TN Department of Revenue

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Chapter 16: Job Tax Credit

Job Tax Credit Overview

The Job Tax Credit ("JTC") is found at Tenn. Code Ann. § 67-4-2109(b). It was enacted in 1992 and has undergone numerous legislative changes over the years. The following discussion is based on the most current legislation.[1]

A qualified business enterprise that makes the required capital investment and creates a minimum number of new jobs, within an enhancement county, may obtain the standard JTC equal to $4,500 for each qualified job created during the investment period. To receive the credit; the qualified business enterprise must file a business plan with the Department, which must be tentatively approved. A qualified business enterprise may also establish additional credits in subsequent years if certain requirements are met.[2]

For example, an additional annual JTC can be earned for:

- Creating new jobs in tier 2, 3, or 4 enhancement counties;
- Making a higher-level capital investment; or
- Creating jobs in an adventure tourism zone.

Taxpayers may not claim more than one additional annual credit per business plan/investment period.[3]

There are six types of JTC:

- Standard JTC;
- Additional Annual Credit – Tier 2, 3, or 4 Enhancement Counties;
- Additional Annual Credit – Higher Level Investments;
- Additional Annual Credit – Adventure Tourism Zone;
- Persons with Disabilities; and
- Community Resurgence Tax Credit.

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Terms Defined by Statute

Each of the underlined terms above has a specific and detailed statutory definition. Only taxpayers fully satisfying those requirements qualify for the standard credit. All requirements of the standard credit must be met before considering any additional annual credit.

1. Qualified Business Enterprise

A qualified business enterprise ("QBE")[4] is an enterprise that meets at least one of the qualifications below:

- 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,[5] back office operations, convention or trade show facilities, or tourism related businesses (e.g., restaurants, lodging establishments, or other tourism related attractions);
  - An enterprise that has made a capital investment necessary to permit the creation or expansion of warehousing and not distribution or vice versa is not a QBE. However, those engaged in the creation or expansion of warehousing *and* distribution may be a QBE.
- Has made the required capital investment necessary to permit the creation or expansion of a repair service facility primarily engaged in providing repairs for aircraft owned by unrelated commercial, governmental, or foreign persons; or
- Promotes high-skill, high-wage jobs in high-technology areas, emerging occupations, or skilled manufacturing jobs in which the business has made the required capital investment necessary to permit an increase in the number of qualified jobs in that county and that receives an approval from the Commissioners of Revenue and Economic and Community Development ("ECD") in a manner prescribed by the Department of Revenue.

A taxpayer may have locations or departments that meet this definition and others that do not. For example, a taxpayer may have a manufacturing facility and retail stores. The manufacturing facility would constitute a QBE and the manufacturing positions would potentially qualify for the credit, but the retail employees would not.

Typically, support staff such as office workers at a manufacturing facility would qualify for the credit since they are necessary to the operation of the QBE.[6]

2. Required Capital Investment

A required capital investment ("RCI") is an investment of $500,000 in real property, tangible personal property, or computer software owned or leased in this state that is valued in accordance with GAAP, except for convention or trade show enterprises.

For businesses engaged in convention or trade show enterprises, the investment must be at least $10,000,000. A capital investment is considered made on the date of payment or the date on which the business enterprise enters a legally binding commitment or contract for purchase or construction.[7]

⚠ **New positions qualifying for the credit must have been created because of the required capital investment. Therefore, the investment must generally occur before the job creation.**

3. Enhancement County

"Enhancement county" is a county that meets one of the following criteria for any month during the 24-months immediately prior to the creation of any qualified job for which a JTC is sought. The figures are determined by using statistics from the Department of Labor and Workforce Development:

- The average number of dislocated workers in the county exceeds the average number of dislocated workers in Tennessee; or
- The per capita income of the county is less than TN's average per capita income.[8]

Designation of Tiers

ECD designates all counties as either Tier 1, 2, 3, or 4 based on:

- Unemployment;
- Per capita income; and

- Poverty levels and high concentrations of employment in declining industries.

