

Georgia Letter Ruling: LR IT-2020-01
Topic Quality Jobs Tax Credit
Date Issued: January 15, 2020

This letter is in response to your letter requesting a ruling that after the transfer of employees from Taxpayer 1 to Taxpayer 2, Taxpayer 2 can claim quality jobs tax credit carry forward generated by Taxpayer 1, and Taxpayer 2 can claim and assign the remaining quality jobs tax credit installments for new quality jobs created by Taxpayer 1.

Facts as Presented by the Taxpayer

Your letter to the Department states: “Taxpayer 3 is the parent holding company of a group of subsidiaries <deleted text>. Historically, employees of the <deleted text> business have been employed by a single entity, Taxpayer 1. Taxpayer 1 is owned wholly by Taxpayer 4, an affiliate of the <holding company>. Taxpayer 1 is disregarded as an entity distinct from its owner for federal and Georgia income tax purposes and is, therefore, taxed as a division of Taxpayer 4.

“Many of the employees previously hired by Taxpayer 1 have given rise to quality jobs credits (‘QJTC’) pursuant to O.C.G.A. § 48-7-40.17. Those credits were claimed on corporate income returns filed by the regarded owner of Taxpayer 1; however, IT-WH’s were filed each year electing to use the credits that exceeded the owner’s income tax liability against the employee withholding tax liabilities of Taxpayer 1. As a result, Taxpayer 1 has unused QJTC carryforwards that may be used against its employee withholding tax. Taxpayer 1 is presently eligible to claim further installments of credits for quality jobs that have been created within the preceding four (4) years and are being retained; and Taxpayer 1 remains eligible to claim additional credits for new quality jobs that are added in the future.

“The new quality jobs for which the credits have been claimed are exclusively jobs at <deleted text> location in <city>, Georgia. <deleted text>.

“For business reasons unrelated to tax, Taxpayer 4 plans to create a new LLC (Taxpayer 2) that will be disregarded for federal and Georgia income tax purposes and taxed as a division of Taxpayer 4. Taxpayer 1, which is a brother/sister to Taxpayer 2, will transfer all employees at the <location> to Taxpayer 2. This series of transactions (*i.e.*, the formation of Taxpayer 2 and transfer of the <deleted text> employees) is hereinafter referred to as the ‘Taxpayer 1 Restructuring.’ Subsequent to the Taxpayer 1 Restructuring, the activities of the transferred employees will remain substantially the same. Going forward, all <deleted text> employees will be hired and employed by Taxpayer 2. Prior to the Restructuring, Taxpayer 1 was separately compensated by affiliates for the <deleted text> services performed by the transferred employees. That arrangement will remain in place, but with the compensation being recognized by Taxpayer 2. The <deleted text> business has historically considered the <location> to be an identifiable segment of its business, and the <deleted text> business has separately accounted for its costs and associated revenues. This method of accounting will remain unchanged subsequent to the Taxpayer 1 Restructuring.

“<deleted text> the Restructuring does not result in the transfer of all or substantially all employees and operations of Taxpayer 1, <deleted text>. All employees at the <location> will be transferred. All of the jobs that give rise to the QJTC will be transferred to Taxpayer 2. The transfer of the

jobs will not be done in exchange for any kind of consideration from Taxpayer 1. It will be accounted for as a contribution to the capital of Taxpayer 2.”

Issue # 1

Whether after the transfer of employees, which were claimed for the quality jobs tax credit, from Taxpayer 1 to Taxpayer 2, Taxpayer 2 can continue to claim the remaining quality jobs tax credit installments for new quality jobs created by Taxpayer 1 and remain eligible to claim additional quality jobs tax credit for new quality jobs that are added in the future during any remaining job creation years, if any. Also, whether Taxpayer 2 can utilize Taxpayer 1’s unused approved withholding benefit carry forward for new quality jobs created by the legal entity Taxpayer 1?

Issue # 2

Whether after the transfer of employees, which were claimed for the quality jobs tax credit, from Taxpayer 1 to Taxpayer 2, Taxpayer 2 can assign a portion of quality jobs tax credit claimed each year to Taxpayer 4, other affiliates of Taxpayer 4, and /or other disregarded entities that are taxed as a division of Taxpayer 4 or other corporate affiliates included in the Taxpayer 1 affiliated group?

