TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-17

Letter Rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

The application of the job tax credit provisions under TENN. CODE ANN. § 67-4-2109(b) (Supp. 2010).

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

(A) The taxpayer must not have misstated or omitted material facts involved in the transaction;

(B) Facts that develop later must not be materially different from the facts upon which the ruling was based;

(C) The applicable law must not have been changed or amended;

(D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and

(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] is headquartered and bases its [REDACTED] operations in [CITY], Tennessee. [REDACTED]. At its Tennessee headquarters, the Taxpayer conducts [DESCRIPTION OF ACTIVITIES].

In [YEAR], the Taxpayer began increasing its Tennessee presence through an expansion and remodeling of its corporate headquarters facility (the "Headquarters"). [REDACTED]. As part of this expansion, the Taxpayer filed a business plan on [DATE], and applied for the enhanced job tax credit.

The Taxpayer's total investment has exceeded $10 million with respect to the expansion and remodeling of its corporate headquarters facility. The Taxpayer forecasts that in [YEAR], it will have met the requirement for 100 additional new, full-time headquarters jobs that meet or exceed 150% of Tennessee's average occupational wage. The jobs added in connection with the qualified headquarters facility are full-time jobs in [EXAMPLES]. [REDACTED].

The Taxpayer's business plan was approved by the Department on [DATE], and provides for an investment period of [DATE], through [DATE].

QUESTIONS

1. Is the Taxpayer eligible for the enhanced job tax credit available under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010)?

2. Will the jobs of Headquarters staff employees, including those employees at the Headquarters who perform [EXAMPLES OF EMPLOYMENT FUNCTIONS], qualify as "net new full-time jobs" eligible for the enhanced job tax credit available under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010)?

3. Will the Taxpayer be able to use the headcount of Headquarters staff employees added from [DATE – BEGINNING OF INVESTMENT PERIOD], to determine the number of "net new full-time jobs" added in Tennessee during the investment period for purposes of TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010)?

4. What is the compensation requirement that must be met for each job created in connection with the qualified headquarters facility and contributing to the required 100 net new full-time jobs for the job tax credit, and at what point in time must the average salary requirements be met?

5. When will the Taxpayer be eligible to begin taking the $5,000 per new full-time job tax credit provided by TENN. CODE ANN. § 67-4-2109(b) (Supp. 2010), related to the new investment?

6. What percentage of Tennessee franchise and excise taxes will the Taxpayer be permitted to offset in connection with its qualified headquarters investment?

RULINGS

1. Provided that the Taxpayer meets the capital investment threshold and creates the requisite number of qualified jobs described under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010), the Taxpayer will be eligible for the additional annual job tax credit of $5,000 per job available under TENN. CODE ANN. § 67-4-2109(b)(2).

2. Executive, administrative, or professional workers at the Taxpayer's Headquarters who perform [EXAMPLES OF EMPLOYMENT FUNCTIONS] in support of all business operations are "headquarters staff employees" as defined under TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010). Executive, administrative, or professional workers involved in the management or supervision of [EXAMPLES OF EMPLOYMENT FUNCTIONS] are "headquarters staff employees" if the workers are assigned to the Headquarters. Provided that

these jobs pay at least 150% of the state's average occupational wage for the month of January of the year in which they are created, such jobs will qualify as "qualified jobs" for purposes of the additional annual job tax credit under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010).

3. The Taxpayer should count the Headquarters staff jobs added beginning [DATE – BEGINNING OF INVESTMENT PERIOD], to determine the number of "qualified jobs" created in Tennessee during the investment period for purposes of TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010).

4. The compensation requirement for each qualified job created by the Taxpayer for purposes of the additional annual job tax credit under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010) is at least 150% of Tennessee's average occupational wage for the month of January of the year in which the job is created. [REDACTED].

