

Georgia Letter Ruling: LR IT-2016-01  
Topic: Quality Jobs Tax Credit and Jobs Tax Credit  
Date Issued: March 15, 2016

This letter is in response to your letter requesting a ruling that Subsidiary 1 can claim Acquired Taxpayer's quality jobs tax credit and jobs tax credit, and Acquired Taxpayer's quality jobs tax credit carry forward and jobs tax credit carry forward.

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

Your letter to the Department states: "Parent and its related entities are <deleted text> companies <deleted text>.

"<deleted text>.

"<deleted text> Parent created a new company, Subsidiary 1, for the purpose of acquiring Acquired Taxpayer's assets, taking over Acquired Taxpayer's supply and other contracts and continuing the business of operations of Acquired Taxpayer by using Acquired Taxpayer's assets and employing certain of Acquired Taxpayer's employees. All of the payroll and payroll-related activities for Subsidiary 1 are performed by Subsidiary 2, and Subsidiary 1 gets cross charged for the payroll cost via intercompany transactions. Though they are separate entities, they are related; both Subsidiary 2 and Subsidiary 1 are wholly-owned subsidiaries of Parent. Parent opted to separate the payroll functions and business operations related to the Georgia operations into different entities for business purposes. In Georgia, Parent continued operations into different facilities, including an <deleted text> facility located in <city>, Georgia and a facility in <city>, Georgia. By doing so, Parent protected substantially all of the jobs that Acquired Taxpayer had previously brought to Georgia; the same jobs that gave rise to the Georgia QJTC and JTC that are the subject of this ruling request. Despite the fact that the payroll functions and business operations have been placed into two separate but related entities, the substance of the arrangement has not changed and Parent's intention of continuing operations in Georgia and retaining substantially all of the jobs initially created by Acquired Taxpayer remains the same."

### *Background of the Georgia Credits in Question*

"<deleted text> Acquired Taxpayer applied for and qualified for two Georgia tax credits; the Georgia QJTC and the Georgia JTC. The information about the qualifying jobs for tax years <year> through <year> are as follows:

#### **Quality Jobs Tax Credit**

<deleted text>

#### **Jobs Tax Credit**

<deleted text>

#### **Issue # 1**

Whether Subsidiary 1 can claim Acquired Taxpayer's quality jobs tax credit and whether Subsidiary 1 can utilize Acquired Taxpayer's quality jobs tax credit carry forward?

#### **Issue # 2**

Whether Subsidiary 1 can claim Acquired Taxpayer's jobs tax credit and whether Subsidiary 1 can utilize Acquired Taxpayer's 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.”

Revenue Regulation 560-7-8-.51 (2)(b) provides that:

“(b) New quality job. The term ‘new quality job’ means employment for an individual located in this state which:

1. Has a regular work week of thirty (30) hours or more;
2. Is not a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for;

3. Pays at or above 110 percent of the county average wage. For purposes of determining the 110% requirement in years one through seven, the job must pay at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the tax year in which the taxpayer first elected jobs to qualify as new quality jobs; thus the 110% county average wage threshold remains constant over the life of the credit; and

4. For a taxpayer that initially claimed the credit in a taxable year beginning before January 1, 2012, the job has no predetermined end date.”

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

**“Claiming the credit.** The quality jobs tax credit shall be claimed on an income tax return for the first taxable year in which the taxpayer first becomes eligible for the credit. The quality jobs tax credit must be claimed within one year of the earlier of the date the original return was filed or the date such return was due, including extensions.

(a) Income tax. For a taxpayer to claim the quality jobs tax credit, the taxpayer must submit Form IT-QJ and a listing of new quality jobs employees, which includes the name of the employee, social security number, wages, and any other information that the Commissioner may request, with the taxpayer's Georgia income tax return.”

O.C.G.A. § 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 (10) provides that:

**“Claiming the Credit.** For a business enterprise to claim the job tax credit, the business enterprise must submit Form IT-CA with its Georgia income tax return for each year in which the credit is claimed. For any business enterprise that creates a new year one under DCA regulations for any taxable year beginning on or after January 1, 2009, the job tax credit must be claimed within one year of the earlier of the date the original return was filed or the date such return was due, including extensions.”

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

**“(c) 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**

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

The Department’s records indicate that Acquired Taxpayer claimed the quality jobs tax credit by attaching Form IT-QJ and the required employee information to their <years> Georgia income tax returns. No quality jobs tax credit was utilized by Acquired Taxpayer against income tax liability on these income tax returns. Based on the facts stated herein, it is the opinion of this Department that Subsidiary 1 cannot claim Acquired Taxpayer’s quality jobs tax credit and cannot utilize Acquired Taxpayer’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.

Please note that if Subsidiary 1 meets all the statutory and regulatory requirements for the quality jobs tax credit and claims the credit, they cannot include any of the jobs claimed by Acquired Taxpayer. (The jobs claimed by Acquired Taxpayer are transferred jobs and cannot be included by Subsidiary 1 if Subsidiary 1 meets the quality jobs tax credit requirements on its own.)

#### **Ruling on Issue #2**

The Department’s records indicate that no jobs tax credit was utilized by Acquired Taxpayer against income tax liability on their <years> Georgia income tax returns. Based on the facts stated herein, it is the opinion of this Department that if all statutory and regulatory requirements of the jobs tax credit have been satisfied then the unused jobs tax credit carry forward which was generated by Acquired Taxpayer may be transferred to Subsidiary 1.

For future years, jobs tax credit can be earned by Subsidiary 1 for full-time jobs created by Acquired Taxpayer as long as those jobs are maintained by Subsidiary 1. Therefore, Subsidiary 1 will be eligible to claim jobs tax credits in tax years <years> for jobs created by Acquired Taxpayer in the same manner and to the same extent as Acquired Taxpayer would have been eligible to claim such credits, provided Subsidiary 1 maintains the jobs and meets all other applicable requirements in law and regulation.

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.