

Georgia Letter Ruling: LR IT-2014-03
Topic: Quality Jobs Tax Credit
Date Issued: June 9, 2014

This letter is in response to your letter requesting a ruling that after Taxpayer 1 converts to Taxpayer 2, Taxpayer 2 can claim quality jobs tax credit carry forward generated by Taxpayer 1, and Taxpayer 2 can qualify for the quality jobs tax credit.

Facts as Presented by Taxpayer

Your letter to the Department states: “On <date>, Taxpayer 1 entered into an agreement to acquire 100 percent of the outstanding equity of Taxpayer 3 in a series of transactions expected to close during <month and year> (the ‘Acquisition’). To facilitate the Acquisition, Taxpayer 1 will engage in a series of internal restructurings prior to the Acquisition. Additionally, following the Acquisition, Taxpayer 1 and Taxpayer 3 will enter into a series of restructuring transactions to integrate operations of the combined enterprise. As part of the restructuring, Taxpayer 1 will convert to an LLC (Taxpayer 2) pursuant to applicable <State> LLC conversion statutes. Note, for purposes of this redacted letter ruling, parts of the restructuring that are not pertinent to this ruling have been omitted.

Issue #1

Whether, after Taxpayer 1 converts to Taxpayer 2, the ultimate taxpaying owners of Taxpayer 2 can claim the income tax carry forwards of the quality jobs tax credit for new quality jobs created by the legal entity Taxpayer 1 and can the legal entity Taxpayer 2 claim any unused approved withholding benefit carry forward for new quality jobs created by the legal entity Taxpayer 1.

Issue #2

Whether, after Taxpayer 1 converts to Taxpayer 2, Taxpayer 2 can continue to claim the remaining quality jobs tax credit installments for jobs created by Taxpayer 1. Also whether, after Taxpayer 1 converts to Taxpayer 2, new quality jobs created by the legal entity Taxpayer 2 qualify for the quality jobs tax credit without the legal entity Taxpayer 2 having to qualify again under O.C.G.A. § 48-7-40.17 and Revenue Regulation 560-7-8-.51?

Analysis

Georgia Code § 48-7-40.17 (b) provides in part that:

“(b) A taxpayer establishing new quality jobs in this state or relocating quality jobs into this state which elects not to receive the tax credits provided for by Code Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such jobs and investments created by, arising from, related to, or connected in any way with the same project and, within one year of the first date on which the taxpayer pursuant to the provisions of Code Section 48-7-101 withholds wages for employees in this state and employs at least 50 persons in new quality jobs in this state, shall be allowed a credit for taxes imposed under this article. . .”

Revenue Regulation 560-7-8-.51 (4)(b) provides that:

“(b) In the taxable year in which the taxpayer first employs at least fifty (50) persons in new quality jobs, the taxpayer shall be entitled to claim the quality jobs tax credit even if the average number of new quality jobs is less than fifty (50) for such taxable year. However, in subsequent taxable years the average number of new quality jobs must be at least fifty (50) for a taxable year in order for the new quality jobs to be claimed. If such fifty (50) new quality jobs requirement is not met, the taxpayer shall forfeit the right to claim the credit for such jobs in such taxable year. However, if in a subsequent taxable year such fifty (50) new quality jobs requirement is met, the taxpayer may continue taking the credit and shall resume the credit schedule from when the credit was initially claimed.”

Ruling

Ruling on Issue #1

To qualify for the quality jobs tax credit all requirements in O.C.G.A. § 48-7-40.17 and Revenue Regulation 560-7-8-.51 must be satisfied. The Department's records indicate that Taxpayer 1 claimed the quality jobs tax credit on their <year> and <year> income tax returns. The Department approved Taxpayer 1 <dollar amount> for use against withholding for <year>; and the Department approved Taxpayer 1 <dollar amount> for use against withholding for <year>.

Based on the facts stated herein, it is the opinion of this Department that after Taxpayer 1 converts to Taxpayer 2, the ultimate taxpaying owners of Taxpayer 2 can claim the income tax carry forwards of the quality jobs tax credit for new quality jobs created by the legal entity Taxpayer 1 and the legal entity Taxpayer 2 can claim any unused approved withholding benefit carry forward for new quality jobs created by the legal entity Taxpayer 1.

Ruling on Issue #2

Based on the facts stated herein, it is the opinion of this Department that after Taxpayer 1 converts to Taxpayer 2, Taxpayer 2 can continue to claim the remaining quality jobs tax credit installments for jobs created by Taxpayer 1. Also, after Taxpayer 1 converts to Taxpayer 2, new quality jobs created by the legal entity Taxpayer 2 during the remaining years of the seven year credit creation period will qualify for the quality jobs tax credit without the legal entity Taxpayer 2 having to qualify again under O.C.G.A. § 48-7-40.17 and Revenue Regulation 560-7-8-.51. Essentially, the legal entity Taxpayer 2 will continue to claim the quality jobs tax credit as if they were the legal entity Taxpayer 1.

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.