Georgia Letter Ruling: LR IT-2024-01
Topic: Job Tax Credit
Date Issued: May 1, 2024

This letter is in response to your letter emailed to the Department of Revenue (the "Department") on <date>, requesting a ruling that Taxpayer is eligible to claim the job tax credits for certain jobs. <deleted text>.

<u>Facts as Presented by the Taxpayer</u>

Your letter to the Department states: "For more than <number> years, Taxpayer (& Affiliates), d.b.a. <name>, has ensured the peace of mind of <deleted text> through its commitment to <deleted text>. Taxpayer is a <deleted text> organization that provides a seamless network of <services> throughout the <geographic region>. With more than <number> facilities and another <number> offices within in Georgia, Taxpayer employs over <number> full time Georgia residents.

"[O.C.G.A.] § 48-7-40 and [O.C.G.A.] § 48-7-40.1 provide income tax credits for new, permanent, full time jobs within the state by a business enterprise. Taxpayer satisfies the definition prescribed by 48-7-40(a)(2) of a business enterprise located within the state <deleted text>. 'New Full-Time employee job' is defined by 4[8]-7-40(5) as a 'newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county...'

"In response to market demands and inflationary pressures, Taxpayer conducted a thorough review of its compensation structures. The review led to salary adjustments aimed at ensuring competitiveness, retaining talent, and aligning with industry standards. These adjustments were particularly targeted at locations and positions that were critical to the company's growth and operational efficiency. The company's strategy was not merely reactive to market trends but also proactive in strengthening its workforce in a sustainable manner.

"As a result of these adjustments, a subset of employees, who previously were not considered to be 'qualified jobs' due to earning below the average wage earned in the county with the lowest average wage, now earn above the required minimum amount. This raises the question of whether these positions, due solely to salary increases, now qualify as 'New Full-time Employee Job' under the Jobs Tax Credit, as defined in O.C.G.A. § 48-7-40.1(a)(3).

"The existing regulatory framework under Regulation 560-7-8-.36 does not provide clear guidance on scenarios where positions transition into a qualifying status solely due to salary adjustments. This ambiguity in the regulations leaves room for interpretation on whether such roles, which have not undergone functional changes but have experienced significant salary increases, are now eligible for the Job Tax Credit. Based on the form calculations in GA Form IT-CA, all qualified jobs (new and existing) are used in the calculations of the GA job tax credit. Adhering to the guidelines set forth in GA Form IT-CA, positions that newly meet the ‘qualified’ criteria due to salary adjustments would generate job tax credits. However, these positions [w]ere not created during the reporting period but have existed for many years but, instead, have attained a ‘qualified’ status based on their updated salary figures.

“In summary, we seek guidance on whether a newly ‘qualified’ GA job due to salary adjustments that are not otherwise new positions can be included in the new job tax credit calculation on GA Form IT-CA.

“On a similar, yet unrelated issue. We seek clarification from the Department on whether you consider unrelated staffing changes across multiple facilities (different counties) to be new jobs or merely transfer of jobs. Taxpayer has multiple locations in multiple counties and tiers throughout the state. Many times, Taxpayer will create a new job and hire a new employee(s) in a certain location (Location A) that is part of the operational plan for Location A. However, completely unrelated to Location A, they may also reduce jobs & lose an employee (same job title) in another location (Location B) because it is no longer part of the operational plan in Location B. Specific to the GA Job Tax Credits provided by [O.C.G.A.] § 48-7-40 and [O.C.G.A.] § 48-7-40.1, this scenario would appear to have a new qualified job in Location A, a loss of one job in Location B, and a net zero job count impact overall. Can you please provide guidance on whether this is a new job for Location A or essentially a job transfer to Location A?”

Issue #1

Do jobs that did not constitute new full-time employee jobs under O.C.G.A. §§ 48-7-40 and 48-7-40.1 in prior years become new full-time employee jobs in the current year due to an increase in salary, but without any other change in job function or structure for such positions?

Issue #2

Do jobs constitute new full-time employee jobs or transferred jobs under O.C.G.A. §§ 48-7-40 and 48-7-40.1 when the organization makes separate and unrelated business decisions to create jobs in one location and to remove similar jobs in another location?

Authorities

O.C.G.A. § 48-7-40(a)(2) provides:

> “Business enterprise” means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, research and development industries, biomedical manufacturing, and services for the elderly and persons with disabilities. Such term shall not include retail businesses.

> Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

O.C.G.A. § 48-7-40(a)(5) provides:

> "New full-time employee job" means a newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

O.C.G.A. § 48-7-40.1(a)(2) provides:

> "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, and research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

O.C.G.A. § 48-7-40.1(a)(3) provides:

> "New full-time employee job" means a newly created position of employment that was not previously located in this state, requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

Community Affairs Regulation 110-9-1-.01(6)(d) provides:

> Establishment -- means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. This is specifically where an employee's job is performed. Note that if more than one business activity is conducted at the establishment then only those jobs engaged in a qualifying activity will be eligible. For example, a retail establishment which also has a distribution activity serving the southeast will only be eligible for the jobs engaged in the qualifying distribution activity and not for any retail jobs.

Community Affairs Regulation 110-9-1-.01(6)(g) provides:

> New Full-Time Employee Job (also "New Job") -- means a newly created position of employment by a Georgia employer, requires a minimum of 35 hours worked each week, and pays at or above the average wage earned in the county with the lowest average wage in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor, but does not mean a job classified for federal tax purposes as an independent contractor. This determination occurs when a new or expanded operation is first staffed and does not include staff replacement or transfer.
>
>> 1) Part-time jobs that become full-time jobs shall be considered new full-time employee jobs for the purposes of the Job Tax Credit Program. Part-time jobs may not be aggregated to establish full-time equivalents for the purposes of the Job Tax Credit Program.
>>
>> 2) Leased employees will, for the purposes of the Job Tax Credit Program, be considered employees of the company using the services of the leased employees. Leased employees and other employees may be counted toward new job totals for purposes of determining a business enterprise's job tax credit when such employees otherwise meet the definition of full-time job contained herein. Leased employees and other employees that do not meet the definition of full- time job contained herein may not be counted toward job totals. (Note that only the business enterprise using the services of leased employees may claim credit for such employees so long as the business enterprise retains control of the business location and does not delegate such control to the leasing company.)
>>
>> 3) Special circumstances affecting the ability for employees to count new full-time employee jobs include the following:
>>
>>> (i) When a business purchases or leases existing assets and uses those assets for a substantially different process than their immediate prior use, the rule does not apply, and no approval is required from the commissioner of community affairs.

> (ii) When a seasonal business purchases or leases existing assets, the assets must have been out of service for one year or longer unless otherwise approved by the commissioner of community affairs.
>
> (iii) Any time a business is uncertain whether or not new jobs have been created based on this paragraph, the business shall seek a ruling from the commissioner of community affairs before claiming any credits.

Community Affairs Regulation 110-9-1-.01(6)(q) provides:

> Transferred Job -- means a job that is relocated by a business or related businesses from one Georgia establishment to another, or a job that is created by a business or related business that is substantially the same as a previously existing job of such business or related business at a location in Georgia that has ceased operations for six months or less. Because the Job Tax Credit is calculated by taxpayer, by county or census tract area, jobs that are relocated from one establishment to another within the same county or census tract area by the same taxpayer are not considered transferred jobs. If the duties of a transferred job are substantially different from those at the former location, the business may request in writing that the commissioner of community affairs determine whether or not the job is a new job for the purposes of the Job Tax Credit Program. Only after the commissioner of community affairs has determined that the job is a new job may any credits be earned. Similarly, new jobs that are transferred during years one through five from their original location to another county or less developed census tract area may not earn credits after their transfer unless otherwise approved by the commissioner of community affairs.

Revenue Regulation 560-7-8-.36(3)(a) provides:

> 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.

Ruling

Ruling on Issue #1

Based on the facts stated herein, it is the opinion of the Department that Taxpayer cannot claim the job tax credit for any taxable year for jobs that did not meet the pay requirements of a new full-time employee job in the year of the job creation even though such pay requirements are met in a subsequent taxable year. Specifically, Taxpayer was correct to not claim the job tax credit for jobs that did not meet the pay requirements at the time of creation. Additionally, Taxpayer cannot claim the job tax credit for these jobs that only met the pay requirements in a later taxable year following the year of the job creation.

Revenue Regulation 560-7-8-.36 and Community Affairs Regulation 110-9-1-.01 require that the determination of a new full-time employee job occurs when a new or expanded operation is first staffed and does not include staff replacement or transfer. These regulations also provide exceptions to certain Georgia employer requirements and hours-worked requirements of a new full-time employee job, but no exception is provided for jobs that do not meet the pay requirements in the year of the job creation.

Ruling on Issue #2

Based on the facts stated herein, it is the opinion of the Department that Taxpayer can claim the job tax credits for jobs created in a Georgia location in one county even though similar jobs are removed in a Georgia location in a different county. No "transferred jobs"[1] occurred because the addition of jobs by Taxpayer in one Georgia location was not caused or affected by the removal of jobs in another Georgia location.

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.

[1] See Revenue Regulation 560-7-8-.36 and Community Affairs Regulation 110-9-1-.01