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Chapter 15: Credits and Overpayments

Tax Credits

Tax credits offset tax liability. Franchise and excise tax credits currently in effect are found at Tenn. Code Ann. §§ 67-4-2009 and 67-4-2109. *Depending on the type of credit and the year being audited, the credit may offset both franchise and excise tax or just one of these taxes*. Any *unused credit may or may not be allowed to offset future tax liabilities.* When *an audit does not change the credit* earned in the audited year, other audit changes may impact the current credit used to offset current tax and the amount of carryover credits available for later years.

Tennessee law does not specify the order in which credits should be applied. The Department applies credits that do not have a carryover provision first. For instance, the state applies the Additional Annual Job Tax Credit first and then any remaining credits in the same order as they are listed on Schedule D of the tax return. For example:

- The Gross Premiums Tax Credit and the Tennessee Income Tax Credit (Schedule D, Lines 1 and 2) may only be claimed in the current tax year.
- As such, claiming these credits before credits with carryover provisions is advantageous to the taxpayer.
- It is the Department's intention to apply credits in a manner that is most favorable to the taxpayer.

The Department is barred from making assessments and refunds on tax periods outside the statute of limitations. However, the statute of limitations does not prevent auditors from verifying and adjusting credits carried forward from closed periods to be utilized in open periods. The Department can adjust the carryover schedules of closed years and make assessments in open tax years resulting from adjustments made to the schedule. Audits may verify that credits, including carryovers from a closed period, are valid.

Credits generated by a predecessor taxpayer will not be allowed to be used by the surviving taxpayer in the case of mergers, consolidations, and like transactions. However, an exception is provided in the case of a merger into a shell entity. A shell entity is one that has no income, expenses, assets, liabilities, equity, or net worth.[1]

Example

TP, Inc. is being audited for the tax year ended December 31, 2010. TP's return reported franchise tax of $2,000, excise tax of $0, and a credit of $1,000. The state's credit carryover schedule shows that a $5,000 credit was earned in 2009, and $1,000 was used to offset tax in tax years 2009, 2010, 2011, and 2012. No additional credit was earned in the December 31, 2010, audit year. The only audit change was that the excise tax increased to $9,000. As a result, the 2010 credit limitation is recalculated and the 2009 credit carryover and 2010 credit are "reapplied" to the 2010 tax liability (as audited), without regard to the amount of the 2009 credit carryforward utilized in subsequent tax years, and the credit carryover schedule is adjusted accordingly. The credit in this example is limited to 50% of the combined franchise and excise tax liability [50% X ($2,000+9,000) = $5,500 credit offset limit].

Therefore, the credit amount used to offset tax liability in the audited year would be $5,000 (2009 credit carryforward of $4,000 plus 2010 credit of $1,000). Note that the audit change to the 2010 tax year will cause the tax liability to change in tax years 2011 and 2012 as well, because the credit carryforwards that were previously applied to the 2011 and 2012 tax years have now been fully utilized in the 2010 tax year and are no longer available to offset tax liability in later tax years.

1. Community Investment Tax Credit

Financial institutions may take a credit against their combined franchise and excise tax liability when they make qualified loans, qualified long-term investments, grants, contributions, or qualified low-rate loans to an eligible housing entity for an eligible activity.[2] The community investment tax credit is claimed on the franchise and excise tax Form FAE 174, Schedule D.

Eligible Entities

Eligible housing entities include Tennessee nonprofit organizations and corporations with Internal Revenue Code § 501(c)(3) status, including entities created and controlled by such corporation, or wholly-owned subsidiaries of such corporation, that engage in eligible activities on behalf of such corporation;

- The Tennessee housing development agency;
- A public housing authority, including an entity created and controlled by such authority, or a wholly-owned subsidiary of such authority, that engages in eligible activity on behalf of such authority; or

- A development district.

Eligible Activities

Eligible activities include activities that:

- Create or preserve affordable housing for low income Tennesseans;
- Help low-income Tennesseans obtain safe and affordable housing;
- Build the capacity of an eligible nonprofit to provide housing opportunities to low income Tennesseans; and
- Any other activities approved by the Executive Director of the Tennessee Housing Development Agency and the Commissioner of Revenue.

Credit Types and Amounts

There are four types of community investment tax credits, which depend on whether a one-time or annual credit is chosen and the type of investment made in the eligible entity.