ECD uses statistical data prepared by "any agency of the state or federal government" and publishes the tier designations for all counties no later than July 1 of each year. Counties experiencing substantial characteristics of economic distress are designated as a Tier 2, 3, or 4 enhancement county.[9] ECD posts a color coded map titled "Tennessee Jobs Tax Credit Enhancement Counties" each year on July 1 that designates each Tennessee county as either Tier 1, 2, 3, or 4.

⚠ **The map in effect as of the beginning date of the investment period, as shown on a QBE's business plan, is the map used to determine the enhancement county tier that will be used for the entire investment period.**

The maps are located here: Enhanced Job Tax Credit Counties as of 7-1-2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 The ECD website where the maps are located is http://www.tnecd.com/research-and-data/publications/

4. Qualified Job

The qualified job definition is comprised of two parts: the first part is applicable to most QBEs while the second part applies specifically to adventure tourism jobs.[10] Part I defines a qualified job as one that meets all of the following:[11]

- Permanent (not seasonal or part-time);
- Provides employment to a person in a QBE for at least 37.5 hours per week for at least 12 consecutive months;
- Offers minimum health care insurance, as described in the Tennessee Small Employer Group Health Coverage Reform Act.[12] (The law does not require a specific percentage of the insurance be paid by the employer, but there must be an employer plan in which the employee has the opportunity to enroll);
- Newly created in this state (did not exist in this state as a job/position of the taxpayer or of another business entity for at least 90 days[13] prior to being filled by the taxpayer);

- For example, XYZ, Inc. merges into ABC, Inc. on 9/1/2018 and terminates 20 machine operators. ABC, Inc. is the surviving entity and hires these operators on 9/10/2018. Because 90 days had not elapsed, ABC is not entitled to the JTC. However, if ABC, Inc. was a QBE and made the required capital investment and hired the operators on 2/15/2019, they could qualify for the JTC since over 90 days had elapsed.

- Part-time positions in existence prior to the investment period are not considered qualified jobs *if they become full-time jobs during the investment period*. They are not "newly created in the state."

- For example, a Tennessee manufacturer uses workers provided by an employment agency. After a trial period, the workers are hired by the manufacturer and made full-time employees that are offered health insurance. These positions are considered to have existed in the state when the manufacturer first utilized them as leased labor; so, it is likely that they existed 90 days prior to the start of the investment period.

- It is filled (a position is deemed filled if it subsequently becomes vacant but is refilled within 90 days); and

- If it is a back office operations job (accounting, legal, IT, etc.),[14] it must meet the definition of an industrial wage job[15] and pay at least the state's average occupational wage.

⚠ **A "job" within the context of this credit means the "position." Position descriptions are established when the job is created and are not impacted by the employee or employees that fill the position.**

Adventure Tourism District Job

Part II of the qualified job definition addresses adventure tourism jobs located in an adventure tourism district.[16] Beginning July 1, 2017,[17] a qualified job also includes part-time and seasonal adventure tourism jobs created in an adventure tourism district.[18]

The majority of the duties of an adventure tourism job must involve outdoor recreational opportunities, such as:

- Equine and motorized trail riding
- White water rafting, kayaking, and canoeing
- Rappelling and zip lining
- Road biking
- Rock climbing
- Hang-gliding and paragliding
- Spelunking
- Shooting sports
- Mountain biking
- Rowing
- Other such activities

Unlike the previous qualified job requirements discussed, these jobs may be part-time. *Seasonal* adventure tourism jobs (regardless of whether they provide health insurance) are counted as one-half of one job in calculating the number of jobs created. Jobs that do not offer health insurance, are seasonal, or part-time cannot have existed in the state for 36 months prior to being filled. Permanent, full-time positions that offer health insurance cannot have existed in the state for at least 90 days prior to being filled.

