

Date Issued: November 30, 2010  
Georgia Letter Ruling: LR IT-2010-01  
Topic: Investment Tax Credit

This letter is in response to your letter dated March 12, 2010, that requested a ruling that Taxpayer 2 qualifies as an “existing manufacturing facility” for purposes of the tax credit in O.C.G.A. § 48-7-40.2.

### **Facts**

Your letter dated March 12, 2010, to the Department states: “Taxpayer 1 has been in the state for many years and has filed all the tax returns necessary. Taxpayer 2 was created under a Section 721 on date. The assets were not transferred though until midnight on date, so the company did not start doing business until date.

“Effective date, Taxpayer 1 transferred all fixed assets of the Georgia plant to the new legal entity Taxpayer 2. Taxpayer 2 filed a partnership return for year and will file a partnership return in Georgia for all future years. Both corporate partners will report the flow-through income from the partnership and pay tax in Georgia. Taxpayer 1 is a % owner of the new partnership, and Taxpayer 3 is a % owner. This was a straightforward Section 721 contribution of assets, with the goal to create a more efficient corporate structure.

“The Georgia facility continues to operate as before. Taxpayer 2 and its corporate partners expect to file all applicable GA returns.

“Based on the above, facts we believe that Taxpayer 2 would still be eligible for the Georgia investment tax credits. The operations have not changed, and all the personnel remain the same. Also, under Section 721, all tax attributes carry over. No credit is being claimed for property transferred in the reorganization.”

### **Issue**

Whether or not Taxpayer 2 qualifies as an “existing manufacturing facility” for purposes of O.C.G.A. § 48-7-40.2?

### **Analysis**

Georgia Code Section 48-7-40.2(b) provides in pertinent part that:

“In the case of a taxpayer which has operated for the immediately preceding three years an existing manufacturing or telecommunications facility. . . in this state. . . there shall be allowed (a credit) against the tax imposed. . .”

Georgia Code § 48-7-40.2(c)(2) provides in part that:

“The sale, merger, acquisition or bankruptcy of any taxpayer shall not create new eligibility in any succeeding taxpayer. . .”

The term “taxpayer” is described in Revenue Regulation 560-7-8-.37(3)(b):

“For the purpose of establishing eligibility, the ‘taxpayer’ referenced is the entity that is required by law to file a return or pay tax. A partnership or business joint venture must have operated within the state for the immediately preceding thirty- six months to qualify for the credit. For example, the previous activity in Georgia of a parent, in the case of a corporation, a partner, in the case of a partnership or a business joint venture will not create eligibility for a new entity for the purposes of the thirty-six month threshold.”

The criterion for establishing new eligibility is described in Revenue Regulation 560-7-8-.37(3)(d):

“The sale, merger, acquisition, or transfer in liquidation or bankruptcy of a taxpayer does not create new eligibility for any succeeding taxpayer, but any unused credits may be transferred and continued by any transferee of the taxpayer as long as the transferee meets other applicable requirements in law and regulation. ... When a taxpayer merely changes its name, recapitalizes, or liquidates subsidiaries not related to the manufacturing facility, however, no new eligibility need be established.”

### **Ruling**

This statute was intended to benefit Georgia manufacturers. The apparent purpose of the three year requirement is to prohibit a non-Georgia corporation from moving into the State, beginning its operation, and claiming manufacturing investment credits without first meeting the three year threshold. To qualify, a corporation must be physically present and operating a qualifying facility within the State for a minimum of thirty-six months prior to making a qualified investment and may not impute the presence or activities of sister or subsidiary corporations (See Rule 560-7-8.37(3)(b)). In the case of the facility in Georgia, Taxpayer 1 has been the % owner of any corporation that has held the facility since the decade. And Taxpayer 3 has been filing tax returns in Georgia since year.

Based on facts stated herein, it is the opinion of this Department that Taxpayer 2 qualifies as an “existing manufacturing facility.” We feel confident that Taxpayer 1’s commitment to and presence in Georgia since the early decade is precisely the economic activity that the Legislature intended to reward through the enactment of the tax credit.

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.