

# Rules of Department of Community Affairs

## 110-9 Job Tax Credit Program

### Chapter 110-9-1 Job Tax Credit Program Regulations

#### 110-9-1-.03 Job Tax Credit. Amended.

##### (1) Eligibility for Job Tax Credit for New Jobs Created in Year One.

Provided that all the provisions of these regulations are met, business enterprises in counties currently designated by the commissioner of community affairs as tier 1 counties or less developed census tract areas shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to \$2,500.00 annually, business enterprises in counties currently designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to \$1,500.00 annually, and business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under Article 2 of Chapter 7 of Title 48 equal to \$500.00 annually for each new job created for five (5) years beginning with years two through six after the creation of the job.

(a) A business enterprise will receive job tax credits in year two for full-time jobs created in year one and maintained in year two. Similarly, a business enterprise will receive job tax credits in year three for full-time jobs created in year one and maintained in year three. This method of calculating job tax credits also applies in years four through six.

(b) Only those business enterprises that increase employment by five or more in a tier 1 county or in a less developed census tract area shall be eligible for the credit. Only those business enterprises that increase employment by 15 or more in a tier 2 county shall be eligible for the credit. Only those business enterprises that increase employment by 25 or more in a tier 3 county shall be eligible for the credit. The credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit received for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected.

(c) The number of new jobs increase shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding number of the prior taxable year. The monthly average number of full-time employees in a taxable year shall be determined by the following method:

1. for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;

2. add the monthly totals of full-time employees; and

3. divide the result by the number of months the business enterprise was in operation during the taxable year. Transferred jobs and replacement jobs may not be included in the monthly totals.

(d) For business enterprises that make the election authorized by paragraph 110-9-1-.03(10)(a), the number of new jobs increase shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the calendar year with the corresponding number of the prior calendar year. The monthly average number of full-time employees in a calendar year shall be determined by the following method:

1. for each month of the calendar year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;

2. add the monthly totals of full-time employees; and

3. divide the result by the number of months the business enterprise was in operation during the calendar year. Transferred jobs and replacement jobs may not be included in the monthly totals.

(e) Job tax credits for jobs created in year one and maintained during a portion of or all of the following five years will not be affected even if the county/census tract area, during years two through six, is no longer designated as less developed or is reclassified.

(2) **Eligibility for Job Tax Credit for Additional New Jobs (Jobs Created During Years Two Through Six).** Tax credits for five years for the taxes imposed under Article 2 of Chapter 7 of Title 48 shall be awarded for additional new jobs created by business enterprises qualified under subsection (b) or (c) of Code Sections 48-7-40 and 48-7-40.1. Additional credits are allowed for additional new jobs if the business enterprise already qualifies for the job tax credit based on new job increases in year one and if the county/census tract area is in a currently designated less developed area. Additional credits are also allowed for additional new jobs if the business enterprise already qualifies for the job tax credit based on new job increases in year one and the additional new jobs are created within the time-frame of a current and accepted notice of intent. Additional new jobs shall mean those new jobs created in year two that increase an employers monthly average of full-time employees above the number of monthly average of full-time employees in year one; and those new jobs created in year three that increase

an employers monthly average of full-time employees above the highest number of monthly average of full-time employees achieved by a business enterprise in previous years beginning with year one, etc. Additional new jobs may only be created in years two through six, including all subsequent years two through six initiated by a qualifying increase of new jobs.

(a) The number of additional new jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding number of the prior taxable year. The monthly average number of full-time employees in a taxable year shall be determined by the following method:

1. for each month of the taxable year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;
2. add the monthly totals of full-time employees; and
3. divide the result by the number of months the business enterprise was in operation during the taxable year. Transferred jobs and replacement jobs may not be included in the monthly totals.

(b) For business enterprises that make the election authorized by paragraph 110-9-1-.03(10)(a), the number of additional new jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the calendar year with the corresponding number of the prior calendar year. The monthly average number of full-time employees in a calendar year shall be determined by the following method:

1. for each month of the calendar year, count the total number of full-time employees of the business enterprise that are subject to Georgia income tax withholding as of the last payroll period of the month or as of the payroll period during each month used for the purpose of reports to the Georgia Department of Labor;
2. add the monthly totals of full-time employees; and
3. divide the result by the number of months the business enterprise was in operation during the calendar year. Transferred jobs and replacement jobs may not be included in the monthly totals.

(c) A business enterprise will receive job tax credits in year three for additional new jobs created in year two and maintained in year three. Similarly, a business enterprise will receive job tax credits in year four for additional new jobs created in year

two and maintained in year four. This method of calculating job tax credits also applies to the remaining three years that an enterprise may receive tax credits for additional jobs created in year two. This same process applies to additional new jobs created in years three through six.

(d) Job tax credits for additional jobs created in years two through six and maintained during a portion of or all of the following five years will not be affected even if the county/census tract area, at some point during years two through six, is reclassified to another tier or is no longer designated as less developed.

