpayer does not have to be a manufacturer to qualify for the ITC if the property

generating the credit is employed in a processing capacity. This standard allows the ITC to be claimed by many types of nonmanufacturing businesses.

VIII. OPTIONS FOR BUSINESS TAX CREDIT REFORM

VIII.1 Modifying Credits

Because of the flaws in film, brownfield, and other business tax credits discussed earlier in this report and concerns with the escalating number and costs of credits, the Commission has asked us to provide options for restructuring New York State's business tax credits. In response, we have developed three broad categories of options: (1) major reform, including the elimination of all business tax credits; (2) moderate reform, including significant scaling back of individual credits and elimination of most refundability provisions; and (3) targeted reform generally designed to eliminate underused credits and improve the workings of remaining credits.

VIII.1.1 Major Reform

1) ***Eliminate all business tax credits:*** Even if elimination of all business tax credits is unlikely, it is worth understanding how much this would allow overall tax rates to be reduced. In one sense, higher rates on the majority of taxpayers are the "price" for lower taxes for relatively few taxpayers. NYS could eliminate all business tax credits and use the resulting revenue to lower tax rates, thus reducing the extent to which the tax system distorts economic decisions and simplifying compliance for taxpayers and administration for tax collectors.

   If all New York State business tax credits were eliminated, the increase in tax revenues would approach $2 billion, when fully in effect (but see discussion below of transition issues). The state could offset the potential revenue gain by reducing the corporate tax rate, cutting the top personal income tax rate, cutting both personal and corporate income tax rates, lowering the sales tax rate, or reducing other tax rates.

VIII.1.2 Moderate Reform

Moderate reform would include significant scaling back of individual business tax credits and the elimination of most refundability provisions. Options for moderate reform include:

1) ***Make "sunsets" the standard practice for credits.*** Just as spending programs are time-limited, credits should be as well so that periodic reviews are, in essence, required. At a minimum, the state should do this for any newly enacted credits.

2) ***Cap additional credits.*** To increase visibility of the budgetary impact of business tax credits and to limit budgetary exposure from uncontrolled growth in their cost, the state could move further toward an aggregate budget for all business tax credits. This would involve extending the concept of a credit cap, currently used for the film, Excelsior, and several other credits, to additional credits where practical. At a minimum, a first-come, first-served cap could be established for brownfield credits.
3) ***Eliminate refundability for most credits.*** The state could eliminate tax credit refundability for most or all of the credits that are currently refundable, with transition rules to minimize restrictions on credits where taxpayers have made commitments, such as binding contracts, in the expectation of receiving the credits. When a tax credit is refundable, it becomes in effect a state spending program — the state must send a check to taxpayers if they do not have enough tax liability to offset the credit. The state thus shares in the cost of the subsidized activity even if it may never become profitable in absence of tax credits and even if the business never did or will pay taxes.
4) ***Provide time limitations on refundability.*** The state could limit the extent to which credits may be refunded in any single year so that a refundable credit might be paid out, for example, over five years rather than all in a single year.
5) ***Further reform the brownfield credits.*** As mentioned earlier, the state reformed the brownfield credit program in 2008 to slow its increasing costs. Further reforms may be warranted. The most radical reform would be to convert the brownfield tax credits to a direct spending program directed at remediation of sites that are contaminated or that may be contaminated. Such a reform would mean that an annual appropriation from the legislature would be required as part of the state's budget process.

   A second option is for the state to limit the brownfield credits specifically to clean-up costs, thus reducing the cost of the program. This would put New York more in line with other states that generally focus their brownfield programs on clean-up. For example, New Jersey provides a reimbursement for up to 75 percent of clean-up costs, from new state taxes generated by the project. If NYS were to limit brownfield credits to a percentage of clean-up costs, it could focus the brownfield program more

effectively on environmental protection, changing it from its current focus on economic development.

A third option is for the state to curtail the lengthy period of project eligibility (currently 10 years) for redevelopment activity to qualify for the credits. Credit for redevelopment could be limited to costs incurred in a preapproved redevelopment plan to reduce the potential for awarding credit for "overdevelopment."

A fourth option is for the state to place further restrictions on the tangible property credit — the portion that is not related to remediation — so that it is limited to economically depressed areas. This would likely encourage a greater share of brownfield-related redevelopment upstate.

6) ***Reduce the film production credit.*** To limit the costs of the film credits, NYS could reduce their annual allocation. For example, it could reduce the annual allocation from the $420 million currently allowed to $300 million, which would still be about $200 million more than the generous credits in Louisiana and Massachusetts. In recent years, some states have not renewed film credits that had sunset provisions; others have suspended or declined to fund the credits.

7) ***Restructure the Investment Tax Credit (ITC).*** There are several possible options to restructure the ITC. Given, however, the vast inventory of unused ITC carried forward from prior years (more than $1.2 billion), savings to the state from these options could take several years to materialize unless the carry forwards are directly addressed. Options include:

   a. ***Target the ITC.*** Target the ITC to job-creating investments by requiring employment increases as a condition for credit qualification, by imposing an entity eligibility test instead of a property eligibility test, limiting or eliminating credit for used property, and/or by adding a requirement that ITC-eligible equipment must produce goods for final sale.

   b. ***Repeal the financial services investment tax credit.*** This credit is complicated, has multiple employment tests, few users (of the 25 corporate taxpayers taking $18.6 million in the ITC in 2009, six accounted for $17.4 million), and frequent property turnover requiring repeated recapture.

c. ***Eliminate the refundable provisions in the ITC for new businesses***. The definition of new business should exclude those that solely purchase the assets of an existing business.

VIII.1.3 Targeted Reform

Targeted reforms generally are designed to eliminate underused credits and improve the workings of remaining credits. The suggested options for targeted reform are as follows.

1) ***Repeal rarely used credits.*** The state has several credits that cost less than $5 million annually and are claimed by few taxpayers. Each of these rarely utilized credits requires an administrative structure, including guidance from the Tax Department, tax forms, and training of tax auditors. Their success in achieving policy goals appears quite limited in relation to the costs of administering them. The main credits in this group are: Youth Works ($5 million), alternative fuel/electric vehicle refueling property credit ($3 million), historic home rehabilitation credit ($3 million), conservation easement credit ($2 million), Qualified Emerging Technology Company (QETC) employment credit ($1 million), QETC capital credit ($1 million), clean heating fuel credit ($0.5 million), defibrillator credit ($0.5 million), security officer training ($0.1 million), credit for employment of persons with disabilities ($0.1 million), handicapped accessible taxi credit ($0.1 million), brownfield environmental remediation credit ($0.1 million), and jobs retention credit ($0.1 million).

   Repealing these credits would generate about $15 million in revenue while also delivering compliance and administration savings. Repeal of the recently enacted Hot Spots would add another $5 million in savings, bringing the total to $20 million; however, this credit is too new to estimate its utilization.

2) ***Repeal certain highly targeted tax credits.*** NYS has a set of relatively small and highly targeted credits that the Tax Commission may wish to consider as candidates for elimination. These include: the historic properties rehabilitation credit ($15 million), the Certified Capital Company Credit ($10 million), biofuel production credit ($10 million), the PIT solar credit ($10 million), and the brownfield real property tax credit ($8 million), which is in addition to the already generous brownfield redevelopment tax credit. In addition, the Economic Transformation and

Facility Redevelopment credit ($55 million) has been narrowly targeted, had one known participant as of 2013, and is complex to comply with and administer.

VIII.1.4 Transition Issues

Taxpayers have made commitments, such as binding contracts, based on their ability to use credits. Transition rules and phase-ins will be desirable to allow taxpayers to take advantage of credits for which they have already qualified. Further, taxpayers who previously earned nonrefundable credits should be entitled to carry them forward as under present law.

This means that the amount of cash revenue available for overall tax rate reduction could be limited in the early years of a reform, as alluded to in the ITC option described above. Full rate reduction would have to wait until many taxpayers had exhausted much of their "legacy" claim to credits. There are options the Commission could consider to ensure that more cash revenue is available for overall rate reduction in early years, such as instituting a minimum tax so that credits cannot reduce liability by more than a certain percentage or amount, with credits that go unused as a result of this change presumably carried forward to future years. This would increase the amount of revenue generated for rate reduction in early years, but extend the time it would take for the reformed system to generate its full potential for rate reduction.

VIII.2 Recommendations for Monitoring, Review, and Evaluation

Whether reforms are adopted or not, the state should strengthen its monitoring and evaluation of business tax credits so that it is better informed about the impacts of this substantial use of state resources. Our review of brownfield credits made clear the power of disclosure: because information about projects qualifying for the credits was made public, it was possible to examine them closely and conclude that their use of state resources is questionable.

Wherever practical, information on individual state business tax credits, but not on unrelated tax return data, should be made publicly available. Where detailed tax credit information is too closely tied to tax return data to be disclosed publicly, the data should be made available to government reviewers for purposes of evaluation, under nondisclosure agreements. Legislation should be developed that would expand upon the disclosure rules for existing credits such as brownfield and Excelsior, extending credit disclosure to all credits on a prospective basis.

Periodic rigorous review of credits. It is not practical to review every credit in depth every year, but NYS should establish a schedule for review that keeps the resource demands reasonable. One approach might be to review the largest five credits every other year and to evaluate smaller credits every five years on a staggered schedule. As discussed in Section VII, Arizona and Washington have adopted staggered schedules for reviewing credits.

