

Rules of Department of Community Affairs

110-9 Job Tax Credit Program

Chapter 110-9-1 Job Tax Credit Program Regulations

Designation of Tier Status

110-9-1-02 Georgia Counties/Designation of Less Developed Census Tract Areas. Amended.

(1) **Timetable and Effective Dates for Designation of Tier Status of Georgia Counties/Designation of Less Developed Census Tract Areas.** Not later than December 31 of each year, using the most current data available from the Department of Labor, the United States Department of Commerce, the United States Census Bureau, and others, the commissioner of community affairs shall rank and designate all 159 counties in Georgia as less developed areas. And no later than December 31 of each year, using the most current data available from the most recent decennial census, the commissioner of community affairs shall rank and designate certain less developed census tract areas.

(a) For the purpose of determining the number of new jobs created, business enterprises shall use their first tax year that begins on or following the beginning of the calendar year in which a census tract is designated as less developed or in which a county is designated as a tier 1, tier 2, tier 3, or tier 4 county, unless otherwise approved by the commissioner of community affairs.

(2) **Ranking and Designation of Tier Status of Georgia Counties.** A combination of the following factors will be used in ranking counties: highest unemployment rate for the most recent 36 month period; lowest per capita income for the most recent 36 month period; and highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

(a) Counties ranked and designated as the first through seventy-first least developed counties shall be classified as tier 1, counties ranked and designated as the seventy-second through one hundred sixth least developed counties shall be classified as tier 2, counties ranked and designated as the one hundred seventh through one hundred forty-first least developed counties shall be classified as tier 3, and counties ranked and designated as the one hundred forty-second through one hundred fifty-ninth least developed counties shall be classified as tier 4.

(b) The factors used in ranking counties will be weighted in the following manner: all factors will be given equal weight.

(c) In the case of a tie that would place tied counties in two different categories (tier 1, tier 2, tier 3, or tier 4), the tie will be broken in the following manner: the county with the highest average unemployment rate will be in the lower category (e.g., tier 1 if the split is between tier 1 and tier 2). If the counties are tied on highest average unemployment rate, the county with the lowest average per capita income will be in the lower category. If the counties are tied on both highest average unemployment rate and lowest average per capita income, the county with highest percentage of poverty will be in the lower category. If the counties are tied on all three categories, the board of community affairs shall determine which county falls into each category.

(3) Ranking and Designation of Ten or More Contiguous Census Tracts as Less Developed Areas. Using data from the most recent decennial census, a combination of the following factors will be used in ranking counties in order to help determine the less developed census tract areas: highest unemployment; lowest per capital income; and highest percentage of residents whose income is below the poverty level. The county that ranks seventy-first from the bottom on these factors will be the benchmark county used to determine which census tracts are potentially eligible for inclusion in a less developed census tract area.

(a) All census tracts in the state and the benchmark county will be ranked using the following factors: highest unemployment; lowest per capital income; and highest percentage of residents whose income is below the poverty level. Data used to rank the tracts and the benchmark county will be from the most recent decennial census. All census tracts that are equal or lower in rank than the benchmark county and are in an MSA will be eligible for inclusion in a less developed census tract area if they can be grouped as part of 10 or more contiguous census tracts that are also eligible for inclusion in a less developed census tract area.

(b) Groupings of 10 or more eligible census tracts will be determined according to the following rules:

1. all eligible census tracts will be grouped into less developed census tract areas that are as large as possible but never in groupings of less than 10;
2. groupings may cross county boundaries; and
3. all census tracts in a grouping must be contiguous.

(c) All factors used in ranking census tracts and counties for the purpose of determining less developed census tract areas will be given equal weight.

(4) Redesignation of Tier Status of Georgia Counties/Designation of Less Developed Census Tract Areas Based on a Period of Economic Distress. Any tier 3 county which undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county may be eligible for tier 2 designation. Also, any tier 2 county which undergoes a sudden and severe period of

economic distress caused by the closing of one or more business enterprises located in such county may be eligible for tier 1 designation. In addition, any area comprised of ten or more contiguous census tracts which undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such area may be eligible for designation as a less developed census tract area; or any area comprised of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs, is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, or the closing of a business enterprise which, in the opinion of the commissioner of community affairs, results or will result in a sudden and severe period of economic distress.

(a) In order to receive consideration for designation as a tier 2 or tier 1 county based on a sudden and severe period of economic distress caused by the closing of one or more business enterprises, a county must request designation from the commissioner of community affairs and must show actual job losses that exceed the following threshold criteria:

1. If the unemployment rate of the county has exceeded the state's average unemployment rate for the previous 3 months, the dislocation must amount to at least 2 percent of the employed population.

2. If the unemployment rate of the county was equal to or less than the state's average unemployment rate for any of the previous 3 months, the dislocation must amount to at least 4 percent of the employed population.

3. In addition, fifty (50) percent of the job loss threshold must result from the action of a single employer, or eighty (80) percent of the job loss threshold must occur in a single industry classification (i.e., three digit NAICS Code).

