

Georgia Letter Ruling: LR IT-2015-03  
Topic: Quality Jobs Tax Credit  
Date Issued: December 14, 2015

This letter is in response to your letter requesting a ruling that Taxpayer 2 can claim Taxpayer 1's <year> quality jobs tax credit and Taxpayer 1's quality jobs tax credit carry forward.

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

Your letter to the Department states: <deleted text>

“Taxpayer 1 commenced operations at a new <deleted text> plant in <city>, Georgia in <month> <year>. As a result of the job creation at the plant, Taxpayer 1 has claimed the Georgia Quality Jobs Tax Credit. Taxpayer 1 has <amount> in credit carry forward that is eligible to be used against withholding tax.

“On <date>, Taxpayer 1 was acquired by Taxpayer 2 in an asset acquisition of substantially all of its assets. Taxpayer 2 also acquired the entire workforce of Taxpayer 1.

<deleted text>

“For the <year> tax year, Taxpayer 1 will file a short-year tax return beginning on <date>, and ending on <date>, which is the date on which it [sic] was acquired. Taxpayer 2 will file a short-year tax return for tax year ending <date>.”

### **Issue**

Whether Taxpayer 2 can claim Taxpayer 1's <year> quality jobs tax credit on Taxpayer 2's tax year ending <date> Georgia income tax return and whether Taxpayer 2 can utilize Taxpayer 1's quality jobs tax credit carry forward?

### **Authorities**

O.C.G.A. § 48-7-40.17 (b) provides 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:

(1) Equal to \$2,500.00 annually per eligible new quality job where the job pays 110 percent or more but less than 120 percent of the average wage of the county in which the new quality job is located;

(2) Equal to \$3,000.00 annually per eligible new quality job where the job pays 120 percent or more but less than 150 percent of the average wage of the county in which the new quality job is located;

(3) Equal to \$4,000.00 annually per eligible new quality job where the job pays 150 percent or more but less than 175 percent of the average wage of the county in which the new quality job is located;

(4) Equal to \$4,500.00 annually per eligible new quality job where the job pays 175 percent or more but less than 200 percent of the average wage of the county in which the new quality job is located; and

(5) Equal to \$5,000.00 annually per eligible new quality job where the job pays 200 percent or more of the average wage of the county in which the new quality job is located; provided, however, that where 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. For each new quality job created, the credit established by this subsection may be taken for the first taxable year in which the new quality job is created and for the four immediately succeeding taxable years; provided, however, that such new quality jobs must be created within seven years from the close of the taxable year in which the taxpayer first becomes eligible for such credit. Credit shall not be allowed during a year if the net employment increase falls below the 50 new quality jobs required. Any credit received for years prior to the year in which the net employment increase falls below the 50 new quality jobs required shall not be affected except as provided in subsection (f) of this Code section. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the 50 new quality jobs required.”

**Ruling**

Based on the facts stated herein, it is the opinion of this Department that Taxpayer 2 cannot claim Taxpayer 1's quality jobs tax credit and cannot utilize Taxpayer 1's quality jobs tax credit carry forward. Unlike certain other Georgia income tax credit statutes, the quality jobs tax credit statute, O.C.G.A. § 48-7-40.17, does not contain the sale, merger, acquisition, or bankruptcy provision which allows unused income tax credit to be transferred and continued by the transferee. Therefore, when there is a sale, merger, acquisition, or bankruptcy of the taxpayer, the quality jobs tax credit cannot be transferred and used by the transferee. When there is a sale, merger, acquisition, or bankruptcy of the taxpayer, the quality jobs tax credit is lost and cannot be utilized by any taxpayer.

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.