In the review, credits should be subject to rigorous evaluation criteria and state policymakers should consider eliminating credits that cannot meet the criteria. Several questions should be asked including:

- ✓ What is the purpose of the tax credit?
- ✓ Assuming the purpose is achieved, is the tax credit good policy?
- ✓ How does the credit relate to other state programs? Is a credit more effective at meeting its goals than a spending program would be? Is a credit more effective at meeting those goals than more-general tax reduction would be?
- ✓ What are the consequences for the state budget of the credit?

The evaluation of business tax credits should not only be conducted on a credit-by-credit basis but also using a holistic approach. This will allow policymakers to see how spending on tax credits is being used to promote overall state objectives. For example, a frequently stated state policy objective is the economic revival of upstate New York, especially its manufacturing sector. Does the current allocation of tax credit spending address this objective? Does it make sense for the state to spend less than 10 percent of the total costs of business tax credits on the ITC, the one credit that is directly targeted toward manufacturing companies?

Still looking at the objective to revitalize upstate, does it make sense for NYS to allocate over 50 percent of its total spending on business tax credits to brownfield and film credits? Both have been almost entirely focused on NYC and other downstate localities and have had little impact on upstate. In addition, as shown in Section VI, brownfield credits have failed to produce significant clean-up, in terms of numbers of sites remediated and remediation spending. Some of the largest claims have been for retail and hospitality projects, both industries that tend to choose locations based on consumer location. The NYS film credits subsidize much activity that is transitory and does not contribute to the growth of a long-term base of economic activity.

As described earlier, certain kinds of reviews, such as economic impact analyses, can result in widely varying conclusions depending upon assumptions and methods used. To ensure that these reviews are of the highest practical quality and are transparent, a quality control process should be created that (1) establishes model standards for these kinds of studies; (2) institutes a peer-review process for draft studies, including review by academic and industry experts; and (3) allows the public to have access to the results of the peer review process.

Determining the most appropriate agency to review most credits would be challenging. At present in the executive branch, neither the Department of Taxation and Finance (DTF) — the agency with primary responsibility for administering tax credits — nor any other NYS agency administering one or more tax credits has the responsibility for evaluating the efficacy of the state's tax incentives. There are several reasons why DTF is not currently in a position to perform this function. Structural and data issues in the tax system and in the way businesses organize themselves complicate even basic evaluation.

To conduct a complete evaluation would require a retooling of how tax returns are processed including, for example, making data for evaluation available in a timely manner. At present, DTF generally does not have final, verified data until two or three years after the conclusion of a given tax year. Other reasons include the following.

- ✓ The level of resources needed to add additional functions to those already in place has not been made available to DTF.
- ✓ The expertise to evaluate all tax expenditures does not reside in DTF, especially for those incentives that are the responsibility of other Departments.
    - If the credit is as-of-right with no external agency involved (e.g., the investment tax credit), DTF monitors compliance.
    - If the credit is fully administered by an agency other than DTF, the agency that awards actual credit certificates (e.g., film credits and Excelsior credits) handles compliance.
    - When an agency other than DTF certifies eligibility, but DTF monitors compliance with the tax laws, administration is more complicated. An example is brownfield credits. DTF defers to the Department of Environmental Conservation

(DEC) on all environmental criteria required to get a certificate of completion. Once the taxpayer files the credit, DTF ensures compliance with tax rules.

Even with the suggested staggered reviews, the state will need to reallocate resources for this purpose to ensure that the entity responsible for evaluation has sufficient staff time available. That agency will also have to strengthen its evaluation tools and expertise, both of which will take time. In addition, because of multiple agency coadministration of certain credits, evaluation will require cross-agency cooperation. Finally, as discussed in Section VI, because tax data systems often do not provide information that is ideal for evaluation, the reviewing entity will have to either work within the limits of available data or, where warranted, collect additional data for purposes of evaluation.

IX. APPENDICES

IX.1 Selected Tables

IX.1.1 History of Business Tax Incentive Credits in New York

Tax Credit	Year Enacted	Tax Law Section(s)	Effective	Last Legislative Action	Description of Last Legislative Action	Benefit Period	Allocation or As-of-Right	Limitations	Refundable / Carryforward (CF)	Employment Requirement	External Agency Involved
Investment tax credit (ITC)	1969	210(12) 606(a)	TYBOA 1/1/69	Ch. 393 of the Laws of 2005	Extended the ITC to property owned by a qualified film production facility and used by another for film production activity.	Year property placed in service	As-of-right	AMT/FDM	Refundable to new business only/15y CF	No	No
Retail Enterprise Tax Credit (ITC component)	1981	210(12)(k) 606(a)	Expenses incurred on/ after 6/1/81	Ch. 103 of the Laws of 1981	Extended ITC to rehabilitation expenditures for buildings employed in retail sales.	Year rehab expenditures incurred	As-of-right	AMT/FDM		No	No
Rehabilitation Credit for Historic Barns (ITC component)	1996	210(12)(l) 606(a)	TYBOA 1/1/97	Chapter 309 of the Laws of 1996	ITC expanded to allow a tax credit for the rehabilitation of historic barns.	Year rehab expenditures incurred	As-of-right	AMT/FDM		No	No
Employment Incentive Credit (EIC)	1987	210(12-D) 606(a-1)	Property acquired on/ after 1/1/1987 for corp; 1/1/97 for PIT	Ch. 817 of the Laws of 1987	Replaced prior 3 year employment incentive credit	2 years following ITC year if employment test is met	As-of-right	AMT/FDM	CFT: Nonrefundable/ 15y CF PIT: Refundable to new business only/10y CF	101%-102%, 102%-103%, 103%+ of employment in year prior to ITC for rates of 1.5%, 2%, or 2.5%, respectively	No
ITC/EIC for the Financial Services Industry	Ins: 2000 Others: 1998	210(12) 606(a)(2)(A) 1456(i) 1511(q)	Ins: property placed in service between 1/1/02 and before 10/1/15; Others: Property placed in service on or after 10/1/98 and before 10/1/15	Part E of Chapter 61 of the Laws of 2011	Extended the credit to apply to property placed in service before October 1, 2015	Year property placed in service; EIC available in succeeding 2y following ITC year if employment test is met (see EIC above)	As-of-right	AMT/FDM	Refundable to new business only/15y CF	Taxpayers must pass 1 of 3 eligibility tests based on average number of employees performing administrative and support functions	No

Tax Credit	Year Enacted	Tax Law Section(s)	Effective	Last Legislative Action	Description of Last Legislative Action	Benefit Period	Allocation or As-of-Right	Limitations	Refundable / Carryforward (CF)	Employment Requirement	External Agency Involved
Credit for servicing SONYMA mortgages	Bank: 1972 CFT: 1995	210(21-a) 1456(a)	Bank: TYBOA 4/25/72 CFT: TYBOA 1/1/95	Chapter 151 of the Laws of 2013	Allows credit when the mortgage loan is not acquired by SONYMA directly from the originating lenders, but is acquired pursuant to a SONYMA program that would involve Fannie Mae.	Principal & interest collected during tax year	As-of-right	None	Nonrefundable/ Non-CF	No	SONYMA reports credit amounts to taxpayers by letter
Special additional mortgage recording tax credit	PIT: 2005 Others: 1979	187 210(17) 210(21) 606(f) 1456(c) 1511(e)	PIT: TYBOA 1/1/04 Others: TYBA 12/31/78	Part I of Chapter 61 of the Laws of 2005	Credit extended to personal income taxpayers.	MRT paid during tax year	As-of-right	AMT/FDM Limited to amount of tax paid	Refundable for residential mortgages only/unlimited CF	No	No
EZ ITC	Art. 9: 2005 Others: 1986	187-k 210(12-B) 606(j)	CFT/PIT: TYBOA 1/1/86 Art. 9: TYBOA 1/1/04	Part R of Chapter 57 of the Laws of 2010	Created a period during which additional EZ-ITC and EZ-EIC can be earned, notwithstanding the expiration of the EZ Program.	3/31/14 is last date for property to be placed in service for EZ-ITC	As-of-right	AMT/FDM	50% refundable to new business/ unlimited CF	*No*	*Empire State Development (ESD) certifies EZ businesses*
EZ employment incentive credit (EIC)	Art. 9: 2005 Others: 1986	187-l 210(12-C) 606(j-1)	CFT/PIT: TYBOA 1/1/86 Art. 9: TYBOA 1/1/04	Part R of Chapter 57 of the Laws of 2010	Created a period during which additional EZ-ITC and EZ-EIC can be earned, notwithstanding the expiration of the EZ Program.	3 years following EZ-ITC year	As-of-right	FDM	CFT: Nonrefundable/ unlimited CF PIT: 50% refundable to new business/ unlimited CF	At least 101% employment in year before ITC	ESD certifies EZ businesses

