

Rules of Department of Community Affairs

110-9 Job Tax Credit Program

110-9-1-.01 Introduction and Definitions. Amended

(1) **Authority for Regulations.** Official Code of Georgia Annotated Section 48-7-40, Section 48-7-40.1, and Section 36-62-5.1.

(2) **Administrative Agencies.** The Georgia Department of Community Affairs (DCA) and the Georgia Department of Revenue have been designated as the responsible agencies within the State of Georgia to administer the Job Tax Credit Program for less developed areas.

(3) **Program Purpose.** The purpose of the Job Tax Credit Program is to encourage the further economic development of the state.

(4) **Program Objective.** The Job Tax Credit Program is designed to encourage businesses to locate and expand in the state.

(5) **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 jobs in areas designated as less developed. A minimum number of new full-time jobs must be created and retained for one year before any credit may be received.

(6) **Definitions.**

(a) Less Developed Areas -- means all 159 counties in this state and certain census tract areas that meet applicable requirements in law and regulation. Less developed census tract areas means areas in this state which are comprised of 10 or more contiguous census tracts each of whom is equal to or worse than the benchmark county on the following economic indicators: highest unemployment rate; lowest per capita income; and highest percentage of residents whose income is below the poverty level. Comparisons between census tracts and the benchmark county will be based on data from the most recent decennial census. Only census tracts in a metropolitan statistical area (MSA) will be eligible for inclusion in this designation. Counties included in Georgia's MSAs are: Albany MSA, Dougherty and Lee counties; Athens MSA, Clarke, Madison and Oconee counties; Atlanta MSA, Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, Pickens, Rockdale, Spalding, and Walton counties; Augusta MSA, Columbia, McDuffie,

and Richmond counties; Chattanooga MSA, Catoosa, Dade, and Walker counties; Columbus MSA, Chattahoochee, Harris, and Muscogee counties; Macon MSA, Bibb, Houston, Jones, Peach and Twiggs counties; Savannah MSA, Bryan, Chatham, and Effingham counties. Other census tracts may be designated as less developed areas as provided for in these regulations.

> (b) Business Enterprise -- means any corporation, partnership, limited liability company, or sole proprietorship or the headquarters of any such corporation, partnership, limited liability company, or sole proprietorship which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, research and development, or tourism in a less developed area. Such term does not include retail businesses. For the purpose of determining which businesses are engaged in the qualifying activities, the North American Industry Classification System (NAICS Code), United States, 1997, will be used. Classification of any business establishment for the purpose of the Job Tax Credit Program will be based on the NAICS Code, United States, 1997.

1. Manufacturing means those establishments classified by the NAICS Code that belong to Sectors 31-33 [formerly Division D of the SIC Code].

2. Warehousing and distribution means a warehouse, facility, structure, or enclosed area which is used primarily for the storage, shipment, preparation for shipment, or any combination of such activities, of goods, wares, merchandise, raw materials, or other tangible personal property, and those establishments classified by the NAICS Codes that belong to Sector 42 or to Subsector 493 [formerly SIC Codes that belonged to Division F or to Industry Group 422].

3. Processing means the same as manufacturing establishments. Processing also means those establishments primarily engaged in providing data processing, information processing, computer software, or telemarketing services and further means only the following establishments in addition to Sectors 31-33 of the NAICS Code: establishments that are both primarily engaged in providing point-to-point communication services, and included in Subsector 513 of the NAICS Code [formerly SIC Code 48]; establishments that are both primarily engaged in providing insurance reporting and research services, insurance advisory services, insurance educational services, insurance information bureaus, medical insurance claims processing, pension and retirement plan consulting, and policy-holder's consulting services, and included in NAICS Codes 524298 and 524292 [formerly SIC Code 6411]; establishments that are both primarily engaged in providing automated clearinghouses, check clearinghouse associations, and included in NAICS Code 522320 [formerly SIC Code 6099]; establishments that are both primarily engaged in providing investment advice and investment research, exchange clearinghouses, financial reporting, and quotation services, and included in NAICS Codes 523930 and 523999 [formerly SIC Code 6282 or 6289]; establishments that are both primarily engaged in providing title abstract services, and included in NAICS Code 541191 [formerly SIC Code 654]; establishments that are both primarily engaged in providing credit reporting services, and included in NAICS Code 561450 [formerly SIC