The **one-time credits**, which are based on the total investment amount in an eligible entity for any eligible activity, are as follows:

- 5% of a qualified loan or qualified long-term investment
- 10% of a grant, contribution, or qualified low-rate loan

Any one-time credits that are unused may be carried forward for 15 years after the tax year in which the credit originated.[3]

The **annual credits** are as follows:

- 3%, annually, of the unpaid principal balance of a qualified loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or 15 years, whichever is earlier.
- 5%, annually, of the unpaid principal balance of a qualified low-rate loan made to an eligible housing entity for any eligible activity as of December 31 of each year for the life of the loan or 15 years, whichever is earlier.

Any annual credit that exceeds the taxpayer's tax liability for a given tax year may not be carried forward to subsequent tax years.[4]

Administration

This program is administered by the Tennessee Housing Development Agency ("THDA") in cooperation with the Tennessee Department of Revenue (the "Department"). THDA certifies the housing entity and activity as eligible for the tax credits, and the Department awards the tax credits to the financial institutions to be claimed on their franchise and excise tax returns. To claim the credit, taxpayers must complete and submit the Affordable Housing Certificate of Contribution for Tax Credit form to the THDA.

Example

A financial institution makes a $200,000 qualified loan to an eligible housing entity for an eligible activity; this would generate a credit of $10,000 (5% one-time credit). A $200,000 qualified *low-rate* loan, grant or contribution made to an eligible housing entity for an eligible activity would generate a credit of $20,000 (10% one-time credit).

Syndicated Lending

Letter Ruling #19-05 discusses the application of community investment tax credits to a syndicated lending arrangement. A syndicated loan is an arrangement where a borrower enters into a single credit agreement with two or more originating lenders. All of the lenders participate jointly in the origination and lending process, and each lender has a direct relationship with the borrower and receives its own promissory note from the borrower.[5]

When two or more financial institutions make a loan to an eligible housing entity for an eligible activity, pursuant to a syndicated lending arrangement in which they are the originating lenders, the financial institutions may claim either the one-time credit or annual credit (with the applicable percentage based on the loan type). However, all lenders must utilize the same credit computation method (e.g., one-time credit at 5%).

If the lenders choose the one-time credit, the credit amount each lender may claim on its tax return is based on the loan amount reflected in the individual lender's promissory note. If the lenders choose the annual credit, the credit amount is based on the balance owed to each lender, pursuant to each lender's promissory note, as of December 31 each year.

Loan Participation

Letter Ruling #19-05 discusses the application of community investment tax credits to a loan participation arrangement. A participation loan is an arrangement that involves the transfer of ownership of a loan (or portion of a loan) between two or more lenders. An “originating lender” originates the loan and then transfers ownership interests in the loan to one or more “participating lenders” while retaining an interest in the loan. The participating lenders do not become parties to the credit agreement and do not have any direct contractual relationship with the borrower.[6]

Under a loan participation arrangement, the determination of which lenders are eligible to claim the community investment tax credit depends on the type of credit claimed by the originating lender. If the originating lender chooses the one-time credit, only the originating lender will be eligible to claim the one-time credit; participating lenders that join into the arrangement later are not eligible to claim the one-time credit (or annual credit). The participating lenders are not eligible to claim the one-time credit because they are not part of the loan at its origination, and thus, are not deemed to have generated the loan and the resulting one-time credit and credit carryforwards.[7] However, if the originating lender chooses the annual credit, participating lenders that join into the arrangement later will also be eligible to claim the annual credit.

If the originating lender chooses the one-time credit, the credit amount the lender may claim on its tax return is based on the total loan amount reflected in the lender’s promissory note. If the originating lender chooses the annual credit, the credit amount for the originating lender and all participating lenders is based on the balance owed to each lender, pursuant to each lender’s percentage of ownership in the loan, as of December 31 each year.

When participating lenders join into a participation loan for which the originating lender chose the annual credit, the period for claiming the credit is measured by reference to the date on which the loan originated (and not the date on which the participating lender received its ownership interest in the loan). For example:

- A participation loan is originated in 2019, and the originating lender chooses the annual credit. The originating lender sells a portion of the loan to a participating lender in 2021. The participating lender may only claim the annual credit through 2033 or the life of the loan, whichever is earlier.