Tax Credit	Year Enacted	Tax Law Section(s)	Effective	Last Legislative Action	Description of Last Legislative Action	Benefit Period	Allocation or As-of-Right	Limitations	Refundable / Carryforward (CF)	Employment Requirement	External Agency Involved
EZ/ZEA wage tax credit	Art. 9: 2005 Others: 1986	187-m 210(19) 606(k) 1456(e) 1511(g)	Art. 9: TYBOA 1/1/04; Others: TYBOA 1/1/86 ZEA WTC — expired 6/30/04	Part Z-1 of Ch. 109 of the Laws of 2006	Established an exception to the requirement that employees must receive EZ wages for more than half the taxable year to qualify for credit	5 years; no claims for TYBOA 7/1/14	As-of-right	AMT/FDM Limited to 50% of tax before MTA surcharge or credit	50% refundable to new business only/ unlimited CF	Current employment in NYS & zone > 4 yr. base period employment	ESD certifies EZ businesses
EZ capital credit	1986	210(20) 606(l) 1456(d) 1511(h)	TYBOA 1/1/86	Part R of Chapter 57 of the Laws of 2010	Extended the credit through March 31, 2014 for contributions certified by the Commissioner of ESD to community development projects in fulfillment of a pledge made to the project before the EZ Program expired.	Tax year contribution were made	As-of-right	AMT/FDM Credit cannot exceed $300,000 for all years; total amount for each contribution type cannot exceed $100,000 Limited to 50% of tax before MTA surcharge and credits	Nonrefundable/ unlimited CF	No	ESD certifies EZ businesses
QEZE real property tax credit (RPTC)	Art. 9: 2004 Others: 2000	14 15 187-j 210(27) 606(bb) 1456(0) 1511(r)	Art. 9: TYBOA 1/1/04; Others: TYBOA 1/1/01	Part R of Chapter 57 of the Laws of 2010	Clarified that real property taxes for purposes of the QEZE RPTC do not include charges for local benefits that inure to specific properties.	15y or 10y depending on date of 1st certification; EZ Program sunset 6/30/10, so last claims in 2020	As-of-right	AMT/FDM	Refundable	Annual test & employment increase factor computation	ESD certifies EZ businesses
QEZE tax reduction credit	2000	14 16 210(28) 606(cc) 1456(p) 1511(s)	TYBOA 1/1/01	Part Z-1 of Ch. 109 of the Laws of 2006	Established alternative employment number computation for purposes of credit.	15y or 10y depending on date of 1st certification; EZ Program sunset 6/30/10, so last claims in 2020	As-of-right	FDM; no limit if zone allocation factor equal to 100%	Nonrefundable/ non-carryforward	Annual test & employment increase factor computation	ESD certifies EZ businesses

Tax Credit	Year Enacted	Tax Law Section(s)	Effective	Last Legislative Action	Description of Last Legislative Action	Benefit Period	Allocation or As-of-Right	Limitations	Refundable / Carryforward (CF)	Employment Requirement	External Agency Involved
Farmers' school property tax credit	1996	210(22) 606(n)	TYBOA 1/1/97	Chapter 297 of the Laws of 2010	Clarified that payments from the Farmland Protection Program, administered by NYS Department of Agriculture and Markets, should be disregarded when determining whether or not a taxpayer is eligible for the credit.	Payments made during the tax year	As-of-right	AMT/FDM	Refundable	No	No
Credit for employment of persons with disabilities	1997	187-a 210(23) 606(o) 1456(f) 1511(j)	TYBOA 1/1/98 for individuals who began work on or after 1/1/97	Chapter 142 of the Laws of 1997	Credit enacted.	1st year wages; 2nd year instead if federal WOC in effect	As-of-right	FDM $2,100/ employee	Nonrefundable/ unlimited carryforward	Only available for hiring qualified employees; no base level employment	No
Qualified emerging technology company (QETC) capital tax credit	CFT: 1998 PIT: 1999	210(12-F) 606(r)	CFT: TYBOA 1/1/99 PIT: TYBOA 1/1/00	Part D of Chapter 59 of 2004	Credit expanded to cover businesses engaged in biotechnology.	Investments made during the tax year; 4 or 9 year holding period requirement	As-of-right	AMT/FDM Credit cannot exceed 50% of tax $150k max for credit computed at 10% rate; $300k max for credit computed at 20% rate	Nonrefundable/ unlimited carryforward	No	No
QETC employment credit	CFT: 1998 PIT: 1999	210(12-E) 606(q)	CFT: TYBOA 1/1/99 PIT: TYBOA 1/1/00	Part U of Chapter 61 of the Laws of 2005	Credit made fully refundable.	3 years	As-of-right	AMT/FDM	Refundable	Employment must be at least 101% of base-year employment number	No
Low-income housing credit	2000	18 210(30) 606(x) 1456(l) 1511(n)	TYBOA 1/1/00	Part J of Chapter 59 of the Laws of 2012	Aggregate statewide credit amount increased	10 years	Aggregate allocation is $48 million in SFY 2013-14	AMT/FDM	Nonrefundable/ unlimited carryforward	No	NYS DHCR determines eligibility and allocates credit

Tax Credit	Year Enacted	Tax Law Section(s)	Effective	Last Legislative Action	Description of Last Legislative Action	Benefit Period	Allocation or As-of-Right	Limitations	Refundable / Carryforward (CF)	Employment Requirement	External Agency Involved
Credit for purchase of an automated external defibrillator	1999	210(25) 606(s) 1456(j) 1511(l)	TYBOA 1/1/01	Part J of Chapter 407 of the Laws of 1999	Credit enacted.	Annual purchases	As-of-right	AMT/FDM Lesser of cost of unit or $500	Nonrefundable/ non-CF	No	No
Green buildings credit	2000	19 187-d 213(31) 606(y) 1456(m) 1511(o)	TYBOA 1/1/01	Chapter 61 of the Laws of 2005	Second allocation of green buildings tax credit authorized and minor technical fixes made.	5 years	$25m each for Periods 1 & 2 (DEC is no longer issuing component certificates)	AMT/FDM	Nonrefundable/ unlimited CF	No	NYS DEC issues credit component certificate
Empire State film production tax credit	2004	24 606(gg) 210(36)	TYBOA 1/1/04	Part B of Chapter 59 of the Laws of 2013	Credit extended to relocated talk or variety shows; maximum allocation extended and modified; and upstate credit enhancements added.	Credit claimed over 1, 2, or 3 years depending on size	$420m/year through 2019 (portion is dedicated to post-prod. credit, see below)	FDM	Annual amount allowed under trifurcation rules is fully refundable	No	MP/TV determines eligibility and allocates credit
Empire State film post-production credit	2010	31 210(41) 606(qq)	TYBOA 8/11/10	Part B of Chapter 59 of the Laws of 2013	Credit allocation extended and modified; upstate credit enhancements added; and visual effects and animation incentive created.	Credit claimed over 1, 2, or 3 years depending on size	2013 & 2014 allocations are $7m; 2015-19 allocations are $25m; funded from film allocations	FDM	Refundable over two years	No	MP/TV determines eligibility and allocates credit
Empire State commercial production credit	2006	28 210(38) 606(jj)	TYBOA 1/1/07 and before 1/1/15	Part I of Chapter 59 of the Laws of 2012	Credit reauthorized and extended.	Costs incurred during the tax year	$7 million in credit annually through 2014	FDM	Refundable over two years	No	MP/TV determines eligibility and allocates credit
Security training tax credit	2005	26 187-n 210(37) 606(ii) 1456(t) 1511(x)	TYBOA 1/1/05	Chapter 537 of the Laws of 2005	Credit enacted.	3 years	$5 million annually	AMT/FDM $3,000/ qualified security guard	Refundable	Only available for hiring qualified security guards; no base level employment increase required	DHSES determines eligibility and allocates credit

Tax Credit	Year Enacted	Tax Law Section(s)	Effective	Last Legislative Action	Description of Last Legislative Action	Benefit Period	Allocation or As-of-Right	Limitations	Refundable / Carryforward (CF)	Employment Requirement	External Agency Involved
Brownfield Redevelopment Tax Credit	2003	21 187-g 213(33) 606(dd) 1456(q) 1511(u)	TYBOA 4/1/05 and COCs issued before 1/1/16	Chapter 474 of the Laws of 2012	The eligibility time frame for issuing a certificate of completion (COC) brownfield tax credits was extended.	5 years for cleanup costs; 10 years for redevelop. costs after COC is issued	As-of-right	AMT/FDM Post June 08 sites cap redev. credit at lesser of: 3x cleanup costs or $35m or 6x/$45m for manu. sites	Refundable	No	DEC issues COC
Remediated Brownfield Credit for Real Property Taxes	2003	22 187-h 213(34) 606(ee) 1456(r) 1511(v)	TYBOA 4/1/05 and COCs issued before 1/1/16	Chapter 474 of the Laws of 2012	The eligibility time frame for issuing a certificate of completion (COC) brownfield tax credits was extended.	10 years	As-of-right	AMT/FDM Limited to $10,000 multiplied by the average number of FTEs	Refundable	Minimum 25 FTEs on site; employment number factor can increase with more	DEC issues COC
Environmental Remediation Insurance Credit	2003	23 187-i 213(35) 606(ff) 1456(s) 1511(w)	TYBOA 4/1/05 and COCs issued before 1/1/16	Chapter 474 of the Laws of 2012	The eligibility time frame for issuing a certificate of completion (COC) brownfield tax credits was extended.	1 time	As-of-right	AMT/FDM Lesser of $30k or 50% of premiums paid	Refundable	No	DEC issues COC
Biofuel production credit	2006	28 187-C 210(38) 606(jj)	TYBOA 1/1/06 and before 1/1/20	Part K of Chapter 59 of the Laws of 2012	Sunset date extended.	4 years	As-of-right	AMT/FDM Limited to $2.5m/entity/yr	Refundable	No	No
Land conservation easement credit	2006	210(38) 606(kk)	TYBOA 1/1/06	Part F of Chapter 62 of the Laws of 2006	Credit enacted.	Property taxes paid during the year	As-of-right	AMT/FDM Max allowable credit is $5,000/yr	Refundable	No	No
Clean heating fuel credit	2006	606(mm) 210(39)	Purchases made on 7/1/06 - 6/30/07 & on/ after 1/1/08-1/1/17	Chapter 193 of the Laws of 2012	PIT credit extended (Ch. 591 of 2011 extended the credit in CFT only; Ch. 193 was a conforming amendment)	Purchases during the tax year	As-of-right	AMT/FDM Cannot exceed $0.20/gallon	Refundable	No	No

