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# BOND ACTION MEMO

## Tax Law

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June 2013

### The Tax-Free NY Program

On June 7, 2013, Governor Cuomo introduced a bill creating a new economic incentive program known as the “Tax-Free NY Program” (the “Bill”). This is New York’s first attempt at comprehensive legislation intended to spur economic growth since the Empire Zone Program, which has often been the subject of public criticism and scorn. Chiefly through lobbying and provincial efforts, the Empire Zone Program evolved “from a laser aimed at economically distressed communities into a shotgun blast of opportunity for businesses across New York State.”<sup>1</sup> In contrast to the Empire Zone Program’s “laser” focus on distressed communities, the Tax-Free NY Program will focus on actual lasers and other advanced technologies.

Over the past several weeks, Governor Cuomo argued that New York’s economic policies are not competitive enough, and that they neither attract business to the state nor retain graduates from academic institutions in New York. The Tax-Free NY Program is intended to allow businesses to start up and remain tax-free in New York State for ten years, dependent on their relationship and proximity to colleges and/or universities in New York State. The new initiative is inspired by the economic success of the College of Nanoscale Science and Engineering which partnered with SUNY Albany. The result is a proposed Article 21 to New York’s Economic Development Law, and amendments to New York’s Tax Law and Education Law.

The following is a summary of the terms of the Bill and of how the Tax-Free NY Program would operate if the Bill is approved in its current form:

#### The Tax Benefits

Eligible businesses that open within designated tax-free communities proximate to an eligible university, college or other institution designated in the Bill (“Eligible Institution”) will be exempt from New York taxes, including sales, property, business and corporate taxes, and franchise fees, and their employees will be exempt from state and local income taxes. The exemptions for businesses will last ten years. Employees of businesses are exempt for five years, followed by another five years so long as their income remains below a specified threshold.

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<sup>1</sup> A.T. Kearney, *Delivering on the Promise of New York State: A Strategy for Economic Growth & Revitalization*, 2007, p. 27.



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In order to enable participating business to attain the tax benefits offered by the Tax-Free NY Program, an Eligible Institution must submit to the Commissioner of Economic Development (the "Commissioner") an application to sponsor a Tax-Free NY area, including a plan detailing how vacant space would be used in the Tax-Free NY Program. Eligible Institutions that are selected to sponsor a Tax-Free NY area ("Sponsoring Institutions") must then solicit eligible businesses to use the Tax-Free NY area and eligible businesses must in turn submit applications detailing that they will use the space in the manner designated by the Sponsoring Institution, and that they will meet the eligibility criteria of the Tax-Free NY Program.

### Eligible Institutions

The Bill distinguishes between private and public Eligible Institutions in setting forth eligibility requirements.

**Public Institutions.** All state universities and community colleges ("SUNYs") are eligible to sponsor a Tax-Free NY area except for: (1) SUNYs that are Empire State campuses; (2) campus and properties of Downstate Medical Centers in Nassau, Suffolk and Westchester counties and New York City unless that property constitutes a New York State business incubator; (3) property of the College of Optometry or Maritime College in Nassau, Suffolk and Westchester counties and New York City; and (4) property located in Nassau, Suffolk and Westchester Counties of a community college that has its main campus located in New York City. However, the Saratoga Springs Empire State College campus is eligible to participate in the Tax-Free NY Program. Further, five of the City University of New York ("CUNY") campuses, one for each borough of New York City, are potentially eligible, with the Eligible Institution chosen by the CUNY Board of Trustees based on the CUNY school's location in the area with the highest poverty rate.

Public Eligible Institutions are not subject to an aggregate limitation as to the amount of space that can be used for Tax-Free NY areas, and each public Eligible Institution is free to sponsor a Tax-Free NY area on any vacant space in a campus building or on campus land, and up to 200,000 square feet of vacant land or vacant building space owned or leased by the Eligible Institution and located within a mile of the campus. Public Eligible Institutions can also apply to the Commissioner for a determination that land or building space outside the one-mile radius is eligible for the program.

**Private Institutions.** All private Eligible Institutions located in New York are eligible to sponsor a Tax-Free NY area; provided that no space can be located in Nassau, Suffolk or Westchester counties or in New York City, **and only an aggregate of three million square feet will be allowed for all private Eligible Institutions under the Tax-Free NY program.** This space may include any vacant space in a campus building or on campus land, and any vacant land or vacant building space owned or leased by the private Eligible Institution that is located within a mile of the campus; provided that an Eligible Institution cannot create vacant space by eliminating or re-locating an existing program. The Bill requires the distribution of the three million square feet of land to be managed in a way designed to ensure regional balance among eligible areas in the state.