2. Gross Premiums Tax Credit

A taxpayer may take a credit against both franchise and excise taxes in the net amount of gross premiums tax paid to the Department of Commerce and Insurance during the period covered by the franchise and excise tax return.[8] The credit also includes any amount used to offset payment to the Tennessee Insurance Guaranty Association that has not otherwise been recovered.[9] The credit does not include the gross premiums receipts tax paid by fire insurance companies for the purpose of executing the fire marshal law.[10] There is no provision for carryover of excess credit to any other year. The amount of the credit does not include the .4% TOSHA surcharge.

Gross premiums tax is incurred by self-insurers of worker's compensation. Member of self-insured compensation pools are not entitled to claim this credit. Persons subject to this tax are given the option of expensing the amount of the gross premiums tax paid to the state or taking the gross premiums tax credit. If the credit is taken on Schedule D of the franchise and excise return, an add-back of the same amount should be reported on Schedule J of the excise tax return, pursuant to Tenn. Code Ann. §§ 67-4-2109(c), 67-4-2009(1), and 56-4-217.

3. Income Tax Credit (Hall Tax)

Tennessee imposes a limited income tax on individuals, partnerships, associations, and trusts that are legally domiciled in Tennessee. The rate is 2% for tax years beginning January 1, 2019, and applies to interest income received from bonds and notes and dividends from stock above the $1,250 exemption amount.[11] The rate drops to 1% for tax years beginning on or after January 1, 2020, and 0% for tax years beginning on or after January 1, 2021.

A non-corporate taxpayer may take a credit against its excise tax for any Hall income tax that it pays.[12] This credit is limited to the amount of excise tax only, and there is no carryover to subsequent periods.

4. Brownfield Tax Credit

Any taxpayer that has filed a business plan and is engaged in a qualified development project may offset up to 50% of their franchise and excise tax by this credit in a tier 1 or 2 enhancement county and up to 75% in a tier 3 or 4 county.[13] Unused credits may be carried forward for 15 years.[14]

A qualified development project[15] is a project located on a brownfield property consisting of:

- A capital investment of at least $25,000,000 in a tier 1 or 2 county, or $5,000,000 in a tier 3 or 4 county; and
- An approved business plan

Brownfield property is:[16]

- Real property that is the subject of an investigation or remediation as a brownfield project under a voluntary agreement or consent order pursuant to Tenn. Code Ann. § 68-212-224.

The credit amount is 50% of the purchase price of brownfield property purchased in a tier 1 or tier 2 enhancement county for the tax period covered by the return for the purpose of a qualified development project consisting of a capital investment of at least $25 million. Likewise, the credit amount is 75% of the purchase price for property in a tier 3 or 4 enhancement county with a capital investment of at least $5 million. For a project in which brownfield property is received from a county, municipality, or industrial development board as defined in § 7-53-101 for a sale price of less than $1, the amount of any credit is 50% (75% in a tier 3 or 4 county) of the most recent purchase price of the brownfield property that was paid by the county, municipality, or industrial development board.[17]

A capital investment may include real property, tangible personal property, and computer software, as valued under GAAP. The investment period during which the required capital investment must be made cannot exceed five years from the filing of the business plan.[18]
The business plan is filed prior to the investment period; the 5-year investment period begins with the date the plan is filed. The plan should describe the capital investment to be made toward the qualified development project within the investment period and include a determination by the commissioners of Finance and Administration, Revenue, and Economic and Community Development where they find the project to be in the best interest of the state.[19] Qualifying plans will receive an approval letter from the Department of Revenue. A copy of the approval letter should be filed by the taxpayer with the Department in any year in which the taxpayer utilizes the credit.

In order to receive the credit, taxpayers must submit a claim for the credit, along with documentation as required by the commissioner showing that the capital investment was made toward the qualified development project during the investment period. The commissioner will review the claim for the credit and notify the taxpayer of the approved tax credit amount. The taxpayer may not take the credit until they have been notified as to the approved amount.[20] No credit will be allowed until the minimum capital investment requirement has been met.

