

560-7-8-.14 Headquarters Job Tax Credit.

(1) **Program Description.** The headquarters job tax credit program authorized by Section 48-7-40.17 provides a credit for taxes for a taxpayer establishing its headquarters in this state or relocating its headquarters into this state.

(2) Definitions.

(a) **Average Wage.** The term “average wage” means the average wage of the county in which a full-time job is located as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the tax year in which the jobs were created. For purposes of this definition, wages means the total dollars paid during the year to an employee, including but not limited to bonuses, incentive pay, and deductions from gross pay. Wages does not mean contributions made by employers on behalf of employees to health insurance, retirement, or other benefit programs.

(b) **Full-time Job.** The term “full-time job” means employment for an individual in a permanent, full-time position located in this state which:

1. Is located at a headquarters and is engaged in performing headquarters related functions and services as a headquarters staff employee;

2. Has a regular workweek of 30 hours or more;

3. Pays at or above:

(i) In tier 1 counties, the average wage of the county in which it is located;

(ii) In tier 2 counties, 105 percent of the average wage of the county in which it is located;

(iii) In tier 3 counties, 110 percent of the average wage of the county in which it is located; and

(iv) In tier 4 counties, 115 percent of the average wage of the county in which it is located; and

4. Has no predetermined end date.

(c) **Headquarters.** The term “headquarters” means the principal central administrative office of a taxpayer, where headquarters staff employees are located and employed, and where the primary headquarters related functions and services are performed.

(d) **Tier.** The term “tier” means a tier as designated pursuant to Code Section 48-7-40, as amended.

(e) **Headquarters Related Functions and Services.** The term “headquarters related functions and services” means those functions involving financial, personnel, administrative, legal, planning, or similar business functions performed by headquarters staff employees.

(f) **Headquarters Staff Employees.** The term “headquarters staff employee” means executive, administrative, or professional workers performing headquarters related functions and services.

1. An executive employee is a full-time job employee who is primarily engaged in the management of all or part of the enterprise.
2. An administrative employee is a full-time job employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations.
3. A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study.

(g) **New Full-Time Jobs.** The term “new full-time jobs” refers to full-time jobs that are new to the state of Georgia. Jobs that are transferred from other Georgia locations of the taxpayer or from other Georgia locations of an affiliate of the taxpayer would not be jobs that are new to the state of Georgia. However, an employee in a new full-time job may be employed at a temporary location in this state pending completion of construction or renovation work at the headquarters.

(3) Establishing Eligibility for the Credit.

(a) A taxpayer must either establish its headquarters in this state, or it must relocate its headquarters into this state. Such establishment or relocation must occur on or after January 1, 2001.

(b) The first date on which the taxpayer withholds wages for employees at such headquarters (pursuant to the provisions of Code Section 48-7-101) is a critical date with respect to the following eligibility requirements:

1. Prior to one year from such date the taxpayer must incur within the state a minimum of \$1 million in construction, renovation, leasing, or other costs related to such establishment or relocation; and
2. Within one year of such date the taxpayer must employ at least 50 persons in new full-time jobs at such headquarters, as provided in paragraph (3)(c).

(c) Once the taxpayer has employed at least 50 persons in new full-time jobs at its headquarters, the average number of new full-time jobs at such headquarters must be at least 50 for a taxable year.

(d) New full-time jobs at such headquarters are determined for a taxable year by computing the average number of new full-time jobs subject to Georgia income tax withholding for the taxable year. This average shall be determined by the following method:

1. For each month of the taxable year, count the total number of new full-time jobs 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 new full-time jobs; and
3. Divide the results by the number of months in the taxable year.

(e) The taxpayer must elect not to receive the tax credits provided for by Code Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such jobs or for such project. This election is deemed to have been made when the taxpayer claims the headquarters job tax credit on its state income tax return. Under this election, taxpayers may not claim or carry forward the headquarters job tax credit for any given project for which a job tax credit is claimed under O.C.G.A. Sections 48-7-40 or 48-7-40.1, 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 job tax credit, the investment tax credit, or the optional investment tax credit in one year, and the headquarters 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 tax credits for a given project.

(4) **Calculation of Credit.** A taxpayer that has established eligibility for the headquarters job tax credit shall be allowed a credit for taxes imposed under this article as follows:

- (a) An amount equal to \$2,500.00 annually per new full-time job; or
- (b) An amount equal to \$5,000.00 annually per new full-time job if the average wage of the new full-time jobs created is 200 percent or more of the average wage of the county in which such jobs are located.