(b) Counties/census tract areas designated as tier 2 or tier 1 counties or as less developed census tract areas under the provisions of this paragraph will remain designated for one year. After one year, such counties/census tract areas may ask the commissioner of community affairs to be redesignated for additional years if documentation is provided that demonstrates a continuing period of economic distress.

(c) No designation pursuant to this paragraph shall displace or remove any other county/census tract area designated as a tier 2 or tier 1 county or as a less developed census tract area pursuant to paragraphs (2) or (3) of rule 110-9-1-.02.

(d) In order to receive consideration for designation as a less developed census tract area based on the closing of one or more business enterprises, an area must request designation from the commissioner of community affairs and must provide documentation sufficient to support that major job losses have occurred or will occur. The area must include one or more contiguous census tracts all of which must be located in an MSA. Any portion of such one or more contiguous census tracts may be currently

designated as part of an existing less developed census tract area. In addition, such one or more contiguous census tracts must meet the criteria in paragraph (3)(b)2 and (3)(b)3 of rule 110-9-1-.02. Notwithstanding any provision of this subparagraph to the contrary, any area within an MSA comprised of one or more contiguous census tracts which is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, may be designated as a less developed census tract area.

(e) At any time a request for designation based on a sudden and severe period of economic distress is sought that meets the criteria established in law and regulation, the commissioner will bring his recommendation to the board of community affairs for final determination.

(5) Procedures to Ensure Business Enterprises Can Claim Credits in Future Years. For business enterprises which plan a significant expansion in their labor forces, the following procedures ensure that they can claim credits in future years without regard to whether or not a particular county/census tract area is reclassified in a different tier or removed from the list of less developed areas: Business enterprises which plan a significant expansion in their labor forces in a currently designated tier 1, tier 2, or tier 3 county/less developed census tract area may file a notice of intent with the commissioner of community affairs stating the county/census tract area in which the business enterprise is planning to locate or expand, the number of new jobs planned, and the dates for the planned expansion. The notice of intent may only be filed for locations or expansions that are planned within 3 years of the date of the notice of intent. The notice of intent, once received and accepted by the commissioner of community affairs, will allow the business enterprise job tax credits based on the tier status of the county or the status of the census tract at the time of acceptance of the notice of intent if the planned location or expansion takes place within the time-frame submitted in the notice of intent and if all other program requirements are satisfied as specified in these regulations and in the Official Code of Georgia Annotated Section 48-7-40, 48-7-40.1, and 36-62-5.1. No credits for new jobs may be generated outside the time-frame of a notice of intent unless otherwise provided for in Part 3 of these regulations. Credits for maintained jobs may still be taken even after a notice of intent has lapsed. If the tier status of a county changes from tier 2 to tier 1 or from tier 3 to tier 2 during the time-frame of a notice of intent, a business enterprise may elect to take tax credits based on the lower tier for new jobs created during the years the county is in the lower tier.

(a) Notices of intent may be updated or amended by any business enterprise not more often than once a year

(b) For less developed census tract areas, notices of intent or amendments and updates thereto may only be submitted to the commissioner of community affairs during calendar years in which the areas are designated as less developed. When a business enterprise submits a notice of intent to the commissioner of community affairs, the applicable tier status for claiming credits for future years will be the tier status of the county during the calendar year prior to the calendar year of the annual year-end notice of intent deadline.

(c) Business enterprises planning the creation of new jobs in tier 4 counties may file notices of intent, but no benefit is derived from such filing unless otherwise stated in law or regulation.

(d) Businesses planning the creation of new jobs in the first through the fortieth least developed counties may also file notices of intent with the commissioner of community affairs. The notices of intent, once received and accepted by the commissioner of community affairs, will allow businesses job tax credits as described in 110-9-1-.02(5), even if such businesses are not business enterprises as defined in these regulations. The three-year limitation on notices of intent also applies to businesses planning jobs in the first through the fortieth least developed counties. Credits for maintained jobs may still be taken even after a notice of intent has lapsed.

(e) The notice of intent procedures described in these regulations are intended to protect companies, for the limited period of 3 years, from the results of the re-ranking of counties and census tracts. These procedures, however, do not protect companies from changes in law unless otherwise specified in law. Protection provided by notices of intent include the following potential changes in benefits resulting from re-ranking: changes in credit amount, changes in job threshold, changes in above average wage requirements, changes in limitations in the amount of tax liability that may be offset, and changes in ability to apply credits against payroll withholding.

(f) The commissioner of community affairs will accept notices of intent during the period between February 1st of each year and January 31st of the following year. The deadline for acceptance is January 31st of each year. Notices of intent will apply to the three years beginning with the year of the year-end deadline for which the notices are filed.

(Authority O.C.G.A 48-7-40(b), O.C.G.A 48-7-40(c), O.C.G.A 48-7-40(c.1), O.C.G.A 48-7-40(d), O.C.G.A 48-7-40.1(b), O.C.G.A 48-7-40.1(c), and O.C.G.A 48-7-40.1(d))