

1 RELATED PERSONS AS PROVIDED IN SECTION FOUR HUNDRED THIRTY-ONE OF THIS
2 ARTICLE;

3 2. THE PROJECT IS ECONOMICALLY SOUND AND WILL BENEFIT THE PEOPLE OF
4 NEW YORK BY INCREASING OPPORTUNITIES FOR EMPLOYMENT AND BY STRENGTHENING
5 NEW YORK'S ECONOMY; AND

6 3. THE DEPARTMENT DETERMINES THAT THE RECEIPT OF THE BUSINESS EMPLOY-
7 MENT INCENTIVE GRANT WILL BE A MATERIAL FACTOR IN THE BUSINESS' DECISION
8 TO GO FORWARD WITH THE PROJECT.

9 S 431. PROJECT REQUIREMENTS. 1. A BUSINESS MAY APPLY TO THE DEPARTMENT
10 FOR A GRANT FOR ANY PROJECT WHICH:

11 (A) WILL CREATE AT LEAST SEVENTY-FIVE ELIGIBLE POSITIONS IN THE BASE
12 YEARS; OR

13 (B) WILL CREATE AT LEAST TWENTY-FIVE ELIGIBLE POSITIONS IN A TARGETED
14 AREA IN THE BASE YEARS.

15 2. IN THE CASE WHERE A BUSINESS IS A LANDLORD, THE BUSINESS MAY APPLY
16 TO THE DEPARTMENT FOR A GRANT FOR ANY PROJECT IN WHICH:

17 (A)(I) AT LEAST SEVENTY-FIVE ELIGIBLE POSITIONS ARE CREATED IN THE
18 BASE YEARS; OR

19 (II) AT LEAST TWENTY-FIVE ELIGIBLE POSITIONS ARE CREATED IN A TARGETED
20 AREA IN THE BASE YEARS; AND

21 (B) THE TENANTS OR PROPOSED TENANTS HAVE AGREED TO ASSIGN TO THE LAND-
22 LORD ANY CLAIM OF RIGHT THAT THEY MAY HAVE TO A GRANT PROVIDED BY THIS
23 ARTICLE; AND

24 (C) THE TENANT OR PROPOSED TENANTS HAVE AGREED TO COOPERATE WITH THE
25 LANDLORD BY ANNUALLY PROVIDING TO THE DEPARTMENT THE NUMBER OF NEW
26 EMPLOYEES IN ELIGIBLE POSITIONS, THE WITHHOLDINGS AND ANY OTHER INFORMA-
27 TION WHICH MAY BE REQUIRED BY THE DEPARTMENT.

28 3. A PROJECT WHICH CONSISTS SOLELY OF POINT-OF-FINAL-PURCHASE RETAIL
29 FACILITIES SHALL NOT BE ELIGIBLE FOR A GRANT UNDER THIS ARTICLE. IF A
30 PROJECT CONSISTS OF BOTH POINT-OF-FINAL-PURCHASE RETAIL FACILITIES AND
31 NON-RETAIL FACILITIES, ONLY THE PORTION OF THE PROJECT CONSISTING OF
32 NON-RETAIL FACILITIES SHALL BE ELIGIBLE FOR A GRANT, AND ONLY THE WITH-
33 HOLDINGS FROM NEW EMPLOYEES WHICH ARE EMPLOYED IN THE PORTION OF THE
34 PROJECT WHICH REPRESENTS NON-RETAIL FACILITIES SHALL BE USED TO DETER-
35 MINE THE AMOUNT OF THE GRANT. IF A WAREHOUSE FACILITY IS PART OF A
36 POINT-OF-FINAL-PURCHASE RETAIL FACILITY AND SUPPLIES ONLY THAT FACILITY,
37 THE WAREHOUSE FACILITY SHALL NOT BE ELIGIBLE FOR A GRANT. FOR THE
38 PURPOSES OF THIS ARTICLE, CATALOG DISTRIBUTION CENTERS SHALL NOT BE
39 CONSIDERED POINT-OF-FINAL-PURCHASE RETAIL FACILITIES.