5. The Taxpayer will be eligible to begin claiming the $5,000 "basic" job tax credit under TENN. CODE ANN. § 67-4-2109(b)(1) (Supp. 2010) (as enhanced by TENN. CODE ANN. § 67-4-2109(b)(3)(A)) in the taxable year in which it made the required capital investment and created a total of 25 qualified jobs, provided that such investment is made and such jobs are created within twelve months of the effective date of the business plan. Provided that the Taxpayer has met the statutory requirements, the Taxpayer shall be allowed to claim the $5,000 additional annual job tax credit under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) for a period of three years beginning with the first tax year after the initial job tax credit is created.

6. The "basic" job tax credit cannot exceed 50% of the Taxpayer's combined Tennessee franchise and excise tax liability shown on the return before any credit is taken. However, the additional annual job tax credit may be used to offset up to 100% of the Taxpayer's Tennessee franchise and excise tax liability for that year.

ANALYSIS

Tennessee imposes an excise tax on all persons, as defined under TENN. CODE ANN. § 67-4-2004(37) (Supp. 2010), doing business within Tennessee. TENN. CODE ANN. § 67-4-2007(a) (Supp. 2010). Tennessee also imposes a franchise tax at the rate of $0.25 per $100, or major fraction thereof, on the net worth of a taxpayer doing business in Tennessee, pursuant to TENN. CODE ANN. §§ 67-4-2105(a) (Supp. 2010) and 67-4-2106(a) (2006).[1] Persons subject to the Tennessee franchise and excise taxes include, but are not limited to, corporations such as the Taxpayer. TENN. CODE ANN. § 67-4-2004(37).

TENN. CODE ANN. § 67-4-2109(b)(1)(A) (Supp. 2010) generally provides that, if certain conditions are met, a taxpayer may take a job tax credit (referred to for purposes of this letter

[1] Note that, under TENN. CODE ANN. § 67-4-2108(a)(1) (Supp. 2010), the franchise tax base "shall in no case be less than the actual value of the real or tangible property owned or used in Tennessee, excluding exempt inventory and exempt required capital investments." For purposes of this section, "property" is to be "valued at cost less accumulated depreciation in accordance with generally accepted accounting principles." TENN. CODE ANN. § 67-4-2108(a)(3).

ruling as the “basic” job tax credit) against its Tennessee franchise and excise tax liability in the amount of $4,500 for each qualified job[2] created during the investment period.[3] TENN. CODE ANN. § 67-4-2109(b)(3)(A) provides that the $4,500 credit allowed under TENN. CODE ANN. § 67-4-2109(b)(1) will be increased to $5,000 per job if the taxpayer qualifies for the additional annual credit allowed in TENN. CODE ANN. § 67-4-2109(b)(2)(B). In order to qualify for the credit, the qualified business enterprise must, within twelve months of the effective date of the business plan, make the required capital investment and create at least 25 qualified jobs. TENN. CODE ANN. § 67-4-2109(b)(1)(C).

Under certain circumstances, an additional annual job tax credit is allowed under TENN. CODE ANN. § 67-4-2109(b)(2). For example, TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vi) states that an additional annual credit of $5,000 per job will be allowed with respect to jobs described in TENN. CODE ANN. § 67-4-2109(b)(2)(B)(i)-(v).[4] In particular, TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) provides that if “the investment exceeds ten million dollars ($10,000,000) and at least one hundred (100) qualified jobs are created that also meet the definition of headquarters staff employees under TENN. CODE ANN. § 67-6-224[5] and pay at least one hundred fifty percent (150%) of the state’s average occupational wage for the month of January of the year in which the jobs are created, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year after the initial job tax credit is created.”

1. <u>Enhanced job tax credit</u>

Provided that the Taxpayer meets the capital investment threshold and creates the requisite number of qualified jobs described under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010), the Taxpayer will be eligible for the additional annual job tax credit of $5,000 per job available under TENN. CODE ANN. § 67-4-2109(b)(2).