Tax Credit	Year Enacted	Tax Law Section(s)	Effective	Last Legislative Action	Description of Last Legislative Action	Benefit Period	Allocation or As-of-Right	Limitations	Refundable / Carryforward (CF)	Employment Requirement	External Agency Involved
Credit for rehabilitation of historic properties	CFT/PIT 2006 Bank/Ins 2009	210(40) 606(oo) 1456(u) 1511(y)	PIT/CFT — TYBOA 1/1/07 Bank/Ins: TYBOA 1/1/10	Part F of Chapter 59 of the Laws of 2013	Extended the enhanced credit through 2019; made refundable starting in 2015.	Tax year property is placed in service	As-of-right	AMT/FDM Max credit/project cannot exceed $5m for TYBOA 1/1/10 thru '19, $100K for TYBOA 1/1/20	Refundable for qualified rehabilitations placed in service on or after 1/1/15	No	Not directly - property must have National Parks Service project # and claimed federal credit
Excelsior Jobs Program tax credits	2010	31 210(41) 606(qq) 1456(u) 1511(y)	TYBOA 1/1/10	Part C of Chapter 68 of the Laws of 2013	Reduces job creation requirements by half; allows taxpayers meeting 75% of job targets to receive proportional credit; allows unallocated credit to be carried forward for future awards	10 years	$500m in 2011-2015; $2.25b total program cap	AMT/FDM	Refundable	Yes — standards vary by industry/activit y	ESD issues certificate of tax credit
Credit for companies who provide transportation to individuals with disabilities	2011	210(44) [1] 606(tt) [1]	TYBOA 1/1/11 and before 1/1/17	Chapter 604 of the Laws of 2011	Credit enacted* *Similar credit existed for TYBOA 1/1/06 and before 1/1/11	Tax year costs incurred	As-of-right	None-can reduce tax to zero Credit cannot exceed $10,000/ vehicle	Nonrefundable/ unlimited CF	No	No
Economic Transformation and Facility Redevelopment Program tax credit	2011	35 187-r 210(43) 606(ss) 1456(x) 1511(aa)	3/31/11 and before 12/31/21	Part V of Chapter 61 of the Laws of 2011	Credit enacted.	5 years	As-of-right	FDM	Refundable	Must create and maintain 5 net new jobs	ESD issues certificate of eligibility
NY youth works credit	2011	210(44) [1] 606(tt) [1]	TYBOA 1/1/12	Part DD of Chapter 59 of the Laws of 2013	Credit expanded and extended.	Subject to NYS Department of Labor (DOL) award	Allocated by DOL: $25m for hires in 2012; $6m annually for hires in 2014 through 2017	FDM	Refundable	Only available for hiring at risk youths; no overall base employment requirement	DOL issues certificate of eligibility with max amount of credit that employer can claim.

Tax Credit	Year Enacted	Tax Law Section(s)	Effective	Last Legislative Action	Description of Last Legislative Action	Benefit Period	Allocation or As-of-Right	Limitations	Refundable / Carryforward (CF)	Employment Requirement	External Agency Involved
Empire State jobs retention program credit	2011	36 210(44)[1] 606(tt) [1] 1456(y) 1511(bb)	TYBOA 1/1/12 pertaining to emergencies declared on or after 1/1/11	Part E of Chapter 56 of the Laws of 2011	Credit enacted.	10 years	Allocated by ESD (part of funding for Excelsior Jobs Program)	FDM	Refundable	Must have had at least 100 FTEs in the county prior to emergency and must retain or exceed that number of jobs	ESD issues certificate of tax credit
Beer production credit	2012	37 210(45) 606(uu)	TYBOA 1/1/12 for production on/after 4/1/12	Chapter 109 of the Laws of 2012	Credit enacted.	Gallons produced during the tax year	As-of-right	FDM Max amount of credit is $745,000 per year	Refundable	No	No
Minimum wage reimbursement credit	2013	38 187-s 210(46) 606(aaa) 1456(z) 1511(cc)	TYBOA 1/1/14 and before 1/1/19	Part EE of Chapter 59 of the Laws of 2013	Credit enacted.	Hours worked by eligible employees during the tax year	As-of-right	FDM	Refundable	Only available for hiring of eligible employees; no overall base employment requirement	No
Hire a vet credit	2013	210(23-a) 606(a-2) 1456(e-1) 1511(g-1)	TYBOA 1/1/15 and before 1/1/17	Part AA of Chapter 59 of the Laws of 2013	Credit enacted.	Wages paid during first full year of employment	As-of-right	FDM Credit is capped at $5K/vet or $15K/disabled vet	Nonrefundable/ 3 year CF	Only available for hiring of qualified vets; no overall base employment requirement	No
Alternative fuel vehicle refueling property and electric vehicle recharging property credit	2013	187-b 210(24) 606(p)	TYBOA 1/1/13 and before 1/1/18	Part G of Chapter 59 of the Laws of 2013	Credit enacted. *This credit replaces the alternative fuels credit that expired in 2010.	Property placed in service during tax year	As-of-right	AMT/FDM Lesser of $5K or 50% of the cost of the property	Nonrefundable/ unlimited CF	No	No

IX.1.2 Tax Incentive Impact: Findings from Illustrative Studies

Tax Incentive Impact: Findings from Illustrative Studies			
Article	**Incentive**	**Research Method**	**Results**
Loren C. Scott & Associates, Inc. (2013) Louisiana Department of Economic Development, Office of Entertainment Industry Development. *The Economic Impact of Louisiana's Entertainment Tax Credit Programs*. Baton Rouge, LA Retrieved from http://louisianaentertainment.gov/docs/main/2013_OEID_Program_Impact_Report_(FINAL).pdf	Tax credit for investment in state-certified entertainment productions.	Input/Output model to estimate effect of Louisiana's entertainment incentives on growth and employment in relevant industries.(2012)	**POSITIVE** $4.80 of private sector sales in relevant industries per dollar of tax credit. 15,184 jobs from certified spending in relevant industries.
Purpera, D., et al. (2013) Louisiana Department of Economic Development and Louisiana Department of Revenue. (2013). *Motion Picture Tax Credit Program: Performance Audit*. Retrieved from Louisiana Legislative Auditor http://app1.lla.la.gov/PublicReports.nsf/5A685258D794067E86257B57005B8D58/$FILE/00032357.pdf	Tax credit for investment in state-certified entertainment productions.	Audit of fiscal impact of Louisiana motion picture tax credit program. (2010)	**NEGATIVE** Net loss to state government of $169.8 million for calendar year 2010.
HR&A Advisors, Inc. (2013)	Massachusetts film tax incentive program:	Input/Output model to estimate effect of film	**POSITIVE** 2,200 full time

Tax Incentive Impact: Findings from Illustrative Studies			
Article	**Incentive**	**Research Method**	**Results**
Economic Impacts of the Massachusetts Film Tax Incentive Program. Retrieved from Motion Picture Association of America http://www.mpaa.org/Resources/8ee0a160-9953-4c29-bfa3-1f6bff6956d5.pdf	payroll credit, production expense credit, sale and use tax exemption	tax incentives on economic growth and employment. (2011)	equivalent jobs resulted from film tax incentive program. $375.3 million in economic output resulted from film tax incentive program.
Pitter, A. (2011) Commonwealth of Massachusetts, Department of Revenue. (2011). *A Report on the Massachusetts Film Industry Tax Incentives*. Retrieved from http://www.mass.gov/dor/docs/dor/news/2011filmincentivereport.pdf	Massachusetts film tax incentive program: payroll credit, production expense credit, sale and use tax exemption	Input/Output model to estimate effect of film tax incentives on economic growth and employment. Input/Output model to estimate effect of state spending and changes in revenue from film tax incentive on economic growth and employment. (2010)	**NEGATIVE** Loss of 2 full time equivalent jobs resulted from film tax incentive program. Loss of $15.2 million in economic output from film tax incentive program.
Funderburg, R., et al. (2013) "The impact of marginal business taxes on state manufacturing." *Journal of Regional Science 53, 4 (October 2013): 557-82*. Retrieved from http://onlinelibrary.wiley.com/doi/10.1111/jors.12031/abstract	Property tax abatements, investment tax credits, and job tax credits	Regression model used to estimate effect of tax credits on state manufacturing value-added in 20 states (1990-1998)	**NO EFFECT** No statistically significant impact of tax credits on manufacturing value-added.
Adkisson, R. (2013). "Policy convergence, state film-production incentives, and employment: A brief case study." *Journal of*	State tax incentives to encourage film production	Regression model used to estimate effect of film production tax incentives on film production related employment trend in all U.S. states (1997-2011)	**MIXED** After adoption of incentive: 16 states had negative employment trend. 13 states had positive employment trend.