Jobs that are adventure tourism jobs located in an adventure tourism district count as qualified jobs when:

- The employer provides employment for at least 12 consecutive months to a person for at least 37½ hours per week *with health care* (counts as one job);

- The employer provides employment for at least 12 consecutive months to a person for at least 37½ hours per week *without health care,* the position is an adventure tourism job located in an adventure tourism district, and the job did not exist in the state for 36 months prior to being filled (counts as one job);

- The employer provides *seasonal* employment for at least 26 consecutive weeks, with or without minimum health care, and the job did not exist in the state for 36 months prior to being filled (counts as ½ job);

    - Seasonal employment means performing services for a seasonal employer only during the seasonal employer's active period(s) of a seasonal pursuit. It does not

include performing services for a seasonal employer during the seasonal employer's inactive period(s) of seasonal pursuit.[19]

- The employer provides part-time employment for at least 20 hours per week for 12 consecutive months, with or without minimum health care, and the job did not exist in the state for 36 months prior to being filled (counts as ½ job).

> ⚠ **Even though some new jobs count as ½ a job, the credit is computed on whole numbers. For example, 99½ jobs would receive the same credit as 99 jobs.**

Example - 12 Consecutive Months Requirement

A position would have provided employment for 12 consecutive months if the position was:

- Initially filled on January 1 of Year 1 by J. Jones.
- J. Jones was terminated on March 1 of Year 1.
- T. Taylor filled this position on May 15, Year 1, but left on November 1, Year 1.
- C. Cash replaced T. Taylor and filled the position on January 10, Year 2.

Even though the position was filled only 229 days in Year 1, it is considered to have provided employment for 12 consecutive months because, after the position was initially filled, any subsequent vacancies were refilled within a period of not more than 90 days. This is an example of one position filled by three employees.

5. Investment Period

The investment period is the period during which qualified jobs are created *as a result of the required capital investment*. Generally, the period may not exceed three years from the effective date of the JTC Business Plan.[20] Effective for tax years ending on or after July 1, 2016, taxpayers located in Tier 3 or 4 enhancement counties have five years in which to create the minimum required number of jobs.[21] This five-year period applies only to the creation of new jobs; the timeline for making the required capital investment is still limited to three years. Taxpayers indicate the investment period on their business plan and have the option to file two or more

business plans. For example, the first business plan might cover an investment period of two years, and the second plan might cover an additional period of two years.

⚠ **The taxpayer chooses the starting date of the investment period on the Business Plan. This can be any date. However, if multiple business plans are filed, the dates of the respective investment periods may not overlap.**

Net Increase in Qualified Jobs during the Investment Period

A QBE may claim a credit after it first satisfies the minimum capital investment and job creation requirements and in subsequent tax years within the investment period in which further *net increases* occur above the level of employment established when the credit was last taken.[22]

"Net increase" refers to qualified jobs. The definition of a qualified job generally requires that the position provide employment for 12 consecutive months. So, the term "net increase" limits credits claimed after the initial year to those that exceed the number of qualified jobs that previously received the credit.

For example:

- A taxpayer receives the credit for creating 30 qualified jobs in Year 1 of the investment period.
- In Year 2, seven qualified jobs are created, but six of the Year 1 qualified jobs ended.
- The six Year 1 jobs were filled for 13 months before they ended, and they were not refilled.
- The six Year 1 jobs received the credit in Year 1 because they met the 12-month test and all of the other requirements of a qualified job.
- The seven new jobs created in Year 2 also met all of the requirements for the credit.
- However, the taxpayer may only claim credit for *one position* in Year 2 (7 jobs less the 6 jobs that ended).
- Credits are only allowed for *net increases* above the level of employment when the credit was last taken.

- Six of the seven Year 2 positions offset the loss of qualified positions created in Year 1, as seen in the table below.