5. Broadband Internet Access Equipment [Repealed]

A taxpayer may take a credit against both franchise and excise taxes, equal to 6% of the purchase price of new, qualified broadband internet access equipment that is used in Tier 3 and Tier 4 enhancement counties and placed into service on or after April 24, 2017.[21]

Qualified equipment includes asynchronous transfer mode switches, digital subscriber line access multiplexers, routers, servers, multiplexers, fiber optics, and related equipment. The equipment should provide the county with broadband internet access services.[22]

The credit is limited to 50% of the taxpayer's combined franchise and excise tax liability, and any unused credit may be carried forward up to 15 years. Also, the credit is limited to an aggregate annual cap of $5 million per calendar year. Taxpayers must submit the Broadband Internet Access Equipment Application for the credit by October 15 of the year following the calendar year in which the qualified broadband internet access equipment was placed into service. Based on this information, the Department will consider the aggregate cap and advise taxpayers of the amount of credit that they may take.

- ⚠ **Effective July 1, 2019, Public Chapter 501 repealed this credit in its entirety. The credit was subject to appropriations and limitations.**

- ⚠ **As a result of Public Chapter 501, the Department will no longer accept applications for the broadband internet access credit, and credits will no longer be allowed, regardless of the date on which equipment was purchased. Taxpayers who were allowed credits pursuant to the October 15, 2018, application may claim such credits on returns filed for tax periods ending after December 15, 2018. Any unused credit may be carried forward for no more than 15 years.**

6. Industrial Machinery

A qualified taxpayer may take a credit against its franchise and excise tax liability for purchases or leases of "industrial machinery" located in the state. Up to 100% of franchise and excise tax may be offset for a taxpayer that has established a headquarters in the state or a qualified new or expanded warehouse or distribution facility in the state. The Commissioners of Revenue and ECD must deem the headquarters or facility to be in the "best interest of the state."[23]

The industrial machinery credit is limited to 50% of the combined franchise and excise tax liability.[24] Any credit that cannot be fully applied due to the 50% limitation may be carried over for up to 15 years.[25]

Both carryover and current year credits can offset the combined franchise and excise tax liability. Any unused credit may be carried forward for 15 years. Taxpayers report the initial credit on Schedule T and any carryover credits on Schedule V. The credit is generally 1% of the purchase price of the industrial machinery, but the rate can be 3%, 5%, 7%, or 10% for taxpayers that make large capital investments in the state.

Eligible Entities

The business types that may claim the industrial machinery credit include:

- Manufacturers engaged in fabrication or processing as their principal business. This is evaluated on a location-by-location basis.[26]
- Businesses that purchase "computers" (as defined by Tenn. Code Ann. § 39-14-601), and any peripheral devices, in conjunction with qualifying for the job tax credit.[27] These businesses will primarily be manufacturing, but also see the definition of *qualified business enterprise* for the job tax credit.[28]
- New, renovated, or expanded warehouse or distribution facilities with a $10 million investment and an approved business plan.[29]
- Any business making a "required capital investment" greater than $100 million and wishing to claim the credit on purchased or leased computers.[30] These taxpayers are allowed the credit, regardless of whether they meet any of the requirements of the job tax credit. However, they must file a business plan with the Department.

Eligible Machinery

Industrial machinery is defined in the Tennessee Sales Tax Code at Tenn. Code Ann. § 67-6-102(46)(A)-(M) and includes the following:

- Machinery, apparatus, and equipment with all associated parts, appurtenances, and accessories necessary to and primarily for fabrication or processing of tangible personal property for resale, and consumption off the premises by a manufacturer;[31]

- Hydraulic fluids, lubricating oils, and grease necessary for operations and maintenance;[32]
- Repair parts and any necessary repair or taxable installation labor;[33]
- Air or water pollution control equipment used by a manufacturer (fabrication or processing) that is required by law;[34]
- Mining machinery, apparatus, equipment, and materials with associated parts and accessories including repair parts and installation labor for coal mining, reclamation or for maintaining ingress and egress to coal mines;[35]
- Machinery used for remanufacturing industrial machinery;[36]
- Machinery used for press operations of a printer;[37]
- Equipment used to transport raw materials from storage to the manufacturing process and finished goods to storage;[38]
- Machinery used to package manufactured items and used by a manufacturer or an affiliated corporation that packages automotive aftermarket products;[39]
- Material handling equipment and racking systems used for storage, handling or movement in a "qualified new or expanded warehouse or distribution facility";[40]
    - A qualified facility invests over $10 million over three years in a new building and equipment, an expansion of an existing building plus new equipment, or the purchase of a previously occupied building plus new equipment. A written plan describing the investment must be filed with the Department.
- Computer hardware, software, and peripheral devices used in a qualified data center;[41]
- Equipment used by building supply manufacturers to build trusses, window units or door units;[42]
- Equipment used to make prescription eyewear, if the majority of eyewear is dispensed to patients outside of the state;[43] and
- Machinery, apparatus, and equipment with all associated parts, appurtenances, that is necessary to, and primarily for, the purpose of research and development;[44]

Ineligible Machinery

Industrial machinery does *not* include:

- Equipment used for routine maintenance and the convenience of the workers.[45]
- Equipment used in the preparation of food for immediate retail sale.[46]
- Equipment used in the storage and distribution of digital products.47
- Warranties for qualified machinery.