Tax Incentive Impact: Findings from Illustrative Studies			
Article	**Incentive**	**Research Method**	**Results**
Economic Issues, 47, 2 (June 2013): 445-54. Retrieved from http://mesharpe.metapress.com/app/home/contribution.asp			21 states had no significant trend.
Gregor, D., et al. Delaware Department of Finance, (2011) *Department of Finance Tax Preference Report.* State of Delaware. Retrieved from http://finance.delaware.gov/publications/taxpref.shtml	All Delaware state tax expenditures	State used tax returns and state macroeconomic data to estimate effect of corporate tax incentives on location decision. (2011)	**MIXED** 4 of 16 corporate tax incentives have positive effect on firm location decision. 10 of 16 corporate tax incentives have no effect on firm location decision. 4 of 16 corporate tax incentives act as "bonus" not "incentive."
Gullickson, A. (2008) Iowa Department of Revenue, *Iowa's Research Activities Tax Credit: Tax Credits Program Evaluation Study.* Des Moines, 2008. Retrieved from http://www.iowa.gov/tax/taxlaw/RAC2011.pdf	Research Activities Tax Credit (RAC).	Regression model used to estimate effect of RAC on employment and growth in Iowa and neighboring states. (2001-2008)	**NO EFFECT** No statistically significant impact found on research or research-related employment.
Chirinko, R. (2008) Federal Reserve Bank of	Investment tax credits (ITC).	Regression model used to estimate effect on manufacturing of	**POSITIVE** 2.34 percent decrease in capital stock

Tax Incentive Impact: Findings from Illustrative Studies			
Article	**Incentive**	**Research Method**	**Results**
San Francisco, *State investment tax incentives: A zero-sum game?* (Working Paper 2006-47), July 2008. Working Paper Series. Retrieved from: http://www.frbsf.org/economic-research/files/wp06-47bk.pdf		reducing the ITC in 48 contiguous states. (Panel Data from 1963 to 2004)	associated with elimination of ITC. .08 percent decrease in manufacturing establishments for elimination of ITC.
Calcagno, P. et al. (2004) State Economic Incentives: Stimulus or Reallocation? *Public Finance Review* 32, 6 (November 2004): 651-65. Retrieved from http://pfr.sagepub.com/content/32/6/651	State economic development expenditures (state grants, loan guarantees, industrial development bonds and guarantees, customized industrial training, state-funded venture capital corporations, privately sponsored development credit corporations)	Econometric model used to estimate net effect on value-added in manufacturing industries in 48 contiguous U.S. states (1981 to 1989)	**NEGATIVE** Slight negative on state manufacturing value-added.
Lynch, R. (2004). *Rethinking Growth Strategies: How State and Local Taxes and Services Affect Economic Development*. Washington DC: Economic Policy Institute. Retrieved from http://epi.3cdn.net/f82246f98a3e3421fd_o4m6iiklp.pdf	General tax incentives, area-specific tax incentives, firm-specific tax incentives	Review of several studies using econometric, survey, and hypothetical firm techniques to estimate effect of state development incentives on growth, employment, and firm location decision.	**NO EFFECT** No significant effect on firm location decisions. Modestly positive to no effect on growth and employment, only when public services spending is held constant.
Gabe, T., et al. (2002). "The Effect of State Economic Development	Job creation tax credit, industrial training program, development grants.	Regression model used to estimate effect of incentives on employment growth for	**NEGATIVE** Firms receiving incentive experienced average -10.5 job

Tax Incentive Impact: Findings from Illustrative Studies			
Article	**Incentive**	**Research Method**	**Results**
Incentives on Employment Growth of Establishments." *Journal of Regional Science* 42, 4 (2002): 703-30. Retrieved from http://agoregon.org/files/gabe%20and%20kraybill%20in%20jrs.pdf		366 Ohio businesses. (1993-1995)	growth Firms not receiving incentive experienced average 6.5 jobs growth
Faulk, D. (2002) "Do State Economic Development Incentives Create Jobs? An Analysis of Employment Tax Credits. *National Tax Journal* 55, 2 (June 2002). Retrieved from http://connection.ebscohost.com/c/articles/7028596/do-state-economic-development-incentives-create-jobs-analysis-state-employment-tax-credits	Job tax credit (JTC)	Regression model used to estimate employment effects on Georgia firms receiving tax credit and not receiving tax credit.(1993-1995)	**POSITIVE** 23.5-27.9 percent increase in employment in all firms tested explained by JTC.
Buss, T. (2001) "The Effect of State Tax Incentives on Economic Growth and Firm Location Decisions: An Overview of the Literature." *Economic Development Quarterly* 15 (February 2001): 90-105. Retrieved from http://edq.sagepub.com/content/15/1/90.refs	Total tax liability, sales tax deferral and exemptions, industrial revenue bonds, targeted job tax credits, industrial development authorities, economic development spending.	Review of several studies using econometric, survey, hypothetical firm, and case-study technique to estimate effect of state development incentives on growth, employment, and firm location decision.	**MIXED** Interregional/interstate studies show inconclusive effects on growth and employment. Intraregional/intra-metropolitan studies show marginal, but inconsistent positive effect. Studies show little to no effect on firm location decision.
Fisher, P., et al. (1997)	Enterprise zones and related incentives:	Review of several studies using	**MIXED** Most econometric

Tax Incentive Impact: Findings from Illustrative Studies			
Article	**Incentive**	**Research Method**	**Results**
"Tax and Spending Incentives and Enterprise Zones." *New England Economic Review* (March/April 1997), 109-137. Retrieved from http://geography.tamu.edu/class/bednarz/neer297f.pdf	property tax abatements, job tax credit, investment tax credit, economic development grants and loans, tax increment financing, and single-factor apportionment (sales tax exemptions)	econometric, survey, hypothetical firm, and case-study technique to estimate effect of state development incentives on growth, employment, and firm location decision.	studies find statistically insignificant effect on growth and employment. Enterprise zones and municipal and state tax differentials have marginal impact on business location decision.
Wasylenko, M. (1997) "Taxation and economic development: the state of the economic literature." New England Economic Review (March 1997): 37-52. Retrieved from http://surface.syr.edu/cgi/viewcontent.cgi?article=1001&context=ecn	All taxes.	Review of 74 studies examining taxes and interregional business activity.	**MIXED** Most studies found taxes to be a statistically significant determinant of economic activity, but there was no consistency in the magnitude and direction of tax impact. Elasticities ranged from -1.54 to 0.54*

IX.1.3 History of the Investment Tax Credit

Investment Tax Credit Structure History

Year	**Rate and Applicable Investment Tax Credit Base**
1969 - 1973	1% Optional one-year depreciation write-off for research and development property. Industrial waste treatment and air pollution facilities qualify for elective deductions.
1974 - 1977	2% Optional one-year depreciation write-off for research and development property. Industrial waste treatment and air pollution facilities qualify for elective deductions.
1978	3% Optional one-year depreciation write-off for research and development property. Industrial waste treatment and air pollution facilities qualify for elective deductions.
1/1/79 - 5/31/81	4% Optional one-year depreciation write-off for research and development property. Industrial waste treatment and air pollution control facilities qualify for elective deductions.
6/1/81 - 6/30/82	5% 10% rate on research and development property acquired after June 30, 1982. Industrial waste treatment and air pollution control facilities qualify for elective deductions. Retail enterprises eligible for ITC on qualified rehabilitation expenditures made on or after June 1, 1981
7/1/82 - 1986	6% 10% rate on research and development property. Industrial waste treatment and air pollution control facilities qualify for elective deductions.
Beginning in 1987, 1988, and 1989	5% of the first $500 million. 4% of the amount above $500 million. 10% rate on research and development property repealed — An optional 9% rate on research and development property becomes effective in 1987 as a component of ITC. Investments in industrial waste treatment property, air pollution control facilities

Year	Rate and Applicable Investment Tax Credit Base
	no longer qualify for elective deductions, but remain eligible for ITC. Credit carryforward limited to 7 years.
Beginning in 1990	5% of the first $425 million. 4% of the amount above $425 million. An optional 9% rate on research and development property.
Beginning after 1990	5% of the first $350 million. 4% of the amount above $350 million. An optional 9% rate on research and development property. 1994 law increased carryforward from 7 to 10 years. 1994 law extended pre-1987 ITC cutoff date from 1994 to 1997. 1997 law extended credit carryforward from 10 to 15 years. 1997 law extended pre-1987 ITC cutoff date from 1997 to 2002. ITC for rehabilitation of historic barns effective 1997; 25% of qualified rehabilitation expenditures. ITC extended to broker/dealers. (Property placed in service on or after October 1, 1998 and before October 1, 2003.)
Beginning after 2000	2002 law extended ITC for financial services to October 1, 2008. 2005 law extended ITC to certain film production facilities. SFY08-09 budget extended financial services ITC sunset to October 1, 2011. 2008 law codified financial services ITC employment tests and allowed certain property usage to be aggregated for purposes of the principal use test. SFY11-12 budget extended financial services ITC sunset to October 1, 2015.