Position	Creation Date	Position End Date	Qualified Job	2018 JTC established	2019 JTC established
1 - 6	1-1-2018	2-1-2019	6	6	-6
7 - 30	2-1-2018		24	24	
JTC earned in 2018				30	
1 - 7	1-1-2019		7		7
JTC earned in 2019					1

A qualified job that changes within the investment period and fails to meet all of the requirements of a qualified job should be treated as if the job ended, and the principles of *net increase* would apply. For example:

- A job is determined to be a qualified job in Year 2 of an investment period, but the weekly hours worked decrease to 35 in Year 3. The job would qualify for the $4,500 credit in Year 2 if all other requirements are met, but any new qualified jobs for Year 3 would not count until the "deemed loss" of the Year 2 job was offset.

Standard JTC

For a QBE located in a Tier 1 or 2 enhancement county to meet the requirements for the standard credit, they must do three things:

- File a business plan;
- Make a minimum $500,000 capital investment; and
- Create 25 new job/positions as a result of the investment within three years[23] of the

effective date of the business plan.[24]

See the chart below for the minimum number of jobs that must be created for the standard job tax credit and the years allowed in which to create them.

1. Table of Standard JTC - Jobs, Years & Tiers

County Designation	Minimum Investment*	Minimum Qualified Jobs[25] [26]	Years to Create Jobs	Credit Per Job**
Tier 1 or 2	$500,000	25	3	$4,500
Tier 3	$500,000	20	5	$4,500
Tier 4	$500,000	10	5	$4,500

* $10 million if convention or trade-show enterprise

** The standard JTC increases from $4,500 to $5,000 per job if the QBE qualifies for the additional annual credit for higher-level investors and pays the average occupational wage.[27]

Jobs may be created in multiple counties involving multiple tiers over multiple years, but only one enhancement county map is generally used—the map in effect as of the date of the beginning of the investment period.

QBEs that have made a capital investment in the state of at least $500,000 will qualify for the standard credit after creating 25 qualified jobs in a Tier 1 or 2 county, 20 jobs in a Tier 3 county, or 10 jobs in a Tier 4 county. If the sum of the jobs created in multiple tiered counties is 25 or more, all of the jobs created will qualify for the credit. Otherwise, only the jobs meeting the minimum job creation requirements of a specified tier will qualify, as shown in the following chart. Note, the last line of the chart shows that 24 jobs were created, but none qualified for the credit because the tier minimums were not met.

Each row in the below chart is an *independent* example.

Number of Qualified Jobs Created by Enhancement County Designation				
Tier 1	Tier 2	Tier 3	Tier 4	Qualify for JTC
25				25
	25			25
		20		20
			10	10
		5	11	11
		21	2	21
		20	10	30
20	2	1	2	25
20	2	1	1	0

2. Business Plan and Recommended Documentation

Taxpayers must file a Job Tax Credit Business Plan before claiming the JTC. The business plan must include all required information, including a description of the investment to be made, the number of jobs the investment will create, the expected dates the jobs will be filled, and the effective date of the plan.[28]

The "effective date" is the date on which the "investment period" is deemed to begin. The investment period is the period in which the taxpayer creates the qualified jobs resulting from its capital investment. Jobs created outside of the investment period do not qualify for the JTC and capital investments made outside the investment period do not count towards the minimum requirement. The taxpayer enters the investment period dates on the first page of the business plan. The beginning investment period date establishes the enhancement county tier map that is in effect for the entire investment period.

Taxpayers should mail the business plan to the Department. The Department will review the business plan and either tentatively approve it or deny it, if it is clear that the minimum legal requirements to claim the credit will not be met by the taxpayer. The Department will respond to the taxpayer in writing. A letter of tentative approval will state that it is based on the information provided. However, if the actual investment, number of new jobs, or any other material fact does not comply with the requirements of Tenn. Code Ann. § 67-4-2109(a) and (b), the JTC may not be claimed.

Attached to the JTC tentative approval letter is a listing of the JTC: Recommended Documentation that the taxpayer should maintain for verification purposes. An image of the Recommended Documentation sheet, shown on the following page, was first attached to tentative approval letters beginning in 2014.