40 S 432. GRANT APPLICATION. 1. A BUSINESS SHALL APPLY TO THE DEPARTMENT
41 FOR A GRANT ON A FORM PRESCRIBED BY THE DEPARTMENT WHICH SHALL INCLUDE:

42 (A) THE NAME OF THE BUSINESS, THE PROPOSED LOCATION OF THE PROJECT,
43 AND THE TYPE OF ACTIVITY WHICH WILL BE ENGAGED IN AT THE PROJECT SITE;

44 (B) THE NAMES AND ADDRESSES OF THE PRINCIPALS OR MANAGEMENT OF THE
45 BUSINESS, AND THE NATURE OF THE FORM OF BUSINESS ORGANIZATION UNDER
46 WHICH IT IS OPERATED;

47 (C) THE MOST RECENT FINANCIAL STATEMENT OF THE BUSINESS;

48 (D) THE NUMBER OF ELIGIBLE POSITIONS PROPOSED TO BE CREATED DURING THE
49 BASE YEARS AND THEREAFTER; AND

50 (E) AN ESTIMATE OF THE TOTAL WITHHOLDINGS.

51 2. A COOPERATIVE ASSOCIATION MAY APPLY, IN ONE CONSOLIDATED APPLICA-
52 TION IN A FORM AND MANNER DETERMINED BY THE DEPARTMENT, FOR A GRANT ON
53 ITS OWN BEHALF AS A BUSINESS AND FOR GRANTS ON BEHALF OF THE MEMBERS OF
54 THE ASSOCIATION WHO MAY QUALIFY UNDER THIS ARTICLE.

55 3. IF A COOPERATIVE ASSOCIATION IS APPLYING FOR GRANTS ON BEHALF OF
56 ITS MEMBERS, THE MEMBERS FOR WHOM THE APPLICATION IS SUBMITTED SHALL

1 ASSIGN TO THE ASSOCIATION ANY CLAIM OF RIGHT THE MEMBERS MAY HAVE UNDER
2 THIS ARTICLE TO APPLY FOR GRANTS INDIVIDUALLY DURING THE TERM OF THE
3 BUSINESS EMPLOYMENT INCENTIVE AGREEMENT, AND AGREE TO COOPERATE WITH THE
4 ASSOCIATION IN PROVIDING TO THE DEPARTMENT ALL THE INFORMATION REQUIRED
5 FOR THE INITIAL APPLICATION, THE BUSINESS EMPLOYMENT INCENTIVE AGREE-
6 MENT, AND ANY OTHER INFORMATION THE DEPARTMENT MAY REQUIRE FOR THE
7 PURPOSES OF THIS ARTICLE. THE COOPERATIVE ASSOCIATION SHALL BE RESPONSIB-
8 BLE FOR PROVIDING TO THE DEPARTMENT ALL THE INFORMATION REQUIRED UNDER
9 THIS ARTICLE.

10 4. IF A COOPERATIVE ASSOCIATION APPLIES FOR A GRANT ON BEHALF OF ITS
11 MEMBERS, THE MEMBERS INCLUDED IN THE APPLICATION MAY BE PERMITTED TO
12 MEET THE QUALIFICATIONS FOR A GRANT COLLECTIVELY BY PARTICIPATING IN A
13 PROJECT THAT WILL MEET THE REQUIREMENTS OF SECTIONS FOUR HUNDRED THIRTY
14 AND FOUR HUNDRED THIRTY-ONE OF THIS ARTICLE, THE AMOUNT OF A GRANT SHALL
15 BE CALCULATED UNDER THE TERMS OF THIS ARTICLE AS IF THE MEMBERS ARE ALL
16 COLLECTIVELY ONE BUSINESS ENTITY, AND ANY RESTRICTIONS ON THE QUALIFICA-
17 TION FOR A GRANT SHALL APPLY TO EACH MEMBER WHO IS LISTED IN THE APPLI-
18 CATION AS PARTICIPATING IN THE PROJECT. THE GRANTS AWARDED SHALL BE PAID
19 TO THE COOPERATIVE ASSOCIATION. A GRANT RECEIVED UNDER THIS ARTICLE BY A
20 COOPERATIVE ASSOCIATION MAY BE APPORTIONED TO THE MEMBERS OF THE ASSOCI-
21 ATION IN A MANNER DETERMINED BY THE ASSOCIATION. EACH MEMBER INCLUDED IN
22 THE APPLICATION SHALL BE REQUIRED TO SIGN THE BUSINESS EMPLOYMENT INCEN-
23 TIVE AGREEMENT AND SHALL ABIDE BY ITS TERMS.