Code 7323]; establishments that are both primarily engaged in providing direct mail services, and included in NAICS Code 541860 [formerly SIC Code 7331]; establishments that are both primarily engaged in providing computer programming services, and included in NAICS Code 541511 [formerly SIC Code industry group 7371]; establishments that are both primarily engaged in providing prepackaged software, and included in NAICS Code 511210 [formerly SIC Code industry group 7372]; establishments that are both primarily engaged in providing computer systems design, and included in NAICS Code 541512 [formerly SIC Code industry group 7373]; establishments that are both primarily engaged in providing computer processing and data processing services, and included in NAICS Code 514210 [formerly SIC Code industry group 7374]; establishments that are both primarily engaged in providing information retrieval services, and included in NAICS Code 514191 [formerly SIC Code industry group 7375]; establishments that are both primarily engaged in providing computer facilities management services, and included in NAICS Code 541513 [formerly SIC Code industry group 7376]; establishments that are both primarily engaged in providing data base development or data processing, and included in NAICS Code 541519 [formerly SIC Code industry group 7379]; establishments that are both primarily engaged in providing telemarketing services, and included in NAICS Code 561422 [formerly SIC Code industry group 7389]; establishments that are both primarily engaged in providing check validation services, and included in NAICS Code 522320 [formerly SIC Code 7389]; establishments that are both primarily engaged in providing motion picture production, and included in NAICS Codes 512110 and 512191 [formerly SIC Code 781]; establishments that are both primarily engaged in providing accounting, auditing, and bookkeeping services, and included in NAICS Code 5412 [formerly SIC Code 8721]; establishments that are both primarily engaged in providing research, testing, and development services, and included in NAICS Codes 541710, 541720, 541910, 541940, and 541380 [formerly SIC Code 873]; establishments that are both primarily engaged in providing economic consulting, educational consulting, test development and evaluation services, and testing services, and included in NAICS Codes 611710 and 541690 [formerly SIC Code 8748]. Notwithstanding any provision of these regulations to the contrary, for tax credits generated by jobs created during taxable years beginning prior to December 31, 2000, a taxpayer may qualify under the definition of Processing pursuant to paragraph 6(b)3 of rule 110-9-1-.01 that was in effect prior to January 1, 1997. Such a taxpayer may continue to qualify under the prior definition of Processing for additional new jobs created during years two through six, even if these years fall after December 31, 2000, but no year one may be triggered under the prior definition of Processing after December 31, 2000.

4. Telecommunications means those establishments classified in NAICS Code 5133 [formerly SIC Codes 4812, 4813 and 4822].

5. Research and development means those establishments classified in NAICS Codes 541710, 541720, 541910, 541940, and 541380 [formerly SIC Codes that belonged to Industry Group 873].

6. Tourism means only the following establishments: establishments that are both primarily engaged in providing lodging for the public, and included in NAICS Code 7211 [formerly SIC Code industry group No. 7011]; provided that establishments offering lodging for more than 30 consecutive days to the same customer shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in providing overnight or short term sites for recreational vehicles, trailers, campers or tents, and included in NAICS Code 721211 [formerly SIC Code industry group No. 7033]; provided that establishments primarily engaged in the operation of residential trailer parks or primarily engaged in providing accommodations for more than 30 consecutive days to the same customer shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in the operation of convention centers, and included in NAICS Code 711310 [formerly SIC Code industry group No. 6512]; establishments that are both primarily engaged in the operation of sports stadiums or arenas, and included in NAICS Code 711310 [formerly SIC Code industry group No. 7941]; establishments that are both primarily engaged in the operation of sporting or recreational camps, and included in NAICS Code 721214 [formerly SIC Code industry group No. 7032]; provided that establishments primarily engaged in the operation of summer camps shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in the operation of golf courses open to the general public on a contract or fee basis, which are associated with a resort development, and included in NAICS Code 713910 [formerly SIC Code industry group No. 7992]; provided that establishments primarily engaged in the operation of golf courses associated with housing developments shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in the operation of sports complexes open to the general public on a contract or fee basis, and included in NAICS Code 711310 [formerly SIC Code industry group No. 6512]; establishments that are both primarily engaged in the operation of professional or semi-professional sport clubs, and included in NAICS Code 711211 [formerly SIC Code industry group No. 7941]; provided that for the purposes of this provision professional and semi-professional sport clubs include only those clubs which compensate athletes for their services as players and such term does not include amateur sport clubs, amateur sport leagues, or amateur sport associations; establishments that are both primarily engaged in the operation of racing facilities, including drag-strips, motorcycle race tracks, auto or stock car race tracks or speedways, and included in NAICS Code 711212 [formerly SIC Code industry group No. 7948]; establishments that are both primarily engaged in the operation of amusement centers, amusement parks, theme parks, or amusement piers, and included in NAICS Code 713110 [formerly SIC Code industry group No. 7996]; establishments that are both primarily engaged in the operation of permanent non-migrating carnivals or fairs, and included in NAICS Code 711310 [formerly SIC Code industry group No. 7999]; establishments that are both primarily engaged in the operation of tours within the State of Georgia, and included in NAICS Code 561520 [formerly SIC Code industry group No. 4725]; establishments that are both primarily engaged in the operation of airplanes, helicopters, buses, vans or boats for excursion or sightseeing purposes within the State of Georgia, and included in NAICS Code Subsector 487 [formerly SIC Code industry group Nos. 4522, 4119, or 4489]; establishments that are both primarily engaged in the operation of hunting preserves, trapping preserves, or fishing preserves or lakes which are open to the general public on a