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 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. . .”

O.C.G.A. § 48-7-42 (b) and (c) provide that:

“(b) In lieu of claiming any Georgia income tax credit for which a taxpayer otherwise is eligible for the taxable year (such eligibility being determined for this purpose without regard to any limitation imposed by reason of the taxpayer's precredit income tax liability), the taxpayer may elect to assign such credit in whole or in part to one or more affiliated entities for such taxable year by attaching a statement to the taxpayer's return for the taxable year; provided, however, that no carryover attributable to the unused portion of any previously claimed or assigned credit may be assigned or reassigned, except as provided in subsection (d) of this

Code section. Such election must be made on or before the due date for filing the applicable income tax return, including any extensions which have been granted. In the case of any credit that must be claimed in installments in more than one taxable year, the election under this subsection may be made on an annual basis with respect to each such installment, provided that the taxpayer shall notify the commissioner with respect to the assignment of each such installment by filing a separate copy of the election statement for such installment no later than the due date for filing the applicable income tax return, including any extensions which have been granted. Once made, an election under this subsection shall be irrevocable.

(c) The recipient of a tax credit assigned under subsection (b) of this Code section shall attach a statement to its return identifying the assignor of the tax credit, in addition to providing any other information required to be provided by a claimant of the assigned tax credit. With the exception of the transferable credits in Code Sections 48-7-29.8, 48-7-29.12, 48-7-40.26, and 48-7-40.26A, the recipient of a tax credit assigned under subsection (b) of this Code section shall also be eligible to take any credit against payments due under Code Section 48-7-103, subject to the same requirements as the assignor of such credit at the time of the assignment.”

O.C.G.A. § 48-7-42 (g) provides that:

“(g) For the purposes of all credits provided for by this chapter, the sale, merger, acquisition, or bankruptcy of any taxpayer shall not create new eligibility for the succeeding transferee in such transaction or event, but any unused credit eligible to be applied against income tax liability under this article may be transferred and continued by such transferee and applied against the transferee's income tax liability under this article.”

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 was approved to use the quality jobs tax credit against withholding for <years>.

Based on the facts stated herein, it is the opinion of this Department that after the transfer of the employees, which were claimed for the quality jobs tax credit, from Taxpayer 1 to Taxpayer 2, Taxpayer 2 can continue to claim the remaining quality jobs tax credit installments for the new quality jobs maintained by Taxpayer 2 that were created and claimed by the legal entity Taxpayer 1, so long as the transfer of employees occurs in a taxable year beginning on or after January 1, 2018. Taxpayer 2 is eligible to claim new quality jobs tax credit for new quality jobs that are

added in the future during any remaining job creation years, if any. Also, Taxpayer 2 can claim any unused approved withholding benefit carry forward for new quality jobs created by the legal entity Taxpayer 1. Taxpayer 2 must contact the tax credits group in the Department's Taxpayer Services Division and request that the unused approved withholding benefit carry forward be transferred to Taxpayer 2, and they should provide a copy of this letter ruling when they make this request.

Ruling on Issue #2

Based on the facts stated herein, it is the opinion of this Department that after the transfer of the employees, which were claimed for the quality jobs tax credit, from Taxpayer 1 to Taxpayer 2, Taxpayer 2 can assign the quality jobs tax credit claimed in a year (for the remaining quality jobs tax credit installments and new quality jobs tax credit for new quality jobs that are added in the future during any remaining job creation years, if any) to an affiliated entity as provided in O.C.G.A. § 48-7-42. Therefore, Taxpayer 2 can assign the quality jobs tax credit claimed in a year to Taxpayer 4, other affiliates of Taxpayer 4, and/or other disregarded entities that are taxed as a division of Taxpayer 4 or other corporate affiliates included in the Taxpayer 1 affiliated group. Please note that assignments must be made on an original income tax return (return filed before the due date including extensions), assignments cannot be made on an amended return filed after the due date including extensions. And income tax credit carry forward cannot be assigned.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances and taxpayer in question. The facts herein are those presented by the taxpayer and the Department accepts them as true for this ruling. If the facts presented herein change, are not true, are different, or material facts have been omitted, the conclusions reached in this ruling may change. In addition, subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this ruling.