

Georgia Letter Ruling: LR IT-2014-02
Topic: Job Tax Credit
Date Issued: January 23, 2014

This letter is in response to your letter requesting a ruling that Taxpayer 1's unused job tax credit can be transferred to Taxpayer 2.

Facts as Presented by the Taxpayer

<deleted text>

"In late <year>, Taxpayer 1 went through <a> restructure and the <County>, Georgia facility was separated from Taxpayer 1 and all property, assets, liabilities, employees, payroll and sales were moved into Taxpayer 2.

"The Georgia operations have not changed and all personnel have remained the same. Note that this restructure qualified as a tax free reorganization under IRC Sec. 351 (a) which provides that no gain or loss is recognized by transferors of property to a corporation solely in exchange for the stock of the transferee, if after the exchange, the transferor is in control of the transferee. Effective <year>, all <County>, Georgia business operations and transactions will be reported under Taxpayer 2.

Further, it appears that Taxpayer 1 qualified for the job tax credit in tax year <year> <deleted text> and the job tax credit was calculated as such since tax year <year> and forward.

Issue

Whether or not Taxpayer 1's unused job tax credit can be transferred to Taxpayer 2?

Analysis

Georgia Code § 48-7-40 (g) provides that:

"(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification."

Revenue Regulation 560-7-8-.36 (9)(d) provides that:

"(d) **Sale, Merger, Acquisition, Reorganization, or Bankruptcy of a Business Enterprise.** The sale, merger, acquisition, or transfer or liquidation or bankruptcy of a business enterprise will not create new eligibility in any succeeding taxpayer, but any unused credits may be transferred and continued by any transferee of the taxpayer. When a business enterprise merely changes its name, recapitalizes, or liquidates unrelated subsidiaries; however, no new eligibility need be established."

Department of Community Affairs Regulation 110-9-1-.03 (9) provides that:

"(9) **The Sale, Merger, Acquisition, Reorganization, or Bankruptcy of any Business Enterprise Shall Not Create New Eligibility in any Succeeding Business Entity.** The sale, merger, acquisition, reorganization, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity. Any unused job tax credit may be transferred by a business enterprise to any transferee of that business enterprise. New tax credits may be earned by any transferee of a business enterprise for new, full-time jobs created by the original business enterprise as long as those new, full-time jobs are maintained by the transferee of the business enterprise and as long as the transferee meets other applicable requirements in law and regulation."

Ruling

Based on the facts stated herein, it is the opinion of this Department that if all statutory and regulatory requirements of <earning> the job tax credit have been satisfied then the unused job tax credit carry forward which was generated by Taxpayer 1 may be transferred to Taxpayer 2.

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.