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[2] TENN. CODE ANN. § 67-4-2109(a)(6) provides that “qualified job” means “a job that meets all of the following criteria: A) The job position is a permanent, rather than seasonal or part-time, employment position providing employment in a qualified business enterprise for at least twelve (12) consecutive months to a person for at least thirty-seven and one half (37 1/2) hours per week with minimum health care, as described in title 56, chapter 7, part 22; (B) The job position is newly created in this state and, for at least ninety (90) days prior to being filled by the taxpayer, did not exist in this state as a job position of the taxpayer or of another business entity; (C) The job position is filled; provided, however, that a position will be deemed filled if it subsequently becomes vacant but is refilled within a period of not more than ninety (90) days; and (D) The job position is filled prior to January 1, 2016.”

[3] “Investment period” means “the period during which qualified jobs are created as a result of the required capital investment; provided, however, that the period shall not exceed three (3) years from the effective date of the business plan.” TENN. CODE ANN. § 67-4-2109(a)(4).

[4] Note that the jobs must remain filled during the year in which the additional annual credit is being taken. TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vi).

[5] TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010) provides that “‘headquarters staff employees’ means executive, administrative, or professional workers performing headquarters-related functions and services. An executive employee is a full-time employee who is primarily engaged in the management of all or part of the enterprise. An administrative employee is a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations. 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.”

As noted above, TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vi) states that an additional annual credit of $5,000 per job will be allowed with respect to jobs described in TENN. CODE ANN. § 67-4-2109(b)(2)(B)(i)-(v).[6] In particular, TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) provides that if "the investment exceeds ten million dollars ($10,000,000) and at least one hundred (100) qualified jobs are created that also meet the definition of headquarters staff employees under § 67-6-224 and pay at least one hundred fifty percent (150%) of the state's average occupational wage for the month of January of the year in which the jobs are created, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year after the initial job tax credit is created."

Thus, for the Taxpayer to be eligible for the additional annual job tax credit available under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v), the following requirements must be met: 1) the Taxpayer's investment must exceed $10 million; 2) the Taxpayer must create at least 100 qualified jobs; 2) the qualified jobs must also meet the definition of "headquarters staff employees" under TENN. CODE ANN. § 67-6-224; and 3) the qualified jobs must pay at least 150% of the state's average occupational wage for the month of January of the year in which the jobs are created.

The Taxpayer has indicated that its investment has exceeded $10 million with respect to the expansion and remodeling of its corporate headquarters facility. The Taxpayer forecasts that in [YEAR], it will have met the requirement for 100 additional new, full-time headquarters jobs that meet or exceed 150% of Tennessee's average occupational wage. The Taxpayer has stated that the jobs added in connection with the qualified headquarters facility are full-time jobs in administration, research and development, sales, information technology, and other corporate areas.[7]

Provided that the Taxpayer has in fact exceeded the $10 million investment threshold and has created the requisite number of qualified jobs described under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v), the Taxpayer will be eligible for the additional annual job tax credit of $5,000 per job available under TENN. CODE ANN. § 67-4-2109(b)(2).

2. Qualified jobs

Executive, administrative, or professional workers at the Taxpayer's Headquarters who perform [EXAMPLES OF EMPLOYMENT FUNCTIONS] in support of all business operations are "headquarters staff employees" as defined under TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010). Executive, administrative, or professional workers involved in the management or supervision of [EXAMPLES OF EMPLOYMENT FUNCTIONS] are "headquarters staff employees" if the workers are assigned to the Headquarters. Provided that these jobs pay at least 150% of the state's average occupational wage for the month of January of the year in which they are created, such jobs will qualify as "qualified jobs" for purposes of the additional annual job tax credit under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010).

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[6] For a taxpayer to be eligible for the additional annual job tax credit, TENN. CODE ANN. § 67-4-2109(b)(2) requires that the Taxpayer meet the requirements for the "basic" job tax credit set forth under TENN. CODE ANN. § 67-4-2109(b)(1).

[7] [REDACTED].

TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) provides that if "the investment exceeds ten million dollars ($10,000,000) and at least one hundred (100) qualified jobs are created that also meet the definition of headquarters staff employees under TENN. CODE ANN. § 67-6-224 and pay at least one hundred fifty percent (150%) of the state's average occupational wage for the month of January of the year in which the jobs are created, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year after the initial job tax credit is created."