Auditors may request the information listed on the Recommended Documentation sheet, including:

- Detailed employee/position lists, preferably in the JTC - Schedules template format found on the Department's website.

> ⚠ **The template schedules linked on the JTC page of the Department's website for taxpayers to use are also used by auditors to document their audit work.**

- Employee/positions lists, in which the positions for which the credit was claimed are highlighted or otherwise identified.

> ⚠ **Audit testing of the credit will be suspended until the taxpayer has identified the specific positions that are being claimed for the credit.**

- Tennessee Wage and Premium Reports ("SUTA"). These reports generally provide support for positions that existed within the state. It is highly recommended that these reports be available during a JTC audit in an original or redacted form.

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Job Tax Credit: Recommended Documentation

The following information and records should be maintained and available (preferably in an electronic format) to verify that all the requirements of the standard job tax credit have been met.

Capital Investment

List of items acquired during the investment period as part of the required capital investment (may include real property, tangible personal property or computer software owned or leased in Tennessee) that details the purchase date, cost, description, location, and general ledger account charged

New Job Position Documentation

Records for the 90* day period immediately before the first day of the investment period as reported on the business plan detailing the following for positions in Tennessee:

1. Unique position number
2. Position title
3. Employee name
4. Last four digits of employee's SSN
5. Hourly wage rate for each employee
6. Gross annual wages for each position
7. Position designation: permanent, full-time or other
8. Location of position, including county

*36 month period for permanent, part-time and seasonal adventure tourism jobs located in an adventure tourism district

Records of the items listed below during the investment period and the 12** months following the end of the investment period

1. Items 1-8 listed above
2. Date position created / filled
3. Hire date
4. Termination date
5. Indicate if health insurance has been offered
6. Indicate if claimed job tax credit

**26 consecutive weeks for seasonal adventure tourism jobs in an adventure tourism district

Five template schedules are available on our website to assist you with maintaining and providing job and capital investment information.

Payroll and depreciation records should be retained to provide support that all of the requirements for the jobs tax credit have been met. Payroll reports and purchase invoices generally are good sources of documentation.

Schedule X is used for claiming the credit.

Once the minimum requirements for the standard job tax credit have been met, the credit may be claimed by filing Schedule X with the franchise and excise tax return.

Employees should be claimed by the business that controls and utilizes them.

The job tax credit should be claimed by the entity that controls and utilizes the workers regardless of who files the related payroll reports. If another entity files the payroll reports, the same documentation must be provided to support the credit as well as documentation supporting the relationship between the entity and the payroll company.

Amended Business Plan

Taxpayers may file amended business plans. Taxpayers originally complete business plans based on the best information available at the time, but it is reasonable that a business plan may need to be amended. For example:

- A taxpayer files a business plan stating that the investment period is January 1, 2016, through December 31, 2018, but later realizes that jobs will be created and capital investments will also be made in 2019, which is outside the three-year investment period.
- The taxpayer may file one amended business plan (January 1, 2016, through December 31, 2017) and a second plan (January 1, 2018, through December 31, 2019), each with two-year investment periods.

The business plan is normally filed by the taxpayer, but the Department will accept business plans filed by the taxpayer's wholly-owned SMLLC (disregarded to parent). However, the credit will be claimed on the parent corporation's franchise and excise tax return and maintained on the parent's account.

A QBE that is a qualified data center[29] must certify on the business plan that it has not been in violation of the Worker Adjustment and Retraining Notification Act, the Fair Labor Standards Act, or federal immigration laws within the last 12 months. A qualified data center's failure to provide this certification will disqualify the taxpayer from claiming the JTC. This applies for tax years ending on or after July 1, 2016.