Quality Control Equipment

Quality control equipment qualifies as industrial machinery if it is both necessary for and used primarily for the fabrication or processing of the product for resale. *Processing* is a transformation or conversion of materials or things into a different state or form from that in which they originally existed.[48]

- Equipment used for quality control testing after the manufacturing process is complete does not qualify as industrial machinery.
- Equipment used in a random testing of products for a purpose other than what is necessary to the fabrication or processing of the product does not qualify.
- When product testing services are provided by someone other than a manufacturer, the equipment used would not qualify as industrial machinery.

Industrial Machinery and Industrial Supplies

Industrial supplies are materials and supplies that come into direct contact with the manufactured product and are consumed within 25 consecutive calendar days. Industrial supplies are exempt from sales and use tax but are not considered industrial machinery. Therefore, such items do not qualify for the franchise and excise tax industrial machinery credit.

Leased Industrial Machinery

The industrial machinery credit is also available for leased industrial machinery located within Tennessee. Leases must be for new industrial machinery, and the taxpayer/lessee must be the original user. Lessees are treated as having purchased the machinery during the tax period in which the machinery is placed in service at an amount equal to its purchase price.[49]

If the lease term is less than 80% of the asset's useful life, the taxpayer is deemed to have made a partial purchase. The credit is computed on an amount determined by multiplying the actual purchase price of the machinery by a fraction, the numerator being the lease term and the denominator being the useful life of the leased machinery.[50]

Partial Purchase Price

- **Actual Purchase Price x (Lease Term ÷ Useful Life of Machinery)**

Recapture Provision

If the asset is disposed of before the end of its useful life or moved outside of the state, a portion of the credit actually used to offset tax is recaptured. Useful life is determined in accordance with depreciation guidelines in effect for excise tax purposes. If the original credit was populated in the industrial machinery carryforward table and was never used to offset tax, then the carryforward table should be adjusted for the tax period in which the asset was disposed of or moved outside the state prior to the end of its useful life.[51]

Recapture is reported on the bottom half of Schedule T. When auditing returns of taxpayers that have previously taken the industrial machinery credit, auditors may review depreciation schedules and similar schedules to identify whether industrial machinery was disposed of during the audit period and to consider whether the credit recapture applies.

Recapture

- Industrial Machinery Credit x (Remaining Useful Life ÷ Useful Life)

For example:

- On March 1, 2013, a taxpayer purchases an industrial machine for $200,000 to be used at a plant in Tennessee. The taxpayer's plant later closed and on September 1, 2016, the asset was transferred out-of-state. The taxpayer advised that this was seven-year property for federal depreciation purposes.
  IMC = $200,000 x 1% = **$2,000**

  Recapture = $2,000 x (3.5 years / 7 years) = **$1,000**

A business that goes through a restructuring that results in a final return is subject to this provision. A taxpayer not surviving the reorganization is subject to recapture, but the acquiring taxpayer may claim a credit on their tax-cost-basis of the assets. For an example and detailed explanation of these calculations, see Letter Ruling 97-28.

The Department provides taxpayers with an Industrial Machinery Credit Recapture Worksheet to assist in the listing of assets disposed of or removed from the state when an industrial machinery credit was previously established on Schedule T. The worksheet arrives at the total recapture amount, the portion that previously offset tax, and the amount that populated in a carryover table. Taxpayers should be able to provide this worksheet or a similar schedule to auditors as support for the tax recapture.

Enhanced Credit

A taxpayer may receive an additional 10%, 7%, 5% or 3% credit on the cost of owned or leased industrial machinery and computers if it made a required capital investment of $1 billion, $500 million, $250 million, or $100 million, respectively.[52] A taxpayer may receive the enhanced credit for computers, regardless of whether it meets any of the requirements of the job tax credit. However, it must file a business plan with the Department.

