RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-8
RETURNS AND COLLECTIONS

TABLE OF CONTENTS

560-7-8-.36 Job Tax Credit, Description and Definitions.

560-7-8-.36 Job Tax Credit, Description and Definitions.

(1) **Program Description.** The Job Tax Credit program provides tax credits under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated for certain business enterprises that create and retain new full-time employee jobs in Georgia. The Georgia Department of Community Affairs ("DCA") and the Georgia Department of Revenue have been designated as the responsible agencies within Georgia to administer the program.

(2) **Coordination of Regulations.** Any reference to Community Affairs regulations in this regulation refers to the most recent regulations relating to the Job Tax Credit program which have been adopted by the Georgia Department of Community Affairs.

(3) **Definitions.**

(a) **Terms Defined in Community Affairs Regulation.** The terms "business enterprise," "less developed area," "less developed census tract area," "new job," "average wage," "wages," "transferred job," and "replacement job," as used in this regulation are defined in Community Affairs Regulation 110-9-1-.01.

(b) **Taxes Imposed Under Article 2 and Article 5.** The term "taxes imposed under Article 2 and Article 5" means the corporate income tax, withholding tax, and the individual income tax described at Article 2 and Article 5 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated.

(c) **Project.** The meaning of the term "project" as used in this regulation is identical to the meaning of "project" in Department of Revenue Regulation 560-7-8-.37.

(d) **Year One**. The term "year one" means the tax year or calendar year in which sufficient new jobs are created that, meeting the requirements in O.C.G.A. Sections 48-7-40 or 48-7-40.1 and Community Affairs Regulations 110-9-1-.01, 110-9-1-.02, and 110-9-1-.03 and this regulation, entitle a business enterprise to job tax credits.

(e) **Years Two through Five**. For business enterprises that create a new year one under DCA regulations for any taxable year beginning on or after January 1, 2009, the term "years two through five" means the consecutive four-year period following year one in which job tax credits may be allowed for new jobs created in year one and in which additional new jobs may be created that may also qualify for job tax credits.

(f) **Years Two through Six**. For business enterprises that initially claimed the credit for any taxable year beginning before January 1, 2009, the term "years two through six" means the consecutive five-year period following year one in which job tax credits may be allowed for new jobs created in year one and in which additional new jobs may be created that may also qualify for job tax credits.

(g) **Competitive Project**. The term "competitive project" as used in this regulation is defined in O.C.G.A. Section 48-7-40.

(4) **Designation/Redesignation of Less Developed Counties and Less Developed Census Tract Areas.** Counties will be designated tier 1, tier 2, tier 3 or tier 4 less developed counties subject to the factors set out in Community Affairs Regulation 110-9-1-.02. Census tracts will be designated less developed census tract areas subject to the factors set out in Community Affairs Regulation 110-9-1-.02. Less developed counties and less developed census tract areas may be redesignated according to the factors set out in Community Affairs Regulation 110-9-1-.02.

(5) **Amount of Credit.**

(a) **Business Enterprises that Create a New Year One Under DCA Regulations for Any Taxable Year Beginning On or After January 1, 2009.** Business enterprises in counties designated as tier 1, tier 2, tier 3 or tier 4 less developed areas, or in a less developed census tract area will receive an annual credit for taxes imposed under Article 2 for each new full-time employee job created. Replacement jobs and transferred jobs will not generate a credit. The amount of the credit will be $3,500 for business enterprises located in less developed census tract areas or tier 1 counties, $2,500 for business enterprises located in tier 2 counties, $1,250 for business enterprises located in tier 3 counties and $750 for business enterprises located in tier 4 counties. A business enterprise located within the jurisdiction of a joint development authority as described in O.C.G.A. Section 36-62-5.1(e) will qualify for an additional $500 credit for each new full-time job created, subject to the conditions and limitations set forth in these regulations. An existing business enterprise as defined in O.C.G.A. Section 48-7-40(a)(4) will qualify for an additional $500 credit for each new full-time job for the first year in which the new full-time job is created, subject to the conditions and limitations set forth in O.C.G.A. Section 48-7-40 and this regulation.