3. When Credit May Be Claimed, Offset Limits, and Carryover

Taxpayers claim the credit by reporting it on Schedule X of the return. The standard credit is first claimed in the tax year in which all of the requirements for the credit have been met and in subsequent years within the investment period where there are net job increases because of the investment. A taxpayer may claim the standard credit once it has:

- Filed its business plan;
- Received a tentative JTC approval letter from the Department;
- Made the required capital investment; and

- Filled the minimum required number of new Tennessee jobs/positions within the three-year investment period (or five-year period if located in a tier 3 or 4 enhancement county).[30]

For example, a taxpayer located in a Tier 4 enhancement county meets the requirements of the first three bullets above in Year Three and creates 10 new positions in Year Five. The taxpayer would claim the credit in Year Five, since this is the first year in which all the requirements have been met.

The standard credit is $4,500 per each new Tennessee job created.[31] It can offset up to 50% of the combined franchise and excise tax,[32] beginning with the first year in which the minimum statutory requirements are met. Any unused credit may be carried forward for up to 15 years.[33]

Qualified jobs that are not adventure tourism jobs must provide employment for at least 12 consecutive months.

> ⚠ **A taxpayer that has met all other requirements may claim the credit before the position has existed for 12 consecutive months. If the credit is claimed and the position ends short of 12 months, the taxpayer would file an amended return to report the decrease in the credit earned.**

Additional Annual Job Tax Credits

In addition to the standard credit, three additional annual credits may be claimed under specific circumstances, *if the requirements of the standard credit have been met.* A taxpayer may not claim more than one additional annual credit and must indicate which one it will take on its business plan.[34]

1. Tier 2, Tier 3, or Tier 4 Enhancement Counties

Taxpayers qualifying for the standard job tax credit of $4,500 may obtain an additional annual credit if the new jobs were created in an "enhancement county." The Enhancement County JTC/Additional Annual Credit is a tax credit of $4,500 per job created that is *in addition* to the standard JTC for companies that locate or expand in Tennessee counties designated as Tier 2, 3, or 4 enhancement counties. Taxpayers take the credit each year for three or five years, depending on the enhancement county in which the jobs are located. Taxpayers may only take

this credit in tax years in which the job remains filled.[35]

Summary Table of Enhancement Counties

Enhancement County	Minimum Investment	Minimum[36] Qualified Jobs	Credit per Job	Duration of annual credit	Carryover
Tier 2	$500,000	25	$4,500	3 years	No
Tier 3	$500,000	20	$4,500	5 years	No
Tier 4	$500,000	10	$4,500	5 years	No

Business Plan – Enhancement County Credit

Taxpayers claiming this credit should check the box for "Additional Annual Job Tax Credit for Enhancement Counties" and enter the applicable county on the line provided.

Additional Time to Create Jobs/Positions – Enhancement County Credit

A qualified business locating or expanding in a Tier 2 county may take three years to create the minimum required number of jobs. Businesses locating or expanding in a Tier 3 or 4 county may take up to five years to create the minimum required number of jobs.[37]

When Credit May Be Claimed, Offset Limits, and No Carryover – Enhancement County Credit

The credit is claimed by filing Schedule X, Part 2. It may first be claimed in the tax year in which all of the requirements for the credit have been met and in subsequent years within the investment period where there are net job increases because of the investment. It may only be claimed in subsequent years when the newly created positions remain filled.

Taxpayers may choose to delay taking this credit, but they must begin to apply the credit no later than the first tax year following the end of the investment period.[38] This additional annual credit can *offset up to 100%* of the franchise and excise tax liability, but there is no carryover. Schedule X and the state's computer system will apply the credit before credits with carryover capabilities, such as the Industrial Machinery Credit and the Standard JTC.