(e) Additional job tax credit amounts shall be based on the county's current tier status or on the current accepted notice of intent. In addition, job tax credits for additional jobs shall only be allowed if the business enterprise has met, in Year 1, the net employment increase required by the county's current tier status. If, however, a company has filed a notice of intent that has been accepted by the commissioner of community affairs and if additional jobs are created within the time frame of the notice of intent, credits for additional jobs will be allowed if the business enterprise has met, in Year 1, the net employment increase required by the county's tier status for the calendar year the Notice of Intent was filed with the Georgia Department of Community Affairs.

**(3) Initiation of Subsequent Periods of Eligibility for Job Tax Credits Based on Required Net Employment Increases for Counties and Less Developed Census Tract Areas.** A subsequent year one and years two through six are created when a business enterprise creates the required threshold number of new jobs or more above its previous high employment (based on monthly average of full-time employees for each year) beginning with employment during the business enterprise's first year of eligibility for the job tax credit (initial year one).

(a) Subsequent periods of eligibility are subject to all the provisions of these regulations and Official Code of Georgia Annotated Sections 48-7-40, 48-7-40.1, 48-7-40.14, and 36-62-5.1.

(b) Job tax credits generated under previous periods of eligibility will not be affected as long as the new jobs are maintained. But no new job tax credits may be generated under previous periods of eligibility after a subsequent period of eligibility has begun.

**(4) Computation of Job Tax Credit for Business Enterprises Based On Employment By County/Census Tract Area.** For all business enterprises, the computations for employment increases for the job tax credit will be based on total employment dedicated to manufacturing, warehousing and distribution, processing, telecommunications, research and development, or tourism separately for each taxpayer in each individual county/census tract area.

(a) When a single physical location includes both business enterprises and other activities, only employment directly associated with the business enterprises may be counted toward the number of new full-time jobs needed to generate credits.

(5) **Computation of Job Tax Credit for Business Enterprises Based On 12 Month Periods Only.** Business enterprises must compute increases and decreases in full-time jobs on the basis of 12 month periods only, even when business enterprises have taxable years that are not equal to 12 months.

(6) **Carryforward of Job Tax Credit and Limitation on Amount of Tax Credit In Any One Taxable Year.** Any credit claimed under Code Sections 48-7-40, 48-7-40.1, 48-7-40.14, or 36-62-5.1 but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, but the credit established by Code Sections 48-7-40, 48-7-40.1, 48-7-40.14, and 36-62-5.1 taken in any one taxable year shall be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(7) **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.

(a) When one business purchases another business enterprise and the requirements of paragraph 6(h), rule 110-9-1-.01, requiring assets to be idle for six months or longer have not been met, the succeeding enterprise may be eligible for tax credits for new jobs above the employment levels of the preceding business enterprise. The succeeding business enterprise must submit information to the commissioner of community affairs sufficient to establish a base level of employment before any credit may be allowed. Submission of this information will require that the preceding business enterprise be willing to supply the succeeding business enterprise or the commissioner of community affairs payroll or other information confirming the employment base of the preceding company.

(8) **Report Issued Annually by the State Revenue Commissioner.** Each year, the state revenue commissioner will issue a report on the job tax credit. Included in the report will be information, by county/census tract area, by year, on the number of jobs created through the job tax credit and the amount of the tax credit used by all business enterprises.

(9) **Authority of the Commissioner of Community Affairs.** The commissioner of community affairs shall determine which businesses are engaged in qualifying activities and 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.

(10) **Special Provisions.**

(a) Notwithstanding any provision to the contrary, business enterprises may make a one-time election to calculate new full-time jobs on a calendar year rather than a taxable year basis for all jobs created during calendar year 1994 and thereafter as compared against the preceding calendar year. Such one-time election may be made by claiming job tax credits in connection with any 1995 state income tax return or amended return that is filed after April 29, 1997. Such election will not change the taxable year of the business enterprise. Business enterprises that make such an election are eligible to claim the credit beginning with the first taxable year to end following the end of year two.

(b) Notwithstanding any provision of these regulations to the contrary, in all counties designated as tier 1 for any period of time prior to January 1, 1994, job tax credits shall be allowed as provided in these regulations, in addition to business enterprises, to any business of any nature for jobs created from January 1, 1993 through December 31, 1997. The counties affected by this provision are as follows: Warren, Calhoun, Hancock, Burke, Stewart, Quitman, Turner, Mitchell, Emanuel, Baker, Macon, Terrell, Treutlen, Randolph, Seminole, Taliaferro, Early, Taylor, Jefferson, Long, Worth, Telfair, Talbot, Dooly, Clay, Jenkins, Screven, Crisp, Bacon, Meriwether, Twiggs, Brantley, Greene, Montgomery, Dodge, Elbert, Decatur, Toombs, Cook, Atkinson, Marion, Wheeler, Clinch, Webster, Appling, and McIntosh counties.

(c) Tax credits generated during taxable years beginning prior to January 1, 1997 will not be affected by changes in these regulations. Such tax credits will be based on law and regulation in effect at the time the credits were generated.