(b) **Business Enterprises that Initially Claimed the Credit for Any Taxable Year Beginning Before January 1, 2009.** Business enterprises in counties designated as tier 1, tier 2, tier 3 or tier 4 less developed areas, or in a less developed census tract area will receive an annual credit for taxes imposed under Article 2 for each new full-time employee job created for five years, beginning with years two through six after the creation of the jobs. Replacement jobs and transferred jobs will not generate a credit. The amount of the credit will be $3,500 for business enterprises located in less developed census tract areas or tier 1 counties, $2,500 for business enterprises located in tier 2 counties, $1,250 for business enterprises located in tier 3 counties and $750 for business enterprises located in tier 4 counties. A business enterprise located within the jurisdiction of a joint development authority as described in O.C.G.A. Section 36-62-5.1(e) will qualify for an additional $500 credit for each new full-time job created, subject to the conditions and limitations set forth in these regulations. An existing business enterprise as defined in O.C.G.A. Section 48-7-40(a)(4) will qualify for an additional $500 credit for each new full-time job for one year after the creation of such job, subject to the conditions and limitations set forth in O.C.G.A. Section 48-7-40 and this regulation.

(6) **Maximum Amount of Credit.**

(a) **Business Enterprises that Create a New Year One Under DCA Regulations for Any Taxable Year Beginning On or After January 1, 2009.** In tier 3 counties and tier 4 counties the job tax credit may be used, in any taxable year, to offset 50 percent of the taxpayer's Georgia income tax liability derived from operations within this state. Further, where a business enterprise is engaged in a competitive project located in a tier 3 county or a tier 4 county and where the amount of the credit exceeds 50 percent of the business enterprise's income tax liability for the taxable year, such business enterprise may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103. In tier 1 counties, tier 2 counties and in less developed census tract areas the job tax credit may be used to offset 100 percent of the taxpayer's Georgia income tax liability derived from operations within this state. Further, in tier 1 counties and less developed census tract areas, the taxpayer may elect, in cases where the amount of such credit exceeds the business enterprise's liability for income taxes in a taxable year, to take the excess as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103. Where a business enterprise is engaged in a competitive project located in a tier 2 county, such business enterprise may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103.

(b) **Business Enterprises that Initially Claimed the Credit for Any Taxable Year Beginning Before January 1, 2009.** In tier 3 counties and tier 4 counties the job tax credit may be used, in any taxable year, to offset 50 percent of the taxpayer's Georgia income tax liability derived from operations within this state. In tier

1 counties, tier 2 counties, and in less developed census tract areas, the job tax credit may be used to offset 100 percent of the taxpayer's Georgia income tax liability derived from operations within this state. Further, in tier 1 counties and less developed census tract areas, the taxpayer may elect, in cases where the amount of such credit exceeds the business enterprise's liability for income taxes in a taxable year, to take the excess as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103.

(7) **Certification of Competitive Project**. Prior to making the election to use the withholding benefit, a business enterprise engaged in a competitive project located in a tier 2, tier 3 or tier 4 county must be certified by the Commissioner of the Department of Economic Development. The certification must state that but for some or all of the tax incentive provided under O.C.G.A. Section 48-7-40, the business enterprise would have located or expanded outside of Georgia.

(8) **Eligibility for Credit.**

(a) **Net Employment Increase.** Except as otherwise provided in this paragraph, in less developed census tract areas, only those business enterprises that increase employment by 5 or more new full-time jobs for the taxable year will be eligible for the credit. For a business enterprise that initially claimed the credit for any taxable year beginning before January 1, 2012, in tier 1 counties, the business enterprise must increase employment by 5 or more new full-time jobs for the taxable year in order to be eligible for the credit. Within areas of pervasive poverty as designated under O.C.G.A. Section 48-7-40.1, business enterprises shall only have to increase employment by two or more jobs in order to be eligible for the credit, subject to the conditions and limitations set forth in

O.C.G.A. Section 48-7-40.1. For a business enterprise that creates a new year one under DCA regulations for any taxable year beginning on or after January 1, 2012, in tier 1 counties, the business enterprise must increase employment by two or more new full-time jobs for the taxable year in order to be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by 10 or more new full-time jobs for the taxable year will be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more new full-time jobs for the taxable year will be eligible for the credit. In tier 4 counties, only those business enterprises that increase employment by 25 or more new full-time jobs for the taxable year will be eligible for the credit. A credit is not generated during a year if the net employment increase in that year falls below the number of new full-time jobs required in that tier or census tract area.

(b) **Business Enterprises that Create a New Year One Under DCA Regulations for Any Taxable Year Beginning On or After January 1, 2009.**

1. **Jobs Created in Year One.** A business enterprise located in a less developed county or census tract area will receive job tax credits in year one. Such business enterprise will also receive job tax credits in years two through five for each new full-time job created in year one, so long as the net employment increase required for jobs created in that particular county tier or census tract area is maintained during years two through five.