IX.1.4 NYS Business Tax Credits: Number of Claims, 2009

Table 10.1.4: NYS Business Tax Credits: Number of Claims, 2009

Credits	Personal Income Tax			Corporation/Related Taxes			Total		
	Number of Claims	Costs to State ($ mln)	Average Claim per Taxpayer	Number of Claims	Costs to State ($ mln)	Average Claim per Taxpayer	Number of Claims	Costs to State ($ mln)	Average Claim per Taxpayer
Credits to Promote Economic Development									
Brownfield Redevelopment	92	$70.2	$763,043	16	$67.7	$4,232,228	108	$137.9	$1,276,997
Brownfield Real Property Tax	10	1.3	127,000	4	3	708,804	14	4	293,230
Brownfield Environmental Remediation Insurance	0	0.0	0	0	0	0	0	0	0
Film Production	67	7.8	116,716	36	103	2,850,514	103	110	1,072,218
Commercial Production	29	4.3	147,586	7	1	110,409	36	5	140,357
ITC	6,680	19.6	2,937	1,027	107	103,877	7,707	126	16,388
Financial Services ITC	90	*	178	29	33	1,152,005	119	*	280,875
QETC Employment Credit	119	*	126	45	0	9,151	164	*	2,603
QETC Capital Credit	190	*	416	d/	d/	d/	d/	d/	d/
QETC FOTC	408	6.2	15,270	206	18	85,848	614	24	38,949
Security Training Credit	55	*	345	d/	d/	d/	d/	d/	d/
Geographically Targeted									
EZ ITC and EZ FS-ITC	1,168	12.1	10,368	230	21.8	94,717	1,398	33.9	24,245
EZ and ZEA Wage Tax	2,870	18.4	6,416	375	15.7	41,904	3,245	34.1	10,517
EZ Capital	882	1.1	1,190	38	0.1	3,379	920	1.2	1,281
QEZE Real Property Tax	3,777	83.2	22,017	471	138.9	294,977	4,248	222.1	52,282
QEZE Tax Reduction	2,382	42.6	17,893	276	39.9	144,574	2,658	82.5	31,047
Credits to Support Social Policies									
Hiring Disabled Employees	36	*	*	12	*	4,427	48	*	1,107
Handicapped Accessible Taxi Credit	23	*	1,435	3	*	1,750	26	*	1,471
Defibrillator Credit	189	*	*	12	*	4,011	201	*	239
Credits to Support Housing Policies									
Farmers' School Tax				132	1.2	9,174	132	1.2	9,174
Low Income Housing	3	*	*	9	8.0	885,416	12	8.0	664,062
Mortgage Servicing Credit	0	0.0	0	23	5.7	248,452	23	5.7	248,452
Credit Special Additional Mortgage Recording Tax	2,777	6.2	2,218	159	18.4	115,620	2,936	24.6	8,360
Credits to Support Environmental Policies									
Green Buildings Credit	11	*	1,182	3	10.1	3,323,756	14	*	713,162
Biofuel Production Credit	162	6.1	37,346	d/	d/	d/	d/	d/	d/
Clean Heating Fuel Credit	2,856	0.4	151	4	*	1,922	2,860	*	153
Rehabilitation of Historic Properties Credit	31	*		d/	d/	d/	d/	d/	d/
Alternative Fuel Vehicle t	25	*	760	5	0.8	164,638	30	*	28,073

d/ Fewer than 3 taxpayers

* Credits less than $100,000

X.1.5 Summary Table of State Incentives for Film Production

Summary Table of State Incentives for Film Production as of May 2013			
Refundable	**Reimbursement or Rebate**	**Carry Forward/Transferrable**	**States with Sunset and sunset date**
Hawaii	Alabama	Alaska	Arizona (2010)
Kentucky	Arkansas	California	Arkansas (2019)
Maryland	Colorado	Connecticut*	California (2017)
Massachusetts	Maine	Florida	Colorado (2013)
Montana	Michigan	Georgia	Florida (2016)
New Mexico	Minnesota	Illinois	Hawaii (2015)
New York	Mississippi	Louisiana	Idaho (2014) (Unfunded since 2012)
North Carolina	Oklahoma	Massachusetts	Illinois (2021)
Ohio	Oregon	Missouri	Indiana (2011)
Utah	South Carolina	Montana	Iowa(Repealed 2012)
Virginia	Tennessee	Nevada**	Kansas (2013)* (Unfunded 2009 and 2010)
Wisconsin	Texas	New Jersey	Kentucky (2014)
	Utah	Pennsylvania	Maryland (2016)
	Washington	Rhode Island	Massachusetts(2023)
	Wyoming	West Virginia	Missouri (2013)
			Nevada (2023)
			New Jersey (2015)
			North Carolina (2014)
			Wyoming (2016)

* Two-year moratorium effective July 1, 2013; Credits to qualified production companies approved prior to moratorium are "grandfathered "(credits will still be available in "exceptional" cases)
** Available as of January 2014.

Sources: Thomson Reuters Checkpoint; state statutes; state websites; http://www.sagaftra.org/state-film-incentives; Film Production Capital U.S. Tax Incentive Inforhttp://www.filmproductioncapital.com/taxincentive.html

X.1.6 State Incentives Provided to Film Industry

State Incentives Provided to Film Industry						
as of November 2013						
State	**Program Name and Year Adopted and Expiration, if applicable**	**Incentive**	**Eligibility Requirements**	**Type of Program**	**Limitations**	**Sunset Date**
Alabama	Entertainment Industry Incentive 2009	Rebate of 25% of state certified production expenditures excluding payroll paid to Alabama residents, plus 35% of all payroll paid to Alabama residents. for expenditures.	Expenditures must be at least $500,000 but not more than $20 million per project; lesser amounts for production of only soundtrack or music video	Rebate	State limited total claims to $10 million in 2011 and 2012; $15 million in 2013 and 2014; and $20 million in subsequent years.	
Alaska	Film Production Tax Credit 2012	Base amount of the credit is 30% of the production's qualified expenditures with additional 20% of wages paid to Alaska residents; 6% of expenditures made in rural areas; and 2% of expenditures made between October 1 and March 30	To be eligible, production cost must be at least $75,000.	Transferrable with no limits as to how many times, carry forward for 3 years, nonrefundable	The aggregate amount of tax credits cannot exceed $200 million for productions qualified before 1 July 2023. (There was an earlier program that expired 1 July 2013, at such a time the $100 million limit was fully claimed.)	
Arizona	Entertainment Tax Credit Expired in 2010					Expired in 2010

State Incentives Provided to Film Industry

as of November 2013

State	Program Name and Year Adopted and Expiration, if applicable	Incentive	Eligibility Requirements	Type of Program	Limitations	Sunset Date
Arkansas	Digital Product and Motion Picture Development 2009	Rebate up to 20% of qualified expenditures; additional 10% rebate of payroll paid to certain types of employees	Company must spend at least $200,000 within a 6 month period.	Rebate, Nontransferable	Rebates are capped at $5 million annually on a first-come, first-serve basis. Funds are subject to legislative funding.	2019
California	Motion Picture Production Credit 2009	A credit of 20% of qualified expenditures of qualified motion picture in California or 25% of qualified expenditures of a television series that relocated to California or an independent film.	At least 75% of the production days or 75% of the production budget must occur in the state. Feature film budget must be between $1 and $75 million and miniseries, $500,000; new TV series $1 million. There is no minimum budget for independent films or TV series that relocate to California.	May assign credit to one or more affiliated corporation; credits attributed to an independent film may be sold; unused credits may be carried over up to 6 years.	State will allocate $100 million each year during FY 2010 and 2017. Ten percent of the allocation is reserved for independent films and unallocated amounts may be rolled over.	2017

State Incentives Provided to Film Industry						
as of November 2013						
State	**Program Name and Year Adopted and Expiration, if applicable**	**Incentive**	**Eligibility Requirements**	**Type of Program**	**Limitations**	**Sunset Date**
Colorado	Film Incentives 2010	Incentive up to 20% cash rebate of expenditures; investment must be more than $100,000 for Colorado companies or $1 million for out-of-state companies. Production of TV commercials or video games not originating production activities in Colorado employing 50% Colorado residents may claim 20% if total expenditures are $250,000 or more.	Minimum expenditures must be at least $100,000 if production activities originate in Colorado. Otherwise, a production company's total expenditures must equal or exceed $1 million. Minimum expenditures are only $250,000 if production is for commercials or video game.	Rebate, Nontransferable	Limited by the amount appropriated to the Colorado Office of Film, Television, and Media. Appropriation is for both program and administrative costs and comes from the Gaming Fund. $240,054 was available in FY 2011-2012. For FY 2012-13 the legislature also made an initial one-time appropriation of $3 million	