24 5. (A) THE AMOUNT OF THE EMPLOYMENT INCENTIVE AWARDED AS A GRANT IN
25 EACH CASE SHALL BE NOT LESS THAN TEN PERCENT AND NOT MORE THAN EIGHTY
26 PERCENT OF THE WITHHOLDINGS OF THE BUSINESS, OR NOT LESS THAN TEN
27 PERCENT AND NOT MORE THAN FIFTY PERCENT OF THE ESTIMATED TAX OF PARTNERS
28 OF AN ELIGIBLE PARTNERSHIP WHETHER PAID DIRECTLY BY THE PARTNER OR BY
29 THE ELIGIBLE PARTNERSHIP ON BEHALF OF SUCH PARTNER'S ACCOUNT, OR ANY
30 COMBINATION THEREOF, AND SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS
31 FOUR HUNDRED THIRTY-SIX AND FOUR HUNDRED THIRTY-SEVEN OF THIS ARTICLE.
32 THE EMPLOYMENT INCENTIVE SHALL BE BASED ON CRITERIA DEVELOPED BY THE
33 DEPARTMENT AFTER CONSIDERING THE FOLLOWING:

34 (I) THE NUMBER OF ELIGIBLE POSITIONS TO BE CREATED;
35 (II) THE EXPECTED DURATION OF THOSE POSITIONS;
36 (III) THE TYPE OF CONTRIBUTION THE BUSINESS CAN MAKE TO THE LONG-TERM
37 GROWTH OF THE STATE'S ECONOMY;

38 (IV) THE AMOUNT OF OTHER FINANCIAL ASSISTANCE THE BUSINESS WILL
39 RECEIVE FROM THE STATE FOR THE PROJECT; AND

40 (V) THE TOTAL DOLLAR INVESTMENT THE BUSINESS IS MAKING IN THE PROJECT.

41 (B) THE TERM OF THE GRANT SHALL NOT EXCEED TEN YEARS.

42 (C) AT THE DISCRETION OF THE DEPARTMENT, THE GRANT MAY APPLY ONLY TO
43 NEW EMPLOYEES OR PARTNERS IN ELIGIBLE POSITIONS CREATED DURING THE BASE
44 YEARS, OR TO ADDITIONAL NEW EMPLOYEES OR PARTNERS IN ELIGIBLE POSITIONS
45 CREATED DURING THE REMAINDER OF THE TERM OF THE GRANT.

46 S 433. INCENTIVE AGREEMENT. THE BUSINESS EMPLOYMENT INCENTIVE AGREE-
47 MENT SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO, THE FOLLOWING:

48 1. A DETAILED DESCRIPTION OF THE PROPOSED PROJECT WHICH WILL RESULT IN
49 JOB CREATION, AND THE NUMBER OF NEW EMPLOYEES TO BE HIRED IN THE BASE
50 YEARS;

51 2. THE TERM OF THE GRANT, AND THE FIRST YEAR FOR WHICH THE GRANT MAY
52 BE CLAIMED;

53 3. THE NEW EMPLOYEES WHOSE POSITIONS ARE SUBJECTS OF THE GRANT, PURSU-
54 ANT TO PARAGRAPH (C) OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED THIR-
55 TY-TWO OF THIS ARTICLE;

1 4. A REQUIREMENT THAT THE APPLICANT MAINTAIN THE PROJECT AT A LOCATION
2 IN NEW YORK FOR AT LEAST ONE AND A HALF TIMES THE NUMBER OF YEARS OF THE
3 TERM OF THE GRANT, WITH AT LEAST THE NUMBER OF ELIGIBLE POSITIONS AS
4 REQUIRED BY SECTION FOUR HUNDRED THIRTY-ONE OF THIS ARTICLE;

5 5. THE EMPLOYMENT INCENTIVE, AS DETERMINED PURSUANT TO PARAGRAPH (A)
6 OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED THIRTY-TWO OF THIS ARTICLE;

7 6. A METHOD FOR DETERMINING THE NUMBER OF NEW EMPLOYEES WHO ARE
8 EMPLOYED DURING A GRANT YEAR;

9 7. A METHOD FOR THE BUSINESS TO REPORT ANNUALLY TO THE DEPARTMENT THE
10 NUMBER OF NEW EMPLOYEES FOR WHICH THE GRANT IS TO BE MADE;

11 8. A REQUIREMENT THAT THE BUSINESS REPORT TO THE DEPARTMENT ANNUALLY
12 THE AGGREGATE AMOUNT OF WITHHOLDINGS DURING THE GRANT YEAR;

