

Date Issued: April 3, 2007  
Georgia Letter Ruling: LR IT-2007-01  
Topic: Childcare Tax Credit

This letter is in response to your letter, dated March 19, 2007, requesting a ruling that Taxpayer qualifies for tax credits in O.C.G.A. § 48-7-40.6 in calendar year 2006 for purposes of claiming the credit on its 2006 tax return.

**Facts:**

Taxpayer formed a wholly owned limited liability company, LLC in early 2006 in order to operate facility, an employer-provided child care facility. The facility was to operate in space rented at address. Taxpayer began renting the facility in March 2006, contemporaneously with moving its Atlanta operations to address.

In order to comply with its goal of opening for business in late November or early December, Taxpayer fully completed construction of the facility in November 2006. Also in November 2006, a well attended parent information meeting was held, parent/caregiver tours were conducted, and commitment checks were received. Subsequent to the informational meeting, in November 2006, the state of Georgia licensing representative was contacted.

On December 7, 2006, a Temporary Certificate of Occupancy was issued. On December 11, 2006 the Verification of Zoning Classification was issued and on December 14, 2006 the Fire Inspection was completed. Staff employees reported for work on December 15, 2006. By December 18, 2006, the classrooms were configured, the staff was trained, and all furniture and equipment had been received.

The Certificate of Occupancy was issued on December 22, 2006, but the licensing representative could not grant final approval for the Center until she returned to her office during the first week of January, 2007. On January 5, 2007, the licensing representative visited the Center and approved all licensure requirements on that date. The Center received its first clients on Monday, January 8, 2007.

Because of the above described facts, you have requested a ruling that Taxpayer “be deemed to have satisfied the licensure requirement for its child care facility in calendar year 2006 for purposes of eligibility to claim on its 2006 tax return both the child care facility operating cost credit under Georgia Code Section 48-7-40.6(b) and the qualified child care property credit under Georgia Code Section 48-7-40.6(d), notwithstanding that the license was not formally granted until January 5, 2007 due to ‘circumstances beyond the control’ of the Taxpayer (i.e., the temporary absence from work of the individual responsible for granting the license).”

**Code Authority:**

Georgia Code § 48-7-40.6 (b) provides that:

“A tax credit against the tax imposed under this article shall be granted to an employer who provides or sponsors child care for employees. . .”

Georgia Code § 48-7-40.6 (d) provides that:

“In addition to the tax credit provided under subsection (b) of this Code section, a taxpayer shall be allowed a credit against the tax imposed under this article for the taxable year in which the taxpayer first places in service qualified child care property. . .”

Revenue Regulation 560-7-8-.38(2)(c) specifically states when the cost of operation tax credit may be claimed:

“The cost of operation tax credit may be claimed in the same taxable year in which the cost of operation is incurred. . .”

Revenue Regulation 560-7-8-.38 (3)(b) provides when the tax credit for cost of qualified child care property may be claimed:

“The credit may be claimed in the same year in which the qualified child care property is acquired or placed in service. . .”

Georgia Code § 48-7-40.6(a)(1) provides that:

“‘Cost of operation’ means reasonable direct operational costs incurred by an employer as a result of providing employer provided or employer sponsored child care facilities...”

Georgia Code § 48-7-40.6(a)(3) provides that:

“‘Employer provided’ refers to child care offered on the premises of the employer.”

Georgia Code § 48-7-40.6 (a)(6) provides that:

“‘Qualified child care property’ means all real property and tangible personal property purchased or acquired on or after July 1, 1999, or which property is first placed in service on or after July 1, 1999, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child care facility, but only if:

(A) The facility is licensed or commissioned by the Department of Early Care and Learning pursuant to Chapter 1A of Title 20. . .”

Qualified Child Care Property is defined in Revenue Regulation 560-7-8-.38(1)(i):

“The term ‘qualified child care property’ means all real and tangible personal property purchased or acquired on or after July 1, 1999, or which property is first placed in service on or after July 1, 1999, for use exclusively in the construction, expansion, improvement, or operation of an employer provided child care facility. . . No such property shall be considered “qualified child care property” unless:

1. The facility is licensed or commissioned by the Department of Human Resources pursuant to O.C.G.A. Section 49-5-12, or approved by any successor agency having regulatory authority over child care services. . .”

Revenue Regulation 560-7-8-.38 (1)(h) provides that:

“The term ‘qualified child care facility’ means any day care center, family day care home, or group day care home as defined under O.C.G.A. Section 49-5-3 which is licensed or commissioned as a “child welfare agency” by the Georgia Department of Human Resources pursuant to O.C.G.A. Section 49-5-12, or approved by any successor agency having regulatory authority over child care services. This definition includes state regulated after school programs.”

**Ruling:**

To qualify for the cost of operation tax credit in O.C.G.A. § 48-7-40.6 (b) and the tax credit for cost of qualified child care property in O.C.G.A. § 48-7-40.6 (d) all of their respective requirements in O.C.G.A. § 48-7-40.6 and Department of Revenue Regulation 560-7-8-.38 must be satisfied. The statute and the regulation both specify that cost of operation is the reasonable direct operational costs associated with providing employer provided or employer sponsored child care. Further, the statute provides that qualified child care property is property that is licensed by the Department of Early Care and Learning pursuant to Chapter 1A of Title 20. The regulation states that qualified child care property is property licensed by the Department of Human Resources pursuant to O.C.G.A. § 49-5-12, or approved by any successor agency having regulatory authority over child care services.

Taxpayer's child care facility, facility, received its license on January 5, 2007. Taxpayer began providing child care for their employees at facility in January of 2007. Facility was not licensed or operating in 2006, therefore, Taxpayer does not qualify for the tax credit for qualified child care property or the cost of operation tax credit for tax year 12/31/2006.

Based on facts stated herein, it is the opinion of this Department that Taxpayer does not qualify for the tax credits in O.C.G.A. § 48-7-40.6, tax credits for employers providing child care, for tax year 12/31/06. This ruling is made expressly relying upon the representations which have been made in writing and which are contained in this letter.

The opinions expressed in this ruling are based upon the information contained in your request and are limited to the specific transactions and taxpayer in question. A ruling has no precedential value except to the person to whom the ruling was issued and then only for the specific transaction addressed in the ruling. Should the circumstances regarding this transaction change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes and rules upon which this advice is based may subject similar future transactions to a different tax treatment than those expressed in this response.