Thus, for the Taxpayer to be eligible for the additional annual job tax credit available under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vi), the Taxpayer must create at least 100 qualified jobs, which must meet the definition of "headquarters staff employees" under Tenn. Code Ann. § 67-6-224. Additionally, the qualified jobs must pay at least 150% of the state's average occupational wage for the month of January of the year in which the jobs are created.

TENN. CODE ANN. § 67-6-224(b)(5) (Supp. 2010) provides that "headquarters staff employees" means "executive, administrative, or professional workers performing headquarters-related functions and services." TENN. CODE ANN. § 67-6-224(b)(5) further provides that an "executive employee is a full-time employee who is primarily engaged in the management of all or part of the enterprise. An administrative employee is a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations. 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."

The employees described by the Taxpayer are properly characterized as "headquarters staff employees" under TENN. CODE ANN. § 67-6-224(b)(5). The Taxpayer has indicated that it has created positions at its Headquarters in the areas of [EXAMPLES OF EMPLOYMENT FUNCTIONS]. Such positions generally support all business operations. Specifically with respect to workers who are involved in the management or supervision of [EXAMPLES OF EMPLOYMENT FUNCTIONS], such positions are "headquarters staff employees" if the workers are assigned to the Headquarters.

Therefore, provided that the jobs also pay at least 150% of Tennessee's average occupational wage for the month of January of the year in which they are created, such jobs will qualify as "qualified jobs" for purposes of the additional annual job tax credit under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v).

3. <u>Determination of number of Headquarters staff jobs</u>

The Taxpayer should count the Headquarters staff jobs added beginning [DATE – BEGINNING OF INVESTMENT PERIOD], to determine the number of "qualified jobs" created in Tennessee during the investment period for purposes of TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) (Supp. 2010).

TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) provides that if "the investment exceeds ten million dollars ($10,000,000) and at least one hundred (100) qualified jobs are created that also meet the definition of headquarters staff employees under TENN. CODE ANN. § 67-6-224 and pay at least one hundred fifty percent (150%) of the state's average occupational wage for the month of

January of the year in which the jobs are created, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year after the initial job tax credit is created."

In other words, the Taxpayer must determine the number of qualified jobs that meet the requirements of TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) that were created during the investment period. The term "investment period" means "the period during which qualified jobs are created as a result of the required capital investment; provided, however, that the period shall not exceed three (3) years from the effective date of the business plan." TENN. CODE ANN. § 67-4-2109(a)(4). The taxpayer is also allowed a period not to exceed three years from the effective date of the business plan in order to make the required capital investment necessary to qualify for the additional annual credit. TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vii). However, if determined to be in the best interests of the state, the three-year period for making the required investment may be extended by the Commissioner of Economic and Community Development for a reasonable period not to exceed two additional years, or four additional years if the investment exceeds one billion dollars. *Id*.

The Taxpayer's business plan provides for an investment period of [DATE], through [DATE]. Thus, the Taxpayer should count the Headquarters staff jobs added beginning [DATE – BEGINNING OF INVESTMENT PERIOD], to determine the number of "qualified jobs" created in Tennessee during the investment period.

4. Compensation requirements

The compensation requirement for each qualified job created by the Taxpayer for purposes of the additional annual job tax credit under TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) is at least 150% of Tennessee's average occupational wage for the month of January of the year in which the job is created.

TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) provides that if "the investment exceeds ten million dollars ($10,000,000) and at least one hundred (100) qualified jobs are created that also meet the definition of headquarters staff employees under TENN. CODE ANN. § 67-6-224 and pay at least one hundred fifty percent (150%) of the state's average occupational wage for the month of January of the year in which the jobs are created, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year after the initial job tax credit is created."

One must therefore determine Tennessee's average occupational wage for the month of January of the year in which a particular job is created. The job will count toward the creation of at least 100 jobs for purposes of TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) if it pays at least 150% of Tennessee's average occupational wage for the month of January of the year in which it was created.