2. **Additional New Jobs Created in Years Two Through Five.** For each additional new job created in years two through five, a business enterprise will receive a job tax credit, so long as the additional new jobs are maintained. Additional new jobs means those new jobs created in years two through five that increase the

monthly full-time employment average for that year above the monthly full-time employment average for year one. The average full-time monthly employment for a year will be determined by the procedure set out in Community Affairs Regulation 110-9-1-.03.

(i) The credits for additional new jobs may only be taken if the business enterprise already qualifies for the job tax credit in year one.

(ii) Job tax credits for additional new jobs will be based on the tier status of the county or less developed census tract area during the year in which the additional new jobs are created.

(c) **Business Enterprises that Initially Claimed the Credit for Any Taxable Year Beginning Before January 1, 2009.**

1. **Jobs Created in Year One.** A business enterprise located in a less developed county or census tract area will receive job tax credits in years two through six for each new full-time job created in year one, so long as the net employment increase required for jobs created in that particular county tier or census tract area is maintained during years two through six.

2. **Additional New Jobs Created in Years Two Through Six.** For each additional new job created in years two through six, a business enterprise will receive a job tax credit for a five-year period, so long as the additional new jobs are maintained. Additional new jobs means those new jobs created in years two through six that increase the monthly full-time employment average for that year above the monthly full-time employment average for year one. The average full-time monthly employment for a year will be determined by the procedure set out in Community Affairs Regulation 110-9-1-.03.

(i) The credits for additional new jobs may only be taken if the business enterprise already qualifies for the job tax credit in year one.

(ii) Job tax credits for additional new jobs will be based on the tier status of the county or less developed census tract area during the year in which the additional new jobs are created.

(d) **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 business enterprise. When a business enterprise merely changes its name, recapitalizes, or liquidates unrelated subsidiaries; however, no new eligibility need be established.

(9) **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.

(a) **Withholding Tax.** A business enterprise creating new jobs sufficient to qualify for the job tax credit authorized for jobs created in counties designated as tier 1 counties or in less developed census tract areas 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. A business enterprise, which creates a new year one under DCA regulations for any taxable year beginning on or after January 1, 2009, engaged in a competitive project located in a tier 2 county, must notify the Commissioner each year of their election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such business enterprise. A business enterprise, which creates a new year one under DCA regulations for any taxable year beginning on or after January 1, 2009, engaged in a competitive project located in a tier 3 county or a tier 4 county whose credit amount exceeds 50 percent of the business enterprise's income tax liability for the taxable year, must notify the Commissioner each year of their election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such business enterprise. The withholding tax benefit may only be applied against the withholding tax account used by the business enterprise for payroll purposes. 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. When this election is made, the excess 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. The amount per job that is eligible to be taken against the quarterly or monthly withholding tax payment for such business enterprise shall not exceed the following amounts:

1. $3,500 for a business enterprise located in a tier 1 county or in a less developed census tract area;

2. $2,500 for a business enterprise engaged in competitive project located in a tier 2 county;

3. $1,250 for a business enterprise engaged in a competitive project located in a tier 3 county; or

4. $750 for a business enterprise engaged in competitive project located in a tier 4 county.

(b) **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. A business enterprise engaged in a competitive project in a tier 2, tier 3 or tier 4 county must attach certification from the Department of Economic Development to Revenue Form IT-WH. Failure to file this form and certification from the Department of Economic Development (if engaged in a competitive project) 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.

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

(d) **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 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.

(10) **Carry forward.** Any job tax credit which is claimed but not used in a taxable year may be carried forward for 10 years from the close of the taxable year in which the qualifying new jobs were created. For example, job tax credits created by an employment increase in year one, but not used in year one, may be carried forward to years two through eleven.

(11) **Coordination with Investment Tax Credit, Optional Investment Tax Credit, the Headquarters Jobs Tax Credit, and the Quality Jobs Tax Credit.**

(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.

(12) **Pass-Through Entities.** When the business enterprise is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage and the limitations of this regulation. The credit forms will initially be filed with the tax return of the business enterprise to establish the amount of the credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess tax credits against their withholding tax liabilities. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2010. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2010 tax year.

(13) **Special Provisions.**

(a) **Effective Date.** The provisions set forth in this regulation will apply to taxable years beginning on or after January 1, 2012. Taxable years beginning before January 1, 2012 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2012 in the same manner as if the amendments set forth in this regulation had not been promulgated.

(b) **Overlap.** Where the boundaries of a less developed census tract area and a less developed county overlap, Community Affairs Regulations 110-9-1-.02 and 110-9-1-.03 shall apply.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40 and 48-7-40.1.