The capital investment only qualifies the taxpayer for the enhanced 3%-10% rates. The industrial machinery credit is still based on the cost of owned or leased industrial machinery and computers located within the state.[53] In other words, the capital investment amount only determines the enhanced credit rate for which the taxpayer is eligible; the enhanced credit rate is then applied to the purchase price of the owned or leased industrial machinery, *not* the capital investment.

The enhanced credit may be claimed on the tax return filed for the first year of the three-year investment period (this period may be extended at the discretion of the Commissioner of Economic and Community Development). However, if the required capital investment is not met at the end of three years, the taxpayer must repay any credit received for which it failed to qualify, plus interest.[54]

Best Interest of State Provisions

The specific requirements to qualify for the industrial machinery and job tax credits may be modified in cases where there are certain “best interest of state” provisions in the code.
If the Commissioners of Economic and Community Development and Revenue agree that a potential taxpayer’s investment, which is beneficial to the state, would not occur without an incentive modification, they may evoke the “best interest of state” provisions of the code.

Industrial Machinery Credit Table – Summary of Credit Rates

Tax Rate	Taxpayer	Purchase or Investment	Investment Threshold	Recapture	Invest-ment Period	Plan Must be Filed before Investment Occurs	Best Interest of the State Provision
1%	Manufacturer	Industrial Machinery, Computer for JTC	None	Withdrawn or Disposed	Current	No	None
1%	Warehouse Distribution	Industrial Machinery, Computer for JTC	10 million	Withdrawn or Disposed	3 years	Yes	None
3%	Manufacturer, Warehouse Distribution, and Others	Tangible Property and Real Estate	100 million	Withdrawn or Disposed, Investment not met	3 years, 2 year extension	Yes	100% offset - not 50%
5%	Manufacturer, Warehouse Distribution, and Others	Tangible Property and Real Estate	250 million	Withdrawn or Disposed, Investment not met	3 years, 2 year extension	Yes	100% offset - not 50%
7%	Manufacturer, Warehouse Distribution, and Others	Tangible Property and Real Estate	500 million	Withdrawn or Disposed, Investment not met	3 years, 2 year extension	Yes	100% offset - not 50%
10%	Manufacturer, Warehouse Distribution, and Others	Tangible Property and Real Estate	1 billion	Withdrawn or Disposed, Investment not met	3 years, 4 year extension	Yes	No limit for carryover years, 100% offset – not 50%

I.R.C. § 338(h)(10)

[Letter Ruling 14-06] addresses a situation where a buyer and seller jointly elected to treat a stock sale as a sale of assets for federal income tax purposes, under I.R.C. § 338(h)(10). This Ruling concluded that the buyer/taxpayer was not entitled to the industrial machinery credit for acquired manufacturing assets even though the buyer was deemed, for federal income tax purposes, to have acquired them as a result of the sale.

Verification

The following documents may be reviewed by an auditor verifying the Industrial Machinery Credit:

- Sales tax exemption for manufacturers.
- Business plan of warehouse/distribution facility with a $10 million expansion.
- Business plan in regard to enhanced credits (1%, 3%, 5%, 7%, and 10%).
- Commissioner's written approval of the 100% credit offset (instead of 50%) and the unlimited credit carryover (instead of 15 years).
- Depreciation schedules

Overpayment Credits

Overpayments are applied as follows. Overpayments on the taxpayer's account stay on the period in which they originated unless one of the following occur:

- The overpayment is refunded.
- The overpayment is automatically offset to another taxpayer liability.
- A Revenue employee moves the overpayment to another period and/or account (generally at the taxpayer's request).
- The taxpayer requests on its tax return that the overpayment be applied to the next year's tax.

- A taxpayer claiming an overpayment on Schedule E, Line 1 does not cause the overpayment to be moved the that period. It only moves if needed to offset the liability per above.