(d) For tax years beginning on or following January 1, 1997, tax credits, whether generated during year one or during any years two through six, will be based on provisions in these regulations.

(e) The amount of any tax credit will be based on the status of the county/less developed census tract area in the year in which qualifying new full-time jobs are created and not on the status of the county/less developed census tract area in subsequent years when qualifying jobs are being maintained.

(f) When a less developed census tract area and a less developed county overlap, the following rules shall apply unless otherwise changed by the commissioner of community affairs based on a petition from a business enterprise:

1. If a business enterprise locates in the area of overlap between a tier 1 county and a less developed census tract area, rules governing the tax credit shall be based on the portions of these regulations governing tier 1 counties;

2. If a business enterprise locates in the area of overlap between a tier 2 county or a tier 3 county and a less developed census tract area, the business enterprise may choose to claim the credit authorized by Code Section 48-7-40 or the credit authorized by Code Section 48-7-40.1 each time a subsequent period of eligibility is initiated, provided all requirements of the applicable Code Section are met; and

3. under no circumstances shall tax credits based on less developed counties and less developed census tract areas be added.

(g) Not less than 30 percent of qualifying jobs created and maintained by business enterprises in less developed census tract areas that claim the credit authorized by Code Section 48-7-40.1 must be held by a resident of the less developed census tract area for which the credit is sought or another such designated less developed census tract area or less developed tier 1 county.

(h) In counties designated as the 54th through the 80th less developed counties for calendar year 1994, job tax credits equal to \$1,000 annually for five years beginning with year two after the creation of the jobs shall be allowed for business enterprises that create between 10 and 24 new full-time jobs during their taxable year beginning on or after January 1, 1994 but prior to January 1, 1995. Such credits shall be allowed provided that those business enterprises meet all other requirements of these regulations.

(i) A business enterprise located within the jurisdiction of a joint authority established by two or more contiguous counties will qualify for an additional \$500.00 tax credit for each new full-employee position created. A business enterprise located within the jurisdiction of a joint authority, however, must create the number of new jobs required by the tier status of the county in which the business enterprise is located before any tax credits will be allowed. The \$500.00 job tax credit authorized by this subparagraph shall be subject to all the conditions and limitations specified under these regulations. With respect to a joint authority created on or before March 31, 1995, and notwithstanding any provision of these regulations to the contrary, any taxpayer eligible for an additional \$500.00 tax credit pursuant to this subparagraph shall have the option of electing to utilize for a given project the tax credit formerly authorized under Code Section 36-62-5.1 pertaining to taxable years beginning prior to January 1, 1995, in lieu of the tax credit otherwise available pursuant to this subparagraph. Such election shall be made for each committed project in writing on or before July 1, 1995, to the commissioner of community affairs. Such election shall not be effective unless approved in writing by the commissioner of community affairs. The election must be made using a notice of intent form provided by the Georgia Department of Community Affairs and must state the county/census tract area for which the project is planned, the number of new jobs planned, and the dates of the planned expansion. All properly executed notices

of intent received by the Georgia Department of Community Affairs between January 1, 1994 and July 1, 1995 shall be accepted as an election of the tax credit formerly authorized under Code Section 36-62-5.1 pertaining to taxable years beginning prior to January 1, 1995. The election of the formerly authorized tax credit will be applicable to otherwise eligible projects for new full-time jobs created during taxable years, or calendar years for business enterprises that make the election authorized by paragraph 110-9-1-.03(10)(a), beginning on or after January 1, 1995, January 1, 1996, January 1, 1997, and January 1, 1998. The election will no longer be applicable for new full-time jobs created during taxable years, or calendar years for business enterprises that make the election authorized by paragraph 110-9-1-.03(10)(a), that begin on or after January 1, 1999. Benefits of the election shall apply to both new jobs created in year one and to additional new jobs. Benefits of the election will be based on county tier rankings for the calendar year 1995. Benefits will include allowing the higher credit authorized by the election for years two through six after new job creation, even if all or a portion of years two through six begin on or following January 1, 1999. The benefits of the job tax credit authorized by the election provided for in this subparagraph shall be subject to all the conditions and limitations specified under these regulations. The Georgia Department of Community Affairs will not regulate the creation or operation of joint development authorities nor will the department define bona fide authorities for the purposes of the job tax credit program.

(j) No taxpayer shall be authorized to claim on a tax return for a given project the credit provided for in these regulations if such taxpayer claims on such tax return any of the credits authorized under Code Sections 48-7-40.2, 48-7-40.3, or 48-7-40.4, unless otherwise specifically allowed under these Code Sections.

(k) These regulations shall be applicable to all taxable years beginning on or after January 1, 1997.

(Authority O.C.G.A. 48-7-40(g), O.C.G.A. 48-7-40(j), O.C.G.A. 48-7-40.1(g), O.C.G.A. 36-62-5.1(e), O.C.G.A. 48-7-40.14, and O.C.G.A. 36-62-5.1(f))