

Date Issued: October 11, 2013
Georgia Letter Ruling: LR IT-2013-01
Topic: Investment Tax Credit

This letter is in response to your letter requesting a ruling regarding Taxpayer 1's expenditures for the investment tax credit and their <year> and <year + 1> restructuring.

Facts As Presented by the Taxpayer

Your letter to the Department states: "Taxpayer 1 is a leading manufacturer of <deleted text> with <deleted text> employees in our manufacturing and distribution facility in <Georgia>. Our manufacturing facilities have been located in Georgia since <3 + years ago>. <deleted text>, Taxpayer 1 must expand its manufacturing facility in <Georgia> to encompass new product lines and enhance existing manufacturing equipment.

"Taxpayer 1 plans to construct and equip an approximately <number> square foot expansion project at the <Georgia> facility in order to produce a new and innovative <product> (the 'Expansion Project'), and to make other capital investments with respect to expanding and refreshing existing product lines (the 'Upgrade Projects'). The Expansion Project is expected to be undertaken in two (2) phases. During the first phase of the Expansion Project, it is anticipated that Taxpayer 1 will construct the building expansion (the 'Building Expansion') and add <deleted text> automated production lines to the <Georgia> facility. During the second phase, which is to be reviewed and approved by management, it is anticipated that Taxpayer 1 will install <deleted text> automated production lines along with the necessary infrastructure to support capacity increases.

"To meet increased demand for our currently produced <products> and to improve quality, Taxpayer 1 has to make technological improvements to certain production lines. These upgrade Projects will consist of acquiring additional new equipment and making capital improvements with respect to existing <deleted text> production lines and distribution facilities, as well as adding new product lines, over two years.

"Taxpayer 1 estimates that a total of <number> jobs will be created in <Georgia> as a result of the Project. Taxpayer 1 estimates that capital investment for the Expansion Project will total <\$amount>, with approximately <\$amount> invested in phase 1 of the Expansion Project and approximately <\$amount> invested in phase 2.

"For expenditures prior to <year>, the purchaser will be Taxpayer 1. Some corporate restructuring is anticipated for subsequent years. According to the plan of restructuring, effective January 1, <year>, Taxpayer 1 will transfer all of its assets to an affiliated entity, Taxpayer 2, in a Section 351 contribution. Also according to the plan, effective January 1, <year + 1>, Taxpayer 1's manufacturing and R&D assets will be contributed by Taxpayer 2 to another affiliated entity, Taxpayer 3, also in a contribution considered tax free for federal and state tax purposes under Internal Revenue Code § 351. Essentially, these transfers will be straightforward contributions of assets, with the goal to create a more efficient corporate structure. The historic Georgia manufacturing operations of Taxpayer 1 will continue as before, only as part of Taxpayer 2 and Taxpayer 3. All projects are for <deleted text> manufacturing, distribution and related research in <Georgia> and only the name of the investor may change due to this corporate restructuring."

Issue

1. Whether Taxpayer 1 can assign its credit rights, qualifications, duties and obligations to an affiliated or successor entity, including but not limited to Taxpayer 2 and/or Taxpayer 3?
2. Whether Taxpayer 1's prior activities in the state of Georgia can be taken into account in determining Taxpayer 2's and Taxpayer 3's eligibility for tax credits and incentives?
3. Whether due to anticipated corporate restructuring, Taxpayer 2 and Taxpayer 3 will each be considered to have operated for the immediately preceding three years an existing manufacturing or telecommunications facility and to have met such requirement for purposes of O.C.G.A. §§ 48-7-40.2, 48-7-40.3, and 48-7-40.4?

Analysis

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

“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 Section 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, but any unused credit may be transferred and continued by any transferee of the taxpayer;”

The term “taxpayer” is described in Georgia 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 Georgia 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 for Issue #1

Tax credits are generated and claimed on a separate legal entity basis, therefore Taxpayer 1 cannot assign its qualifications, duties and obligations to an affiliated or successor entity, including but not limited to Taxpayer 2 and/or Taxpayer 3. However, if Taxpayer 1 undergoes a restructuring under Internal Revenue Code § 351 and the historic Georgia manufacturing operations of Taxpayer 1 continue as before, then its affiliated entities that receive its assets will not have to separately meet the eligibility requirements of the investment tax credit. Please note that all tax credits, including the investment tax credit, can be assigned to an affiliated entity under O.C.G.A. § 48-7-42. Assignments must be made on an original income tax return and carry forward cannot be assigned.

Ruling for Issue #2

Please reference the Ruling for Issue # 3 below.

Ruling for Issue #3

The investment tax credit statutes, O.C.G.A. §§ 48-7-40.2, 48-7-40.3, and 48-7-40.4, were intended to benefit Georgia manufacturers. 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 Georgia Regulation 560-7-8.37(3)(b)). With respect to the facility in <deleted text> Georgia, Taxpayer 1 has owned this facility since <3 + years ago>.

Based on facts as stated herein, it is the opinion of this Department that after Taxpayer 1's corporate restructuring described in this letter ruling in <year>, Taxpayer 2 will qualify as an "existing manufacturing facility"; and after Taxpayer 2's corporate restructuring described in this letter ruling in <year + 1>, Taxpayer 3 will qualify as an "existing manufacturing facility."

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.