

Georgia Letter Ruling: LR IT-2014-05  
Topic: Withholding Tax Benefit for Credits  
Date Issued: December 19, 2014

This letter is in response to your letter requesting a ruling regarding the carry forward period for using income tax credits against withholding tax liability.

### **Facts as Presented by the Taxpayer**

Your letter to the Department states: “Taxpayer 1 is a limited liability company that is solely owned by Taxpayer 2, and is treated as a disregarded entity for both federal and Georgia income tax purposes. Taxpayer 2 includes Taxpayer 1’s income/losses on its Form 600, Georgia Corporation Tax Return.

“Taxpayer 1 is anticipated to generate [Quality Jobs Tax Credit] QJTC, [Film Tax Credit] FTC, and [Research Tax Credit] RTC that will exceed the amount of Taxpayer 2’s corporate income tax liability and, thus, be eligible to be used against withholding tax. Taxpayer 1 will submit form IT-WH, Notice of Intention to Claim Withholding Benefit, no later than 30 days prior to the due date for filing the Georgia Corporate Income Tax Return of Taxpayer 2, and will not begin to claim such credits against withholding tax until receipt of a letter from the Department granting authorization to do so.

“Although Taxpayer 1 is a disregarded entity for Georgia income tax purposes, Taxpayer 1 is regarded for Georgia employment tax reporting purposes. Taxpayer 1 files quarterly form G-7, Employer’s withholding Quarterly Return.”

### **Issue #1**

Whether the same carry forward period applies when an income tax credit is claimed against withholding tax liability that applies when an income tax credit is claimed against income tax liability, and if so how is the credit carry forward period determined to expire in the context of a credit against withholding tax liability?

### **Issue #2**

Whether there is an order in which the research tax credit, quality jobs tax credit, and film tax credit must be used when these credits are being claimed against withholding tax liability?

### **Authorities**

Georgia Code § 48-7-40.12(d) and (e) provide that:

“(d) Any unused credit claimed under this Code section may be carried forward ten years from the close of the taxable year in which the qualified research expenses were made. The credit taken in any one taxable year shall not exceed 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied.

(e) Where the amount of a credit claimed under this Code section exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer.”

Revenue Regulation 560-7-8-.42(5)(a) and (6) provide that:

“(a) **Withholding tax.** A business enterprise whose credit amount exceeds 50 percent of the business enterprise’s remaining Georgia net income tax liability after all other credits have been applied may elect to take the excess credit as a credit against such business enterprise’s quarterly or monthly withholding payments under Code Section 48-7-103. The withholding tax benefit may only be applied against the withholding tax account used by the business enterprise for payroll. In the event the business enterprise is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company. A business enterprise must notify the commissioner each year of their irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such business enterprise. When this election is made, the excess research tax credit will not pass through to the shareholders, partners, or members of the business enterprise if the business enterprise is a pass-through entity.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the business enterprise’s withholding tax liability, the business enterprise must file Revenue Form IT-WH at least thirty (30) days prior to the due date of the Georgia income tax return (including extensions) or at least thirty (30) days prior to the filing of the income tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit.

2. Review Period. The Department of Revenue has one hundred and twenty (120) days from the date the income tax return claiming the tax credit is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the business enterprise stating the tax credit amount which may be applied against withholding and when the business enterprise may begin to claim the tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.

(6) **Carry Forward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward for ten years from the close of the taxable year in which the qualified research expenses were made.”

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

“[W]here the amount of such credit exceeds a taxpayer's liability for such taxes in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year the credit amounts in paragraphs (1) through (5) of this subsection for each new quality job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103 shall receive a credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer.”

Georgia Code § 48-7-40.17(d) provides that:

“(d) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the new quality jobs were established.”

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

“(b) Withholding tax. A taxpayer may claim any excess quality jobs tax credit against its withholding tax liability. The withholding tax benefit may only be applied against the withholding tax account used by the taxpayer for payroll purposes. In the event the entity that earned the credit is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company. A taxpayer must notify the commissioner each year of their irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payments for such taxpayer. When this election is made, the excess quality jobs tax credit will not pass through to the shareholders, partners, or members of the taxpayer if the taxpayer is a pass-through entity.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the taxpayer’s withholding tax liability, the taxpayer must file Revenue Form IT-WH at least thirty (30) days prior to the due date of the Georgia income tax return (including extensions) or at least thirty (30) days prior to the filing of the income tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the income tax return claiming the tax credit is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the taxpayer stating the tax credit amount which may be applied against withholding and when the taxpayer may begin to claim the tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.”