State Incentives Provided to Film Industry						
as of November 2013						
State	**Program Name and Year Adopted and Expiration, if applicable**	**Incentive**	**Eligibility Requirements**	**Type of Program**	**Limitations**	**Sunset Date**
Connecticut	Digital Media and Motion Picture Tax Credit 2006	Credits range from 10% to 30% of budgets depending on budget levels, ranging from more than $100,000 to more than $1 million.	A company must conduct not less than 50% of principal photography days in Connecticut or expend not less than 50% of postproduction costs in the state or spend at least $1 million in the state. Effective October 27, 2011, a relocated television production is eligible for the credit provided it is created at a qualified production facility in Connecticut at which on or after January 1, 2012, the eligible production company makes a minimum investment of $25 million and creates at least 200 new jobs in Connecticut.	Transferrable up to three times. Insurance companies can use credits to offset only 55% of Connecticut tax liability. Only 25% of tax credits may be transferred per year with some exceptions, Nonrefundable, carry over for no more than 3 years.		Moratorium for 2014 and 2015,except qualified production companies approved prior to July 1,2013 (credit is still available if movie company agrees to shoot at least ¼ of their movie at a studio that opens for business after July 1, 2013 with $25 million in private funding)

State Incentives Provided to Film Industry						
as of November 2013						
State	**Program Name and Year Adopted and Expiration, if applicable**	**Incentive**	**Eligibility Requirements**	**Type of Program**	**Limitations**	**Sunset Date**
Delaware	None					
District of Columbia	None					
Florida	Entertainment Industry Credit 2012	A tax credit of 20% of qualified expenditures, up to a maximum of $8 million is available, with additional 5% bonus for off-season production, 5% for family friendly productions, and 5% for independent film or TV series is eligible for an additional 5%. If 85% of the production is a region designated as underutilized, an additional credit of 5% is available. If the production employs media students, an additional credit of 15% of those students' wages is available.	To qualify, in the first 2 years, at least 50% of the positions must be filled by Florida residents and 60% in the subsequent years. A minimum of $625,000 expenditures is required of general production, such as film and television, commercials and music videos. For commercial and music video productions, $100,000 expenditures per commercial and $500,000 are required within a fiscal year, and $100,000 for	Transferable tax credit may be carried forward for 5 years.	Total amount of credits may not exceed for FY 2011, $53.5 million; FY 2012 $74.5 million and for each of AFY 2013, 2014, and 2015, $38 million. A maximum incentive for general production is $8 million, for commercial and video the maximum incentive is $500,000, and for independent and emerging media production the maximum is $125,000.	2016

State Incentives Provided to Film Industry						
as of November 2013						
State	Program Name and Year Adopted and Expiration, if applicable	Incentive	Eligibility Requirements	Type of Program	Limitations	Sunset Date
			independent and emerging media.			
Georgia	Entertainment Industry Investment Act 2005	Credit of 20% of in-state expenditures with an additional 10% credit for embedding Georgia logo.	Credit on expenditures in excess of $500,000	Transferable once in tranches of at least $100,000, Nonrefundable		

State Incentives Provided to Film Industry						
as of November 2013						
State	**Program Name and Year Adopted and Expiration, if applicable**	**Incentive**	**Eligibility Requirements**	**Type of Program**	**Limitations**	**Sunset Date**
Hawaii	Motion Picture, Digital Media, and Film Production Income Tax Credit 2006	Credit of 15% of qualified production costs while filming on Oahu and 20% filming on neighboring island.	A minimum expenditure of $200,000 is required.	Refundable	There is a $8 million cap per production.	2015
Idaho	Media Production Rebate Unfunded since 2012	The program provides a 20% rebate for qualifying productions on all goods and service purchased in Idaho.	A minimum expenditure of $200,000 and at least 20% of the crew are Idaho residents are required are required.	Unfunded since 2012	There is a $500,000 cap per production.	Unfunded since 2012 Sunsets 2014
Illinois	Film Tax Credit 2008	A credit of 30% of the qualified spending and a 30% credit on Illinois salaries up to $100,000 per worker. An addition 15% tax credit on salaries of individuals living in economically disadvantaged area.	For productions less than 30 minutes, minimum spending is $50,000 and $100,000 for productions of 30 minutes or longer, is required.	Credit can be carried forward 5 years.Within 1 year of issuance, an applicant can transfer credit to no more than 10 taxpayers.		2021
Indiana	Media Production Expenditure Tax Credit Expired 2011	Credit up to 15% of expenditures totaling $50,000 or more	Expenditures must total $50,000.	Expired 31 December 2011 Refundable, Nontransferable	The maximum amount of credits that may be claimed in a state fiscal year if $2.5 million	2011

State Incentives Provided to Film Industry						
as of November 2013						
State	**Program Name and Year Adopted and Expiration, if applicable**	**Incentive**	**Eligibility Requirements**	**Type of Program**	**Limitations**	**Sunset Date**
Iowa	Film Industry Credits Repealed 2012			Transferrable, carry forward		2012
Kansas	Film Production Credit Sunset 2013. Suspended 2009 and 2010			Carry forward for 3 taxable years after the year the costs were incurred	The amount of credits allowed shall not exceed $2 million a year.	2013.
Kentucky	Film Office Tax Credit 2009	Credit of 20% of in-state expenditures minimum of $500,000	Minimum spending $500,000 for feature films, $200,000 for commercials, and $50,000 for documentaries	Refundable	$7.5 million allocated for FY 2012	2014
Louisiana	Motion Picture Investor Tax Credit	Credit of 30% of investment and an additional 5% payroll tax credit for in-state labor.	Minimum spending $300,000.	Carry forward; Transferable, can sell back to state at discount. Nonrefundable,		
Maine	Certified Visual Media Production Credit 2005	Tax rebates equal to 12% of qualified wages paid to Maine residents and 10% paid to non-residents, capped at $50,000. A tax credit of 5% of nonwage production expenses.	Film, television and commercial production companies spending $75,000 or more are eligible for the incentive.	Rebate for wages; Credit available only in year media production is completed, nonrefundable, nontransferable credits for expenditures.	Individual cap of $50,000	

State Incentives Provided to Film Industry						
as of November 2013						
State	**Program Name and Year Adopted and Expiration, if applicable**	**Incentive**	**Eligibility Requirements**	**Type of Program**	**Limitations**	**Sunset Date**
Maryland	Film Production Activity Tax Credit 2013	Credit of up to 25% of film production expenditure and up to 27% of qualified television expenditures.	Total direct costs incurred in state must exceed $500,000 Minimum of 50% filming in Maryland	Refundable	Funding for fiscal year 2014 was $25 million, annual credits cannot exceed $7.5 million in future years.	2016
Massachusetts	Film Incentive Credit 2005	A credit of 25% of the total qualifying payroll is available.	$50,000 minimum expenditures; 50% budget and shooting time in state.	Credits may be carried forward or transferred, for up to 5 years. Credits received after 2007 may be refunded with certain limitations, up to 90% of remaining credit. Minimum tax must be paid.	No annual or production cap	2013 sunset has been extended to 1 January 2023. Credits may be carried forward beyond 2023.

State Incentives Provided to Film Industry						
as of November 2013						
State	**Program Name and Year Adopted and Expiration, if applicable**	**Incentive**	**Eligibility Requirements**	**Type of Program**	**Limitations**	**Sunset Date**
Michigan	Film Production Incentive 2011 replacing prior program adoped in 2008	Incentive of 32% on personnel expenditures paid to Michigan residents (reduced to 27% beginning 1 January 2015). An incentive of 25% on expenditures to non-resident and a 27% incentive on eligible expenditures with an additional 3% for expenditures at a qualified facility or post production facility, from 2012 to 2015.	Eligible production companies must have a minimum of $100,000 of direct production expenditures and personnel expenditures.	2013 incentive is a reimbursement. Pre-2012 credits are refundable or transferable on business tax; nonrefundable nontransferable as income tax credits.	Payments to Michigan producers shall not exceed 10% of expenditures, 5% for non-Michigan $25 million allocated for FY2011 (Oct-Sep);	
Minnesota	Snowbate 2013 after prior program expired	A rebate of 20% to 25% of state production expenditures.	Lower rebate for production less than $5 million; 20% for productions more than $5 million or if 3 of 5 identified positions filled by Minnesota residents or 60% or more of production expenditures or principle photography days take place in rural area. Minimum for documentaries; $200,000; $50,000	rebate	$5 million per project	

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			music videos; feature films must be 80 minutes			
Mississippi	Motion Picture Rebate 2004	Rebate based on investment and payroll. The rebate is 25% of base spending in Mississippi and 30%of payroll paid to resident up and 25% on non-resident payroll. A bonus rebate of 5% is available for payroll paid to veterans.	Total direct costs incurred in state must exceed $50,000 per project.	rebate	There is a $10 (one source says $8) million per project rebate cap and $20 million annual cap.	
Missouri	Film Production Tax Credit 1998	Credit up to 35% of the amount expended in Missouri for production activities, with 30% out of state cast and crew	Film production company must have expenditures at least $100,000 for film over 30 minutes and at least $50,000 for films under 30	The credits are transferrable or may be carried forward for 5 years.	Entire film production credit program is capped at $4.5 million	2013

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			minutes.			
Montana	Film Employment Production Credit 2005	The credit is equal to the sum of 14% of the first $50,000 or less that was compensated to each Montana resident who was employed in a state-certified production. Additional credit of 9% of in-state certified expenditures.		A one-time election, taxpayer may apply credit against income tax liability and carry forward any unused amount or may have any unused credit refunded.		
Nebraska	None					
Nevada	Film Credit 2014	Credit of 15% with an additional 2% if more than 50% of crew are Nevada residents; 2% if more than 50% of the filming days in Nevada	Minimum production $500,000; 60% in state	Transferable	$6 million per production; $20 million annually	2023
New Hampshire	None					

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New Jersey	Film Tax Credit Program 2004	A 20% tax credit for qualified production expenses is available.	Minimum digital content production expenses must be at least $2 million and at least 60% of total expenses of a project must occur in New Jersey.	Credit cannot exceed 50% of tax liability; Carry forward 7 years; Transferrable	Only application received by September 14, 2011 will be considered. Each year $10 million is available.	FY 2015 (suspended in FY 2011 but now available)
New Mexico	Film Production Tax Credit	A 25% credit on direct and post-production expenditures is available for audiovisual project intended for commercial exploitation and exhibition. An addition 5% credit on direct production expenditures for qualifying television series and on for resident wages.	To be eligible for the 5% a TV series with at least 6 episodes in a single season must have a per episode budget of $50,000 or more or that the wages paid to New Mexico residents on a production with a budget not more than $30 million that shoots at least 10 principal days or with a budget over $30 million that shoots at least 15 principal days.	Refundable	A $50 million "rolling cap" was implemented in July 2011, with up to $10 million "rolled over" to the next year.	