contract or fee basis, and included in NAICS Code 114210 [formerly SIC Code industry group Nos. 0921 or 0971]; establishments that are both primarily engaged in the operation of museums, planetaria, art galleries, arboreta or botanical gardens, or aquariums or zoological gardens, and included in NAICS Codes 712110, 712120, 712130, and 712190 [formerly SIC Code industry group Nos. 8412 or 8422]; provided that establishments which derive 50% or more of their gross revenue from the sale of goods or merchandise shall not qualify for a tax credit under this provision; establishments that are both primarily engaged in the operation of boat rentals, boat party fishing services, rowboat or canoe rentals, horse shows, natural wonder attractions, picnic grounds, river-rafting services, scenic railroads for amusement, aerial tramways, rodeos, water-slides or wave pools, and included in NAICS Codes 487990, 487110, 487210, and 713990 [formerly SIC Code industry group No. 7999].

(c) Establishment -- means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed.

(d) Benchmark County -- means the county according to the most recent decennial census that ranks seventy-first from the bottom county on the following factors: highest unemployment rate; lowest per capita income; and highest percentage of residents whose income is below the poverty level. This county's scores will be the benchmark for determining census tracts that are potentially eligible for inclusion in less developed census tract areas. When counties are ranked each year by the commissioner of community affairs to determine their tier 1, tier 2, tier 3, or tier 4 status, one county will be ranked as the seventy-first less developed county. This county will not necessarily be used as a benchmark for determining those census tracts eligible for inclusion in less developed census tract areas.

(e) Full-Time Job -- means a job with no predetermined end date, with a regular work week of 35 hours or more for the entire normal year of local company operations, and with benefits provided to other regular employees of the local company, but does not mean a job classified for federal tax purposes as an independent contractor. 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 must 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.)

(f) Headquarters -- means the central world or national administrative offices of a business enterprise that is primarily engaged in performing management and general administrative functions for such business enterprise. If a business has headquarters that provides services to business enterprises, such business must derive at least 51 percent of its sales from the operations of its business enterprises in order for such business's headquarters to be potentially eligible for tax credits under these regulations.

(g) Maintained Job -- means any new job continued for all or part of the consecutive five-year period after its creation, but does not include any period during the tax year in which it was created.

(h) New Job -- means any full-time job created by an employer in Georgia at the time a new establishment or an expansion of an existing establishment is initially staffed, but does not include any transferred job or replacement job. Part-time jobs that become full-time positions shall be considered new full-time jobs for the purposes of the Job Tax Credit Program. Part-time jobs may not be added together to establish full-time job equivalents for the purposes of the Job Tax Credit Program. When a business purchases or leases existing assets (whether through lease, asset sale, stock sale, or other transaction) located at the site where new jobs are going to be claimed for the purposes of the Job Tax Credit Program, the assets must have been out of service for six months or longer unless otherwise approved by the commissioner of community affairs. Exceptions to this rule include the following situations:

1. 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;

2. 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; and

3. Any time a business is uncertain whether or not new jobs have been created based on this paragraph, the business must seek a ruling from the commissioner of community affairs before claiming any credits.

(i) Prior Year/Base Year -- means the tax year immediately prior to Year One.

(j) Replacement Job -- means a job created by an employer in Georgia that takes the place of a job that was interrupted due to a manmade or natural disaster. Neither the length of the interruption nor the location of the replacement job will favorably affect eligibility for the Job Tax Credit Program.

(k) To Generate/Trigger Credits -- means to meet all requirements in law and regulation for the tax credits allowed under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated except for maintenance of jobs in all or part of the subsequent five years after their creation. Credits are not affected by a county's or census tract area's status once credits have been generated.

(l) 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 6 months or less. Because the Job Tax Credit is calculated by taxpayer, by county, jobs that

are relocated from one establishment to another within the same county 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 two through six 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.

(m) Year One -- means the tax year in which sufficient new jobs are created that, meeting the requirements of these regulations, entitle a business enterprise to tax credits in years two through six after the creation of the new jobs.

(n) 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.

(o) Auxiliary Establishment -- means an establishment primarily engaged in performing management or support services for other establishments of the same business. Auxiliary establishments will be included in the definition of business enterprise only when they are primarily engaged in providing the products or services provided by otherwise eligible business enterprises.

(p) Leased Employee -- means an employee of an employee leasing company, as defined by the Official Code of Georgia Annotated Section 34-8-32 paragraph (a).

(q) Wages -- means total dollars paid (including bonuses, incentive pay, deductions from gross pay, etc.) to all employees (both hourly and salaried) during the year. Wages does not mean contributions made by employers on behalf of employees to health insurance, retirement, or other benefit programs. This definition is consistent with and patterned after the definition of average weekly wages contained in the most recent annual *Georgia Employment and Wages Averages Report* .

(Authority O.C.G.A. 48-7-40, O.C.G.A. 48-7-40.1, and O.C.G.A. 36-62-5.1)