Georgia Code § 48-7-40.26(f)(1) provides that:

“(f) (1) Where the amount of such credit or credits exceeds the production company's or qualified interactive entertainment production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the production company or qualified interactive entertainment production company.”

Georgia Code § 48-7-40.26(h)(3) provides that:

“(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the production company's or qualified interactive entertainment production company's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company or qualified interactive entertainment production company against prior years' tax liability.”

Revenue Regulation 560-7-8-.45(10)(b) provides that:

“(b) Withholding Tax. The production company or qualified interactive entertainment production company may claim any excess film tax credit against its withholding tax liability or the withholding tax liability of its payroll service providers provided such withholding tax liability is with respect to the employees of the production company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(b)3. The withholding tax benefit may only be applied against the withholding tax account used by the production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider for payroll purposes. In the event the production company or qualified interactive entertainment production company is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company or against the withholding tax liability of its payroll service providers provided such withholding tax liability is attributable to wages paid by its payroll service provider with respect to the individuals providing services to the single member limited liability company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(b)3. Any production company or qualified interactive entertainment production company that qualifies to take all or a part of the film tax credit against withholding tax otherwise due the Department of Revenue, must make an irrevocable election to do so as a part of its notification to the Commissioner required under this subparagraph. When this election is made, the excess film tax credit will not pass through to the shareholders, partners, or members of the production company or qualified interactive entertainment production company if the production company or qualified interactive entertainment production company is a pass-through entity.

1. Notice of Intent. To claim any excess film tax credit not used on the income tax return against the production company’s or qualified interactive entertainment production company’s withholding tax liability, the production company or qualified interactive entertainment production company must file Revenue Form IT-WH *Notice of Intent* at least thirty (30) days prior to the due date of the Georgia income tax return (including extensions) or at least thirty (30) days prior to the filing of the income tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the income tax return claiming the film tax credit is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the production company or qualified interactive entertainment production company stating the film tax credit amount which may be applied against withholding and when the production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider may begin to claim the film tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments made by the production company or its payroll service provider or the qualified interactive entertainment production company or its payroll service provider.”

## **Ruling**

### **Ruling on Issue #1**

The carry forward period for using an income tax credit against income tax liability is the carry forward period provided in the respective income tax credit statute. The carry forward period for using a credit against withholding tax liability begins with the first withholding period after the withholding period in the withholding approval letter issued to the taxpayer by the Department and ends in the statutorily specified number of years later. For example,

the income tax carry forward period for the quality jobs tax credit is ten years from the close of the taxable year in which the new quality jobs were created. If a taxpayer properly elects to use their excess credit against withholding, as provided in the quality jobs tax credit regulation, and the taxpayer receives a withholding approval letter from the Department, the carry forward period for using the amount approved against withholding begins with the first withholding period after the period in the withholding approval letter issued to the taxpayer by the Department and ends ten years later. Therefore, assume a taxpayer created 70 new quality jobs in 2010, timely filed Form IT-WH to elect to use their excess credit against withholding, claimed the quality jobs tax credit for those 70 new quality jobs on the taxpayer's 2010 income tax return, and the taxpayer received a withholding approval letter from the Department, which states they can begin to use the amount approved against withholding in January of 2012 (the first quarter of 2012). In this case, the carry forward period would begin on April 1, 2012 (the second quarter of 2012, which is the first withholding period after the period in the withholding approval letter issued to the taxpayer by the Department) and would expire 10 years later. Therefore the carry forward period would expire on March 31, 2022 (the end of the first quarter of 2022).

#### Ruling on Issue #2

Unless an income tax credit statute specifies a specific order in which an income tax credit must be used, the taxpayer decides the order in which they use their income tax credits and income tax credit carry forward. The film tax credit and the quality jobs tax credit statutes and regulations do not specify an order in which they must be used. The research tax credit statute and regulation provide that a business enterprise whose credit amount exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under Code Section 48-7-103. The credit order and limitation have been applied before the excess credit amount is allowed against withholding. Therefore, after the taxpayer has received a withholding approval letter from the Department, there is no order in which the taxpayer must use their film tax credit, quality jobs tax credit, and research tax credit against withholding tax liability. Please note, the taxpayer should specify which credit is being used on any given withholding return.

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.