

Georgia Letter Ruling: LR IT-2015-02
Topic: Quality Jobs Tax Credit
Date Issued: September 15, 2015

This letter is in response to your letter requesting a ruling regarding whether Taxpayer can claim the quality jobs tax credit using jobs that were included when Taxpayer claimed the jobs tax credit.

Facts as Presented by the Taxpayer

Your letter to the Department states: <deleted text> “The Taxpayer files a Georgia corporation income tax return annually on a fiscal year basis for the period of July 1-June 30.

“The Taxpayer is dually eligible for the Georgia Quality Jobs Credit under Georgia Code § 48-7-40.17 and the Georgia Jobs Tax Credit under Georgia Code §§ 48-7-40 and 48-7-40.1. The Taxpayer first claimed the Georgia Jobs Tax Credit for its year ended June 30, 2009, and has continued to claim the credit in each succeeding tax year. <deleted text>

“Due to limited income tax liabilities, the Taxpayer’s Georgia Jobs Tax Credit has not been used, and has been carried forward. The Taxpayer does not foresee utilizing much of the Jobs Tax Credit carryforward in future years.

“The Taxpayer also qualified for the Georgia Quality Jobs Tax Credit beginning with the tax year ended June 30, 2012, but did not claim it on the original return filed for the tax year. The Taxpayer filed an amended return for the tax year ended June 30, 2013 on March 11, 2015, in order to (a) establish the Georgia Quality Jobs Credit for that year and (b) revise the Georgia Jobs Tax Credit calculation to remove jobs that were eligible for the Georgia Quality Jobs Credit. The amended return was filed prior to submitting this request for a ruling in order to comply with the provisions set forth in Georgia Code § 48-7-40.17(e). A copy of the amended return is attached hereto and made part of this request. The amended return did not result in a claim for refund.

“In calculating the Georgia Quality Jobs Tax Credit, the Taxpayer used the tax year ended June 30, 2011 as its base year, and the tax year ended June 30, 2012 as the first year in which it had an increase of 50 or more qualifying jobs. The Taxpayer acknowledges that it is not eligible to actually claim the Georgia Quality Jobs Credit for the tax year ended June 30, 2012, and that its Georgia Jobs Tax Credit carryforward calculations must be revised to remove jobs that qualified for the Georgia Quality Jobs Credit. The Georgia Jobs Tax Credit claimed on the amended return filed for the tax period ended June 30, 2013 is correct as revised.

“Pursuant to Georgia Regulation § 560-7-8-.36(12)(a), the Taxpayer has not claimed any tax credits under Georgia Code §§ 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, or 48-7-40.9 for projects for which the Georgia Jobs Tax Credit or the Georgia Quality Jobs Tax Credit has been claimed.”

Issue #1

Whether Taxpayer's amended return for tax year ending June 30, 2013 was filed within the one year rule under the quality jobs tax credit?

Issue # 2

Whether Taxpayer can amend returns filed for tax years ending June 30, 2011, and June 30, 2012, to restate the jobs tax credit calculations and carry forward and show the establishment of the quality jobs tax credit with a base year of June 30, 2011; or are the adjusted base period amounts and credit carry forward shown in the amended return filed for the tax year ending June 30, 2013, sufficient to show the change to the jobs tax credit and the establishment of the quality jobs tax credit?

Issue #3

Whether Taxpayer can continue to carry forward unused job tax credit as revised and continue to generate job tax credit in years 2-5 from previous job expansions?

Authorities

O.C.G.A. § 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. . .”

O.C.G.A. § 48-7-40.17 (e) provides that:

“(e) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.”

Revenue Regulation 560-7-8-.51 (4)(d)1. provides that:

“1. The taxpayer must elect not to receive the tax credits provided for by Code Sections 48-7-40 and 48-7-40.1 for such jobs. This election is deemed to have been made when the taxpayer claims the quality jobs tax credit on its state income tax return. Taxpayers may not alternatively claim the jobs credit provided by Code Sections 48-7-40 and 48-7-40.1 and the quality jobs tax credit with respect to such jobs. These credits are not interchangeable. Jobs for which the job tax credit is claimed under Code Sections 48-7-40 and 48-7-40.1 shall be

excluded from all calculations for the quality jobs tax credit under this regulation.”

Revenue Regulation 560-7-8-.36 (12)(a) and (b) provides that:

“(a) Taxpayers may not claim or carry forward the job tax credit for any given project for which either an investment tax credit is claimed under O.C.G.A. Sections 48-7-40.2, 48-7-40.3, or 48-7-40.4, or an optional investment tax credit is claimed under O.C.G.A. Sections 48-7-40.7, 48-7-40.8, or 48-7-40.9. Neither may taxpayers alternately elect to claim the investment tax credit or optional investment tax credit in one year and the job tax credit in the next year for a given project. These credits are not interchangeable. Taxpayers may elect to take only one of the investment, optional investment, or quality jobs tax credit for a given project.

(b) Taxpayers may not claim or carry forward the job tax credit for any jobs for which the headquarters job tax credit or the quality jobs tax credit is claimed under O.C.G.A. Section 48-7-40.17. Neither may taxpayers alternatively claim the jobs credit provided by O.C.G.A. Sections 48-7-40 and 48-7-40.1 and the headquarters job tax credit or the quality jobs tax credit with respect to such jobs. These credits are not interchangeable.”

Ruling

Ruling on Issue #1

The Department’s records indicate that Taxpayer filed their tax year ending June 30, 2013 tax return on March 15, 2014, and Taxpayer filed an amended return for tax year ending June 30, 2013, on March 11, 2015. However, due to the ruling on Issue # 2 this issue is moot and no ruling needs to be issued.

Ruling on Issue #2

Based on the facts stated herein, it is the opinion of this Department that Taxpayer cannot amend their tax year ending June 30, 2013 tax return and claim the quality jobs tax credit and include jobs that Taxpayer has claimed for the jobs tax credit. <deleted text> A taxpayer can claim both the jobs tax credit and the quality jobs tax credit if they meet all statutory and regulatory requirements for both credits. However, the same jobs may not be claimed. A taxpayer elects which credit will be used for the jobs when the taxpayer first claims either the jobs tax credit or the quality jobs tax credit, and that election cannot be changed. No jobs that were included when the jobs tax credit was claimed can be included in any calculations for the quality jobs tax credit. Please note that the Department has applied this rule to all taxpayers since the quality jobs tax credit was enacted in 2009. Consequently, there is no need to amend the June 30, 2011 or June 30, 2012 tax returns.

Ruling on Issue #3

Based on the facts stated herein, it is the opinion of this Department that Taxpayer can continue to claim the jobs tax credit without any modifications for the quality jobs tax credit, since Taxpayer elected the jobs tax credit for these jobs and they cannot be included when the quality jobs tax credit is claimed.

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.