13 9. A PROVISION PERMITTING AN AUDIT OF THE PAYROLL RECORDS OF THE BUSI-
14 NESS BY THE DEPARTMENT FROM TIME TO TIME, AS THE DEPARTMENT DEEMS NECES-
15 SARY;

16 10. A PROVISION WHICH PERMITS THE DEPARTMENT TO AMEND AN AGREEMENT
17 PURSUANT TO SECTION FOUR HUNDRED THIRTY-FIVE OF THIS ARTICLE;

18 11. A PROVISION WHICH REQUIRES THE BUSINESS TO MAINTAIN OPERATIONS AT
19 THE PROJECT LOCATION OR ANOTHER LOCATION APPROVED BY THE DEPARTMENT FOR
20 AT LEAST ONE AND A HALF TIMES THE TERM OF THE GRANT, AND A PROVISION TO
21 PERMIT THE DEPARTMENT TO RECAPTURE ALL OR PART OF THE GRANT AT ITS
22 DISCRETION IF THE BUSINESS DOES NOT REMAIN AT THE SITE FOR THE REQUIRED
23 TERM; AND

24 12. A PROVISION ESTABLISHING THE CONDITIONS UNDER WHICH THE GRANT
25 AGREEMENT MAY BE TERMINATED AND GRANT FUNDS RECAPTURED BY THE DEPART-
26 MENT.

27 S 434. SUBMISSION OF NEW YORK TAX RETURN, OTHER INFORMATION; AUDIT. 1.
28 NO LATER THAN FEBRUARY FIRST OF EACH YEAR, FOR THE PRECEDING GRANT YEAR,
29 EVERY BUSINESS WHICH IS AWARDED A GRANT UNDER THIS ARTICLE SHALL SUBMIT
30 TO THE DEPARTMENT A COPY OF ITS APPLICABLE NEW YORK TAX RETURN SHOWING
31 BUSINESS INCOME AND WITHHOLDINGS AS A CONDITION OF ITS CONTINUATION IN
32 THE GRANT PROGRAM, TOGETHER WITH AN ANNUAL PAYROLL REPORT SHOWING (A)
33 THE ELIGIBLE POSITIONS WHICH ARE CREATED DURING THE BASE YEARS AND (B)
34 THE NEW ELIGIBLE POSITIONS CREATED DURING EACH SUBSEQUENT YEAR OF THE
35 GRANT.

36 2. THE DEPARTMENT MAY REQUIRE BY REGULATION ANY INFORMATION WHICH IT
37 DEEMS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS ARTICLE.

38 3. THE DEPARTMENT MAY CAUSE AN AUDIT OF ANY BUSINESS RECEIVING A GRANT
39 TO BE CONDUCTED AT ANY TIME.

40 S 435. FAILURE OF BUSINESS TO COMPLY, CIRCUMSTANCES. 1. IF THE BUSI-
41 NESS RECEIVING A GRANT FAILS TO MEET OR COMPLY WITH ANY CONDITION OR
42 REQUIREMENT SET FORTH IN A GRANT AGREEMENT OR IN RULES AND REGULATIONS
43 OF THE DEPARTMENT, THE DEPARTMENT MAY AMEND THE AGREEMENT TO REDUCE THE
44 AMOUNT OF THE EMPLOYMENT INCENTIVE OR THE TERM OF THE GRANT AGREEMENT.
45 THE REDUCTION OF THE EMPLOYMENT INCENTIVE SHALL BE APPLICABLE TO THE
46 GRANT YEAR IMMEDIATELY FOLLOWING THE GRANT YEAR IN WHICH THE DEPARTMENT
47 AMENDS THE AGREEMENT.

48 2. IF A BUSINESS FAILS TO MAINTAIN EMPLOYMENT AT THE LEVELS STIPULATED
49 IN THE AGREEMENT OR OTHERWISE FAILS TO COMPLY WITH ANY CONDITION OF THE
50 GRANT AGREEMENT FOR ANY TWO CONSECUTIVE YEARS, THE DEPARTMENT MAY TERMI-
51 NATE THE AGREEMENT.