(5) **Claiming the Credit.**

- (a) The headquarters job tax credit may be taken on an income tax return for the first taxable year in which the taxpayer first becomes eligible for such credit. The credit may also be claimed for each of the four immediately succeeding taxable years, provided the

number of new full-time jobs as required in (3)(c) of this regulation and as calculated in (3)(d) of this regulation are maintained in each year. Thereafter, the taxpayer shall be ineligible to claim the headquarters job tax credit on an income tax return, except to the extent that the taxpayer qualifies for a carry forward of the credit in accordance with paragraph (d) below.

(b) The credit may be used to offset 100 percent of the taxpayer's Georgia state income tax liability in the taxable year.

(c) Where the amount of such credit exceeds the taxpayer's income tax liability in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or monthly withholding tax payment under Code Section 48-7-103. The amounts claimed under this paragraph may not exceed in any one taxable year \$2,500.00 annually per new full-time job, or \$5,000.00 if the average wage of the new full-time jobs created is 200 percent or more of the average wage of the county in which such jobs are located.

(d) Any credit claimed under this code section 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 as eligible new full-time jobs for purposes of computing the credit.

(6) **Documentation.** At the time the credit is claimed on an income tax return, the taxpayer shall submit to the commissioner a listing of headquarters staff employees in new full-time jobs. Such listing shall include the name of the employee, social security number, wages, amount of credit claimed for such employee (whether \$2,500.00 or \$5,000.00), and any other information that the commissioner may request.

(7) Notification and Process to Claim and Receive Withholding Tax Credit.

(a) **Notification of Intention to Claim Withholding Tax Credit.** A taxpayer establishing its headquarters in this state or relocating its headquarters into this state must notify the commissioner each year of its election to take all or part of the credit against the quarterly or monthly withholding tax payment for such taxpayer. This notification must be made at least thirty (30) days prior to the date on which the income tax return for the taxpayer is filed with the department. Taxpayers should use Form IT-JOBW for this purpose.

(b) **Process for Receiving Withholding Tax Credit Benefits.** Within ninety (90) days of the date the income tax return is filed in accordance with instructions provided by the department, the commissioner will confirm to the taxpayer the approved amount of headquarters job tax credit and the date when the taxpayer may begin retaining withholding tax payments otherwise due to the department.

(8) Pass-Through of Credit.

(a) **"S" Corporations.** Taxpayers that are "S" corporations will apply the headquarters job tax credit to corporate income tax liability at the entity level if one exists. Any

remaining credit will then be apportioned to shareholders based on their percentage share of ownership of the corporation in the same manner as other pass-through items. Taxpayers that are “S” corporations that otherwise qualify to take all or a part of the headquarters job tax credit against withholding tax otherwise due the department must make an irrevocable election to do so as a part of their notification to the commissioner required under paragraph 7(a) of this regulation. When this election is made no headquarters job tax credit will be apportioned to shareholders.

(b) **Partnership.** Where the taxpayer is a partnership, the headquarters job tax credit will be apportioned to partners according to the partnership agreement for sharing income or loss, or if there is no partnership agreement for sharing income or loss, according to the partner’s interest in the partnership. Taxpayers that are partnerships that otherwise qualify to take all or a part of the headquarters job tax credit against withholding tax otherwise due the department must make an irrevocable election to do so as a part of their notification to the commissioner required under paragraph 7(a) of this regulation. When this election is made no headquarters job tax credit will be apportioned to partners.

(c) **Limited Liability Companies.** Taxpayers that are limited liability companies will apportion the headquarters job tax credit to members based on their percentage ownership of the limited liability company. Taxpayers that are limited liability companies that otherwise qualify to take all or a part of the headquarters job tax credit against withholding tax otherwise due the department must make an irrevocable election to do so as a part of their notification to the commissioner required under paragraph 7(a) of this regulation. When this election is made no headquarters job tax credit will be apportioned to members.

Authority O.C.G.A. Secs. 48-2-12, 48-7-40.17. **History.** Original Rule entitled “Time and Place of Payment of Tax, Installments” adopted. F. and eff. June 30, 1965. **Repealed:** F. May 4, 1976; eff. May 24, 1976. **Amended:** New Rule entitled “Headquarters Job Tax Credit” adopted. F. Dec. 21, 2000; eff. Jan. 10, 2001. **Amended:** F. Feb. 8, 2005; eff. Feb. 28, 2005. **Amended:** F. Mar. 29, 2005; eff. Apr. 18, 2005.