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New York	Empire State Film Production Credit 2004	A 30% refundable credit is available for qualified production costs for filming.	To be eligible work must be carried on at a production facility in New York. For small independent productions with budgets no more than $15 million, (Level 1 productions), the production must shoot at least 1 full day on a set built expressly for the production and at least 75% of the total expenses must be done at a qualified production facility. For larger productions (Level 2 productions) if done in New York City, must be a Level 2 Qualified Facility, with at least 10% of the total principal photography shooting days done	Refundable	Funding enacted in August 2010 created an additional pool of funding. The new funding allocates $420 million for 2010-2014. Of this amount, $7 million is available for the Post Production Credit.	

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			in a Qualified Production Facility and at least 75% of all expenses must be related to work done at a Qualified Facility.			

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New York	Empire State Post Production Credit 2010	A credit of 30% or 35% is available for qualified costs incurred in post production. If the post production occurs in the Metropolitan Commuter Transportation District, the credit is 30%. If the work occurs elsewhere in the state, the credit is 35%.		Refundable (paid out in 1 year if under $1 million; over 2 years if between $1-5 million; over 3 if over $5 million)	An annual amount of $7 million is available between 2010 and 2014. Amounts not used in one year will be rolled over to the next. $420 million for 2010-2014; NYC capped at $30 million	
New York	Commercial Production Tax Credit 2012	A tax credit for shooting commercials in New York. There are 3 components: Upstate (non-Metropolitan Commuter Transportation District), Downstate (MCTD), and Growth programs. The Upstate and Downstate credits are 5% of qualified production costs. The Growth credit is 20% of the increase in qualified costs.	To be eligible for Upstate credit, production costs must be more than $200,000. For Downstate credits, production costs must be more than $500,000.	Refundable	The annual cap for these credits is $7 million; $1 million for the Upstate Program, $3 million for the Downstate Program and $3 million for the Growth Program.	
North Carolina	Interactive Digital Media Tax Credit 2005	Credit is based on 15% of compensation and wages and 20% of research expenses paid to North Carolina university or community colleges.	Credits are based on expenses that exceed $250,000 and may not exceed $7.5 million.	Refundable	$20 million per project cap	2014

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North Dakota	None					
Ohio	Ohio Motion Picture Tax Incentive 2009	The tax credit is equal to 25 percent of nonresident wage cast and crew and eligible production expenditures and 35 percent of Ohio resident cast and crew wage production expenditures.	Eligible productions must spend a minimum of $300,000 in Ohio.	Refundable	$5 million production cap; $20 million cap for FY 2013-14	
Oklahoma	Oklahoma Film Enhancement Rebate Program 2001	A rebate of up to 30% of qualified expenditures made in Oklahoma directly related to film, television production and theater. 2% bonus for using Oklahoma produced music.	The minimum budget for the project shall be $50,000 with a minimum of $25,000 spent in Oklahoma.	Rebate	$5 million production cap;	2014
Oregon	Oregon Production Investment Fund and Greenlight Oregon Labor Rebate 2005	A rebate of 20% of good and service and 10% of Oregon-based payroll is provided. Additional 6.2% available for wages subject to state withholding.	Projects must spend a minimum of $750,000 in Oregon for any single project or season.	Rebate	Program is limited to $7.5 million a year.	
Pennsylvania	Film Production Tax Credit 2007	A credit is equal to 25% of qualified Pennsylvania production expenses. An additional 5% credit is available for productions intended for a national audience.	A project is eligible if at least 60% of the project's total production budget is used for Pennsylvania expenditures.	Unused credits may be carried forward for 3 years or transferred.	$60 million allocated through FY 2015-16; $12 million cap per project	

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Rhode Island	Motion Picture Production Tax Credit 2005	A tax credit of 25% of all qualified expenses associated with film, video, video games, television series and commercials is provided.	To be eligible, the budget must be at least $100,000 and at least 51% of the principal photography days must be in Rhodes Island.	Unused credits may be carried forward for 3 years or transferred.	$15 million annual cap	
South Carolina	Motion Picture Wage/Payroll and Expenditure/Supplier Rebates	For qualifying productions there is a 30% rebate on total in-state expenditures as well as a 25% rebate on resident wages and a 20% rebate on non-state resident wages.	Eligible companies must incur total production costs in South Carolina of $1 million or more in a taxable year.	Rebate	The total rebate for all qualifying projects is generally at least $15 million each year.	
South Dakota	None					
Tennessee	Tennessee Film Entertainment and Music Production Incentive 2012 (Prior program repealed)	A rebate, or grant, is available, not to exceed 25% of total expenses. The grant may be high if so deemed by the state.	Budgets over $200,000 are eligible.	Rebate	The amount available for such grants is subject to annual appropriation. The anticipated funding is $2 million a year.	

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Texas	Moving Image Industry Incentive Program	Rebates range from 5% to 17.5% of Texas spending or 8% to 29.25% of wages paid to Texas residents, depending on budget levels and type of production.	Minimum spending of $250,000 with 60% of the shooting days completed in Texas with 70% of paid crew and cast being Texas residents is required. Maximum rebates based on in-state spending of $5 million or more in underutilized areas.	Rebate	$15 million annual funding for FY 2012-13	
Utah	Motion Picture Incentive 2009	Rebates range from 15% to 25% of budgets depending on budget levels and type of production. Maximum rebates based on in-state spending of $7.5 million or more in Utah with no less than 51% spent in rural areas or significant promotional opportunity.	15% rebate: minimum $200,000; 85% in state crew 20% rebate or credit: Minimum $1 million 25% rebate or credit: $1 million with 85% in state crew or $7.5 million with 70% crew or 51% spent in rural areas or promote Utah	Rebate or refundable tax credit	Cash rebate at 15% capped at less than $150,000; 20% and 25% rebates capped at $500,000$6.7 million for tax credit program FY 2013 Tax Credits: $12,635,940 FY2013 Cash Rebate $540,778	
Vermont	None					

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Virginia	Motion Picture Production Tax Credit 2011	Tax credits of 15% of qualifying expenses is available, with a 5% bonus if the production is filmed in an economically distressed area of the state. An additional credit of 10 to 20% of the payroll is available for all state residents employed with the production, with the higher percentage for companies that spend over $1 million. A bonus of 10% is added for the payroll of first time actors or production crew.	Companies that spend at least $250,000 quality for the resident credit.	Refundable	The aggregate amount of credits available for the 2010-2012 biennium is $2.5 million and $5 million for any biennium after.	
Washington	Washington Filmworks 2006	Reimbursement of in-state expenditures of up to 30% for motion pictures and episodic series with less than 6 episodes and up to 35% for episodic series with at least 6 episodes. Funding assistance is available through the Commercial Business Development Plan.	Each movie production must meet the $500,000 in-state spending threshold; episode series a $300,000 threshold and commercials, a $150,000 threshold.	Rebate	Annual rebate capped at $3.5 million a year.	2017

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West Virginia	West Virginia Film Industry Investment 2008	A credit up to 27% with a 4% bonus for in-state hiring for instate spending is available for production and post-production for commercial film.	A minimum of $25,000 must be spent in-state. Projects included theatrical or motion pictures, TV shows, commercials, music videos and commercial still photography.	Carry forward 2 years; Transferable	Annual credit capped at $5 million.	
Wisconsin	Film Production Services and Investment Credits 2009	Credit equal to 25% of the first $20,000 of salary on residents and 25% of production expenditures paid to produce an accredited production. An additional credit of 15% of the investment in real or personal property or spent to construct, rehabilitate, remodel or repair real estate.	Eligible productions include film, video, broadcast advertisement or television production for which salaries exceed $50,000 for the 12 months after production begins or $100,000 in the 3 years for production of electronic games.	Refundable		2013

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Wyoming	Film Industry Financial Incentive 2007	The program provides production companies with a rebate between 12 and 15% of expenditures. Full 15% is provided if the storyline is set in Wyoming; up to 14% highlighting Wyoming locations; up to 13% using Wyoming props and product placement.	The production company must spend at least $200,000	Rebate	The appropriation shall be $1 million a year which may be rolled over.	2016

Sources: Thomson Reuters Checkpoint; state statutes; state websites; http://www.sagaftra.org/state-film-incentives; Film Production Capital U.S. Tax Incentive Info http://www.filmproductioncapital.com/taxincentive.html.