52 S 436. DISBURSEMENT CONDITIONS. NO AMOUNT SHALL BE DISBURSED TO A
53 RECIPIENT BUSINESS AS A GRANT UNDER THIS ARTICLE IN ANY YEAR UNTIL THE
54 STATE COMPTROLLER HAS CERTIFIED THAT THE AMOUNT OF WITHHOLDINGS OR ESTI-
55 MATED TAXES OF PARTNERS, OR ANY COMBINATION THEREOF, RECEIVED IN THAT

1 YEAR FROM THE BUSINESS OR THE PARTNERS OF THE BUSINESS EQUALS OR EXCEEDS
2 THE AMOUNT OF THE GRANT.

3 S 437. GRANT LIMITATIONS. A BUSINESS THAT IS RECEIVING ANY OTHER GRANT
4 BY OPERATION OF STATE LAW SHALL NOT RECEIVE AN AMOUNT AS A GRANT PURSU-
5 ANT TO THIS ARTICLE WHICH, WHEN COMBINED WITH SUCH OTHER GRANTS, EXCEEDS
6 THE TOTAL OF EIGHTY PERCENT OF ITS WITHHOLDINGS OR FIFTY PERCENT OF THE
7 ESTIMATED TAX, OR ANY COMBINATION THEREOF PAID, EXCEPT UPON THE APPROVAL
8 OF THE STATE COMPTROLLER.

9 S 438. IMPLEMENTATION, STUDY. THE DEPARTMENT SHALL CONDUCT A STUDY TO
10 DETERMINE THE MINIMUM FUNDING LEVEL REQUIRED TO IMPLEMENT THE BUSINESS
11 EMPLOYMENT INCENTIVE PROGRAM SUCCESSFULLY. MAJOR CONSIDERATION SHALL BE
12 GIVEN TO THE RATE OF RETURN FOR EACH JOB CREATED AS A RESULT OF BUSI-
13 NESS EMPLOYMENT INCENTIVE GRANTS.

14 S 439. FEES. THE DEPARTMENT SHALL ESTABLISH AN APPLICATION FEE FOR A
15 GRANT APPLICATION AND SERVICE FEES PAYABLE BY EACH BUSINESS WHICH IS A
16 GRANT RECIPIENT TO PAY THE COSTS OF THE ADMINISTRATION OF THE PROGRAM.

17 S 440. RULES. THE DEPARTMENT SHALL ADOPT RULES NECESSARY TO IMPLEMENT
18 THE PROVISIONS OF THE BUSINESS EMPLOYMENT INCENTIVE PROGRAM NOT RELATED
19 TO THE COLLECTION OR DETERMINATION OF TAXES AND TAX WITHHOLDING. THE
20 RULES SHALL PROVIDE FOR THE RECIPIENTS OF BUSINESS EMPLOYMENT INCENTIVE
21 GRANTS TO BE CHARGED AN INITIAL APPLICATION FEE, AND ONGOING SERVICE
22 FEES, TO COVER THE ADMINISTRATIVE COSTS RELATED TO THE PROGRAM. THE
23 RULES ALSO SHALL INCLUDE THE PROCEDURES TO CLARIFY THE APPLICATION OF
24 THE VARIOUS PROVISIONS OF THIS ARTICLE TO COOPERATIVE ASSOCIATIONS THAT
25 SUBMIT APPLICATIONS ON BEHALF OF THEIR MEMBERS.

26 S 441. ANNUAL REPORT. THE DEPARTMENT SHALL SUBMIT A REPORT ON THE
27 BUSINESS EMPLOYMENT INCENTIVE PROGRAM TO THE GOVERNOR, TEMPORARY PRESI-
28 DENT OF THE SENATE, AND SPEAKER OF THE ASSEMBLY ON OR BEFORE OCTOBER
29 THIRTY-FIRST OF EACH YEAR. THE REPORT SHALL INCLUDE INFORMATION ON THE
30 NUMBER OF AGREEMENTS ENTERED INTO DURING THE PRECEDING FISCAL YEAR, A
31 DESCRIPTION OF THE PROJECT UNDER EACH AGREEMENT, THE NUMBER OF JOBS
32 CREATED, NEW INCOME TAX REVENUE RECEIVED FROM WITHHOLDINGS, AMOUNTS
33 AWARDED AS GRANTS AND AN UPDATE ON THE STATUS OF PROJECTS UNDER AGREE-
34 MENT BEFORE THE PRECEDING FISCAL YEAR. AFTER THE PROGRAM'S FIFTH YEAR,
35 THE DEPARTMENT, IN CONJUNCTION WITH THE STATE COMPTROLLER, SHALL ASSESS
36 THE EFFECTIVENESS OF THE PROGRAM IN CREATING NEW JOBS IN NEW YORK AND
37 THE IMPACT ON STATE REVENUES.

38 S 2. This act shall take effect on the first of January next succeed-
39 ing the date on which it shall have become a law.