

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 17-16**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of the Tennessee franchise and excise tax job tax credit provisions under TENN. CODE ANN. § 67-4-2109(b) (Supp. 2016).

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] (the "Taxpayer") is a national [REDACTED] company that offers a broad-based - [REDACTED -SERVICE DESCRIPTION] and other [SERVICES]. The Taxpayer provides much of its services through internally developed software (the "Software"), summarized below.

[REDACTED]

Between [REDACTED - DATES], the Taxpayer made a capital investment of over [REDACTED - AMOUNT] in the Software. The Taxpayer also created [REDACTED] new jobs from [REDACTED - DATES].

RULING

For Tennessee franchise and excise tax purposes, is the Taxpayer a qualified business enterprise eligible for the job tax credit provided in TENN. CODE ANN. § 67-4-2109(b)(1)(A) through its investment in the Software?

Ruling: No, the Taxpayer does not qualify for the job tax credit because it is not a qualified business enterprise as defined in TENN. CODE ANN. § 67-4-2109(a)(5).

ANALYSIS

Tennessee imposes an excise tax at the rate of 6.5% on the net earnings of all persons doing business within Tennessee.¹ Tennessee also imposes a franchise tax at the rate of \$0.25 per \$100, or major fraction thereof, on the net worth of a person doing business in Tennessee.² Persons subject to Tennessee franchise and excise taxes include, but are not limited to, corporations such as the Taxpayer.³

Tennessee allows credits against a taxpayer's franchise and/or excise tax liability in certain circumstances. TENN. CODE ANN. § 67-4-2109(b)(1)(A) provides that if certain statutory criteria are met, a taxpayer may take a job tax credit against its Tennessee franchise and excise tax liability. The credit is in the amount of \$4,500 for each qualified job created during the investment period.⁴ To qualify for the job tax credit under TENN. CODE ANN. § 67-4-2109(b)(1) a taxpayer must: (1) be a

¹ TENN. CODE ANN. § 67-4-2007(a) (Supp. 2016).

² TENN. CODE ANN. §§ 67-4-2105((a) (Supp. 2016), -2106(a) (2013).

³ TENN. CODE ANN. § 67-4-2004(38) (Supp. 2016).

⁴ TENN. CODE ANN. § 67-4-2109(b)(1)(A) (Supp. 2016). TENN. CODE ANN. § 67-4-2109(b)(3)(A) further 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).

qualified business enterprise; (2) file a business plan with the Department of Revenue; and, within twelve months of the effective date of the business plan: (3) make the required capital investment; and (4) create at least twenty-five qualified jobs.

The first requirement is that the Taxpayer be a qualified business enterprise. A qualified business enterprise includes an enterprise

in which the business has made the required capital investment necessary to permit the creation or expansion of manufacturing, warehousing and distribution, processing tangible personal property, research and development, computer services, call centers, headquarters facilities, as defined in § 67-6-224(b), back office operations, convention or trade show facilities, or tourism-related businesses, including, but not limited to, restaurants, lodging establishments, or other tourism-related attractions.⁵

The Taxpayer here states that it has made a capital investment of over [REDACTED – AMOUNT] in the Software. The Taxpayer states it qualifies as a qualified business enterprise because their capital investments lead to the creation or expansion of “computer services.”

The term “computer services” is not defined for purposes of franchise and excise taxes or the job tax credit. The Tennessee Supreme Court has stated that when a statute does not define a term, it is proper to look to common usage to determine the term's meaning.⁶ Additionally, Tennessee courts construe statutes granting exemptions, credits, or deductions strictly against the taxpayer, and any well-founded doubt defeats a claimed credit.⁷ Tennessee courts also consider the general purpose of the statutory framework,⁸ finding that no subject of taxation will be excluded if it comes within the “fair purview” of the taxing statutes.⁹ “The courts' goal is to construe a statute in a way that avoids conflict and facilitates the harmonious operation of the law.”¹⁰

Here, the Taxpayer has invested in the creation or expansion of the Software. By investing in and using the Software, it provides its core lines of business— [REDACTED – DESCRIPTION OF SERVICES]. Thus, the Taxpayer has not invested in the creation or expansion of computer services, but instead invested in technology to better provide its services. The Taxpayer is not unique in using computer

⁵ TENN. CODE ANN. § 67-4-2109(a)(5).

⁶ See, e.g., *Beare Co. v. Tenn. Dep't of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993); see also *Tenn. Farmers Assurance Co. v. Chumley*, 197 S.W.3d 767, 782-83 (Tenn. Ct. App. 2006).

⁷ *Sears, Roebuck & Co. v. Roberts*, 2016 WL 2866141, at *4 (Tenn. Ct. App., May 11, 2016) (citing *AFG Indus., Inc. v. Cardwell*, 835 S.W.2d 583 (Tenn. 1992)); *Hutton v. Johnson*, 956 S.W.2d 484, 488 (Tenn. 1997) (“Every presumption is against exemption, and any well founded doubt defeats a claimed exemption.”).

⁸ *Hutton*, 956 S.W.2d at 488 (“A court should construe the statute's language in the context of the entire statute and in light of the statute's general purpose.”).

⁹ *SunTrust Bank, Nashville*, 46 S.W.3d at 224; see also *Value Motor Co., Inc. v. Farr*, No. M2006-02024-COA-R3-CV, 2008 WL 238423, at *3 (Tenn. Ct. App., Jan. 28, 2008) (“[T]ax credits must “positively appear” in the statutes themselves, and no subject of taxation will be excluded if it comes within the “fair purview” of the statutes.”).

¹⁰ *Sears, Roebuck & Co.*, 2016 WL 2866141, at *6 (citing *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010)).

software to provide [REDACTED – DESCRIPTION OF SERVICES]. Other companies providing the same or similar services likely also use software to provide their services. Simply using software to provide a service does not equate to creating or expanding “computer services” under TENN. CODE ANN. § 67-4-2109(a)(5), even if the Taxpayer designed its own software versus purchasing software from a separate vendor. Reaching an opposite conclusion would effectively allow any business that uses (and makes the required investment in) computer software to be eligible to claim the job tax credit and would result in the overlap of categories of qualified business enterprise as set forth in TENN. CODE ANN. § 67-4-2109(a)(5)(A).

Accordingly, the Taxpayer is not a qualified business enterprise and is not entitled to the job tax credit.

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APPROVED: David Gerregano
Commissioner of Revenue

DATE: 10/30/17