[1] Tenn. Code Ann. §§ 67-4-2009(6)(A), 67-4-2109(e)(1)-(2)
[2] Tenn. Code Ann. § 67-4-2109(h)
[3] Tenn. Code Ann. § 67-4-2109(h)(8)
[4] *Id.*
[5] The facts in this Ruling indicate that the syndicated lending relationship is *pari passu* (equal), and loan repayments are paid pro rata in accordance with the amount of each lender's claim.
[6] Loan participation can be made on a senior/subordinated basis or a *pari passu* (equal) basis. The facts in this Ruling indicate that the loan participation would be made on a *pari passu* basis with equal risk sharing for all participating lenders.
[7] Pursuant to Tenn. Code Ann. § 67-4-2109(e), a credit carryforward may be taken only by the taxpayer that generated it.
[8] Tenn. Code Ann. §§ 67-4-2009(1), 67-4-2109(c), and 56-4-217
[9] *Id*.
[10] *Id*.
[11] Tenn. Code Ann. § 67-2-102
[12] Tenn. Code Ann. § 67-4-2009(7)
[13] Tenn. Code Ann. §§ 67-4-2009(8)(C), 67-4-2009(9)(C)
[14] *Id.*
[15] Tenn. Code Ann. §§ 67-4-2009(8)(B)(v), 67-4-2009(9)(B)(v)
[16] Tenn. Code Ann. §§ 67-4-2009(8)(B)(i), 67-4-2009(9)(B)(i)
[17] Tenn. Code Ann. §§ 67-4-2009(8)(I), 67-4-2009(9)(H)
[18] Tenn. Code Ann. §§ 67-4-2009(8)(B)(ii), 67-4-2009(9)(B)(ii)
[19] Tenn. Code Ann. §§ 67-4-2009(8)(B)(v), 67-4-2009(9)(B)(iv)
[20] Tenn. Code Ann. §§ 67-4-2009(8)(G), 67-4-2009(9)(F)
[21] Tenn. Code Ann. § 67-4-2009(9)
[22] Important Notice #17-26
[23] Tenn. Code Ann. § 67-4-2009(3)(H)
[24] Tenn. Code Ann. § 67-4-2009(3)(B)
[25] Tenn. Code Ann. § 67-4-2009(3)(C)(i)
[26] Tenn. Code Ann. §§ 67-6-102(46)(A)(i), 67-4-2009(3)
[27] The minimum required capital investment for the job tax credit is $500,000 and the creation of 10 new jobs. The taxpayer must actually qualify for the job tax credit; a mere attempt to qualify for the credit is insufficient.
[28] Tenn. Code Ann. §§ 67-4-2009(3)(A)(ii), 67-4-2109(a)
[29] Tenn. Code Ann. § 67-6-102(46)(H)(i)(a)
[30] See Tenn. Code Ann. § 67-4-2009(3)(I)(ii)-(iv), 67-4-2109(a). A required capital investment is an increase in the investment in real or tangible personal property, including computer software owned or leased in Tennessee, valued under GAAP. The investment is considered made as of the date of payment or the date on which the taxpayer enters into a legally-binding commitment or contract for purchase or construction.
[31] Tenn. Code Ann. § 67-6-102(46)(A)

[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] Tenn. Code Ann. § 67-6-102(46)(B)
[37] Tenn. Code Ann. § 67-6-102(46)(C)
[38] Tenn. Code Ann. § 67-6-102(46)(D)(ii)
[39] Tenn. Code Ann. § 67-6-102(46)(E)
[40] Tenn. Code Ann. § 67-6-102(46)(H)
[41] Tenn. Code Ann. § 67-6-102(46)(K)
[42] Tenn. Code Ann. § 67-6-102(46)(A)(i)
[43] Tenn. Code Ann. § 67-6-102(46)(G)
[44] Tenn. Code Ann. § 67-6-102(46)(O)
[45] Tenn. Code Ann. § 67-6-102(46)(F)
[46] Tenn. Code Ann. § 67-6-102(46)(J)
[47] Tenn. Code Ann. § 67-6-102(46)(L)
[48] *The Beare Co. v. Department of Revenue*, 858 S.W.2d 906, 908 (Tenn. 1993)
[49] Tenn. Code Ann. § 67-4-2009(3)(E)
[50] See Tenn. Code Ann. § 67-4-2009(3)(E). Useful life is considered the depreciable life the asset has for federal income tax purposes.
[51] Tenn. Code Ann. § 67-4-2009(3)(D)
[52] Tenn. Code Ann. § 67-4-2009(3)(I)(ii)-(iv)
[53] Tenn. Code Ann. § 67-4-2009(3)(I)
[54] Tenn. Code Ann. § 67-4-2009(3)(I)(vi); Revenue Ruling 11-07