[REDACTED].

5. Year in which Taxpayer may claim job tax credits

The Taxpayer will be eligible to begin claiming the $5,000 "basic" job tax credit under TENN. CODE ANN. § 67-4-2109(b)(1) (Supp. 2010) (as enhanced by TENN. CODE ANN. § 67-4-

2109(b)(3)(A)) in the taxable year in which it made the required capital investment and created a total of 25 qualified jobs, provided that such investment is made and such jobs are created within twelve months of the effective date of the business plan. Provided that the Taxpayer has met the statutory requirements, the Taxpayer shall be allowed to claim the $5,000 additional annual job tax credit under TENN. CODE ANN. § 67-4-2109(b)(2)(B) for a period of three years beginning with the first tax year after the initial job tax credit is created.

As noted above, TENN. CODE ANN. § 67-4-2109(b)(1)(A) generally provides that, if certain conditions are met, a taxpayer may take a "basic" job tax credit against its Tennessee franchise and excise tax liability in the amount of $4,500 for each qualified job created during the investment period. TENN. CODE ANN. § 67-4-2109(b)(3)(A) provides that the $4,500 credit allowed under TENN. CODE ANN. § 67-4-2109(b)(1) will be increased to $5,000 per job if the taxpayer qualifies for the additional annual credit allowed in TENN. CODE ANN. § 67-4-2109(b)(2)(B). In order to qualify for the credit, the qualified business enterprise must, within twelve months of the effective date of the business plan, make the required capital investment and create at least 25 qualified jobs. TENN. CODE ANN. § 67-4-2109(b)(1)(C).

An additional annual job tax credit is allowed under TENN. CODE ANN. § 67-4-2109(b)(2). TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vi) states that an additional annual credit of $5,000 per job will be allowed with respect to jobs described in TENN. CODE ANN. § 67-4-2109(b)(2)(B)(i)-(v). In particular, TENN. CODE ANN. § 67-4-2109(b)(2)(B)(v) provides that if "the investment exceeds ten million dollars ($10,000,000) and at least one hundred (100) qualified jobs are created that also meet the definition of headquarters staff employees under § 67-6-224 and pay at least one hundred fifty percent (150%) of the state's average occupational wage for the month of January of the year in which the jobs are created, the additional annual credit shall be allowed for a period of three (3) years beginning with the first tax year after the initial job tax credit is created." Note that the qualified jobs must remain filled during the year in which the credit is being taken. TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vi).

6. <u>Percentage of job tax credit available</u>

The "basic" job tax credit cannot exceed 50% of the Taxpayer's combined Tennessee franchise and excise tax liability shown on the return before any credit is taken. However, the additional annual job tax credit may be used to offset up to 100% of the Taxpayer's Tennessee franchise and excise tax liability for that year.

TENN. CODE ANN. § 67-4-2109(b)(1)(D) (Supp. 2010) provides that the "basic" job tax credit "shall apply against the franchise tax imposed by this part and the excise tax imposed by part 20 of this chapter; provided, however, that the credit, together with any carry-forward thereof, taken on any franchise and excise tax return shall not exceed fifty percent (50%) of the combined franchise and excise tax liability shown on the return before any credit is taken." Any unused "basic" job tax credit may be carried forward in any tax period until the credit is taken; provided, however, that the credit may not be carried forward for more than fifteen years. TENN. CODE ANN. § 67-4-2109(b)(1)(D).

TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vi) provides that the "annual credit may be used to offset up to one hundred percent (100%) of the taxpayer's franchise and excise tax liability for that year." Any unused additional annual job tax credit, however, shall not be carried forward beyond the year in which the credit originated. TENN. CODE ANN. § 67-4-2109(b)(2)(B)(vi).

Because no carryforward is available with respect to the additional annual job tax credit, the Taxpayer should utilize that credit first in the taxable years in which it is available.

[REDACTED].

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: June 6, 2011