

BUSINESS AND TRANSACTIONS INFORMATION MEMO

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New York's COVID-19 Capital Costs Tax Credit Program Will Provide Relief for Small Businesses

On April 9, 2022 Gov. Kathy Hochul announced New York State's Fiscal Year 2023 budget which included a \$250 million "COVID-19 Capital Costs Tax Credit Program" (the Program). The Program aims to help support small businesses that incurred additional costs and health-related expenses as a result of the COVID-19 pandemic. The Program provides eligible small businesses the opportunity to apply for a tax credit covering 50% of its "qualified COVID-19 capital costs" incurred between Jan. 1, 2021 through Dec. 31, 2022 and paid by March 31, 2023, up to a maximum tax credit of \$25,000. These tax credits will be awarded on a first-come-first-served basis until the Program funds are depleted.

"Qualified COVID-19 capital costs" are defined as costs incurred to comply with public health or other emergency orders or regulations related to the COVID-19 pandemic, or to generally increase safety through infectious disease mitigation, and may include:

- Supplies to disinfect and protect against COVID-19 transmission;
- Restocking perishable goods to replace those lost due to COVID-19;
- Physical barriers and sneeze guards;
- Hand sanitizer stations;
- Respiratory devices such as air purifier systems installed at the business entity's location;
- Signage related to COVID-19 (e.g., vaccine requirements, social distancing, etc.);
- Materials used to define and/or protect space (e.g., barriers);
- Materials needed to block off certain seats to allow for social distancing;
- Certain point of sale (POS) payment equipment to allow for contactless payment;
- Equipment and/or materials and supplies for new product lines in response to the COVID-19 pandemic;
- Software for online payment platforms to enable delivery or contactless purchases;
- Building construction and retrofits to accommodate social distancing and installation of air purifying equipment, but not for costs for non-COVID-19 pandemic related capital renovations or general "closed for renovations" upgrades;
- Machinery and equipment to accommodate contactless sales;
- Expenses made to support employees working remotely;

- Materials to accommodate increased outdoor activity such as heat lamps, outdoor lighting, and materials related to outdoor space expansions; and
- Other costs as determined by the department to be eligible.

In order to claim this tax credit, small businesses must:

- Be a sole proprietor, partnership, LLC or a corporation with a federal employer identification number (FEIN);
- Operate a location in New York;
- Be independently managed and control the day-to-day operations of its own business through its ownership and management;
- Not be publicly-traded or 5% or more owned by a publicly-traded entity;
- Have \$2.5 million or less in gross receipts during the taxable year ending Dec. 31, 2021;
- Have fewer than 100 [full-time equivalents \(FTEs\)](#);
- Have at least \$2,000 in qualifying COVID-19 capital costs;
- Be in substantial compliance with any public health or other emergency orders or regulations related to the entity's business sector; and
- Not owe past due state taxes or local property taxes unless it is making payments and complying with an approved binding payment agreement.

Businesses that received assistance through the U.S. Small Business Administration Payroll Protection Program (PPP), Economic Injury Disaster Loan program (EIDL), Restaurant Revitalization Fund (RRF), New York Forward Loan program or COVID-19 Pandemic Small Business Recovery grant program are still eligible to apply for this tax credit. However, if any proceeds from the COVID-19 Pandemic Small Business Recovery grant program were used to pay for certain COVID-19 expenses, those expenses will not qualify for the Program.

Businesses will first be [screened for eligibility](#) by Empire State Development (ESD). After being notified of eligibility and that the application portal is open, eligible businesses must submit an application containing:

- Evidence of their eligibility;
- Proof of expenses for any expense over \$1,000 (original invoice or photocopy of the original invoice or some other record identifying the qualifying expenses paid);
- An agreement allowing the New York State Department of Taxation and Finance to share the business' tax information with the Department and to access the business' books and records to monitor compliance;
- A certification that it is in substantial compliance with all emergency orders or public health regulations currently required of such entity, and local and state tax laws; and

- A certification that it did not include any cost paid for with other COVID-19 grant funds as determined by the commissioner in its application for a tax credit under the COVID-19 capital costs tax credit program.

To claim the tax credit on a 2022 tax return, businesses must receive a tax credit certificate from ESD on or before Dec. 31, 2022. Eligible businesses must submit their certificate to the New York State Department of Taxation and Finance when filing their 2022 tax return. Any tax credits issued on or after Jan. 1, 2023 cannot be claimed until a business's 2023 tax return.

If you have any questions about any of the information provided above, please contact [Jeffrey B. Scheer](#), [Dustin M. Dorsino](#) or the Bond attorney with whom you are regularly in contact.