### Eligible Institution Application Process

The President or Chief Executive of an Eligible Institution that would like to sponsor a Tax-Free NY area must submit a plan to the Commissioner that: (1) specifies the land or space the Eligible Institution wants to include in the Tax-Free NY area; (2) describes the types of businesses that may locate in that space; (3) explains how those businesses align with and further the academic mission

of the Eligible Institution; (4) explains how participation by those types of businesses would have positive community and economic benefits; and (5) describes the process the Eligible Institution will follow in selecting the businesses. Further, an Eligible Institution must consult with the municipality where space is located prior to including land or buildings that lie outside of its campus boundaries in its application to the Commissioner.

Plans submitted by public Eligible Institutions are subject to approval of the Commissioner, while plans submitted by private Eligible Institutions are subject to approval of the Tax-Free NY approval board (the "Board"), which will examine the merits of the plans and approve or reject each plan by majority vote. The Board is a three-member board with the Governor, the speaker of the Assembly and the temporary president of the Senate each appointing a member. Although the Bill provides that the Board will not give preference to a plan based on the time of its submission, the Commissioner must stop accepting applications for approval of tax-free areas when the three million square foot mark is reached. As a result, timely submission will be critical. The Bill does provide that the Board will give preference to Eligible Institutions affiliated with New York state incubators and to Eligible Institutions that include underutilized properties within their proposed tax-free areas.

In addition to the Tax-Free NY areas designated by Eligible Institutions, the Board will designate up to twenty strategic state assets as Tax-Free NY areas. Those assets will be affiliated with SUNYs and will require support of the affiliated Eligible Institution.

### **Eligibility Criteria and Application for Businesses**

An Eligible Institution that receives approval to sponsor a Tax-Free NY area, and becomes a Sponsoring Institution, may begin soliciting and accepting applications from businesses interested in operating in the Tax-Free NY area ("Applicant Businesses"). The Sponsoring Institution will provide Applicant Businesses with an application in a form prescribed by the Commissioner containing the information the Commissioner determines is necessary to evaluate the application.

To qualify as an eligible business, an Applicant Business must demonstrate that in its first year it will create new jobs. It must then maintain the new jobs after its first year of operation. Furthermore, in years subsequent to the first year of operation, an Applicant Business must show that the Applicant Business's average number of employees equal or exceed the sum of: (1) the average number of employees of the Applicant Business and its related persons in New York for the year immediately preceding the year during which the application was submitted; and (2) the net new jobs of the Applicant Business in a Tax-Free NY area during that year.

An Applicant Business must be new to New York State. It cannot be engaged in a line of business that it or a related entity conducted in New York State in the last five years. If an Applicant Business operated in New York State at a previous point in time, the Commissioner can make an exception if the Applicant Business can demonstrate that the Applicant Business can substantially restore the jobs it had previously moved out of state. An Applicant Business can participate in the Tax-Free NY program if it is an existing New York State business that expands its operations into a tax-free area, subject to the Commissioner's determination that the business will create new jobs and will not eliminate or move existing jobs. Further, existing businesses that completed residency in a New York State business incubator may qualify for the program subject to the approval of the Commissioner even if they are not new businesses.

An application submitted by an Applicant Business must include: (1) the name, address and employer identification number of the Applicant Business; (2) a description of land or space the Applicant Business will use; (3) the terms of the lease agreement between the Sponsoring Institution and the Applicant Business; (4) a certification by the Applicant Business that it meets the eligibility criteria for participation in the program; (5) a statement as to whether the Applicant Business competes with businesses in the same community but outside the Tax-Free NY area; and (6) a description of how the Applicant Business plans to recruit employees from the local workforce.

Further, the Applicant Business must agree to share tax, employee and related party information with the Department of Economic Development (the “Department”) and to provide the Department and the Sponsoring Institution access to any books or records needed to monitor compliance with the Tax-Free NY Program. Applications will include performance benchmarks for the new jobs and consequences for failure to meet those benchmarks.

Applications submitted to Sponsoring Institutions will be reviewed by the Commissioner within 60 days and may be rejected if the Applicant Business: (1) does not meet eligibility criteria; (2) has not complied with requirements of the application; or (3) has failed to demonstrate that its participation will have positive community and economic benefits. If an application is not rejected within 60 days, the Applicant Business will be deemed to have been accepted to the Tax-Free NY Program. Acceptance forms and notifications of acceptance will be provided by the Sponsoring Institution.

## Next Steps

Although the Bill was only recently introduced by the Governor, public and private universities and colleges in New York should be aware of its provisions and how to comply with its application requirements, in order to be prepared if/when the Bill is approved. Developing a plan and demonstrating how sponsoring a Tax-Free NY area will align with and promote an institution’s educational activities will be essential if an institution seeks to participate in the program. ***It is especially important for private universities and colleges to get an early start, because the amount of space that can be approved for use by these organizations is limited.*** For more information contact the persons listed below:

**Frank J. Patyi**

Chair, Exempt Organizations Practice Group  
(315) 218-8164  
fpaty@bsk.com

**Paul W. Reichel**

Co-Chair, Tax Practice Group  
(315) 218-8135  
preichel@bsk.com

**Scott R. Leuenberger**

Associate  
(315) 218-8393  
sleuenberger@bsk.com