2. Higher Level of Investment and Job Creation

If the QBE involves a Higher Level of Investment and Job Creation ("HLIJC"), an additional annual credit is allowed, as shown in the chart below.[39] For example, if the investment exceeds $1 billion and at least 500 "industrial wage jobs" are created, the $5,000 additional annual credit is allowed for a period of 20 years, if the jobs remain filled during the year in which the credit is being taken. Also, the standard $4,500 JTC available to all qualifying businesses will be increased from $4,500 to $5,000 per job if the QBE qualifies for the additional annual credit for higher-level investors.[40]

An "industrial wage job" is a qualified job with wages equal to or greater than Tennessee's "average occupational wage" for the month of January of the year during which the job was created.[41] The "average occupational wage" is the average wage for all industries as reported by the Department of Labor and Workforce Development in the most recent annual quarterly census of employment and wages super sector data for the state, aggregate of all ownerships.[42] See the table: average occupational wage.

Summary Table – HLIJC Additional Annual Credit

Minimum Investment	Industrial Wage Jobs[43]	Credit per Job	Duration of Annual Credit
$1 billion	500	$5,000	20 years
$500 million	500	$5,000	12 years
$250 million	250	$5,000	6 years[44]
$100 million	100	$5,000	3 years
$10 million*	100*	$5,000	3 years

* The lowest rung on the above chart requires a relatively modest investment, but there are additional requirements that a taxpayer making this level of investment must meet in order to qualify. Namely, the jobs must meet the definition of "headquarters staff employees" and 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. Note that as of July 1, 2015, "regional" headquarter facilities are no longer QBEs and are not allowed this credit.

"Headquarters staff employees" are 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 advanced knowledge (from a prolonged course of specialized study) in a field of science or learning.[45]

Example – HLIJC

A taxpayer invests $100 million and creates 175 new jobs. Of these 175 jobs, 125 pay above the state's average occupational wage and 50 pay less than this amount. Since the taxpayer has invested at least $100 million and created at least 100 new industrial wage jobs, the additional annual credit rate for the 125 qualified jobs that meet the industrial wage requirement is $5,000 annually for three years, provided the job remains filled. For purposes of the standard credit, all 175 new jobs, including those that pay below the average occupational wage, are eligible for the credit at a rate of $5,000 per new job.[46] However, for purposes of the additional annual credit, only the jobs that pay above the average occupational wage are eligible for the credit.[47]

Business Plan – HLIJC

Taxpayers claiming this credit should submit their Job Tax Credit Business Plan with the box checked for "Additional Annual Job Tax Credit for Higher Level Investments" and the applicable sub-box checked to indicate the level of investment expected to be made.

Investment Period – HLIJC

The period in which to make the required capital investment for the HLIJC additional annual credit is three years from the effective date of the business plan. However, if the Commissioner of ECD determines that it is in the "best interest of the state," the Commissioner may extend the three-year period up to two additional years, or four additional years if the investments exceeds $1 billion.[48]

When Credit May Be Claimed and Offset Limits – HLIJC

The additional annual credit for all levels of investment is $5,000 for each job that remains filled[49] during the year in which the credit is being taken. This annual credit may offset up to 100% of the franchise and excise tax liability for that year, but taxpayers cannot carry forward any unused additional annual credit beyond the year in which the credit originated, unless the Commissioners of ECD and Revenue approve the "best interest of the state" provisions before Jan. 1, 2011.[50]

The QBE may first apply the additional annual HLIJC credit in the tax year it which it met all of the statutory requirements, even if that is the first year of the investment period. The taxpayer may delay taking this credit. However, the taxpayer must begin to apply the credit no later than the first tax year following the end of the investment period.[51]

Please see Letter Ruling 11-17 (Item 5) for an example of when the Department approved a taxpayer for a HLIJC credit, but it had not met the minimum requirements. Once the taxpayer had met the minimum requirements for the standard credit ($500,000 dollar investment and the minimum number of new jobs), the taxpayer was able to begin taking the standard credit at the full $5,000 per job rate, per the special provision in the law.[52] However, the taxpayer had to wait until it had met the minimum job and investment requirements for the HLIJC before taking the additional annual credit.

2/3 Exclusion – Schedule G, Line 9 – Exempt Required Capital Investment

Taxpayers may exclude two-thirds of the net book value of assets included in the required capital investment when qualifying for the HLIJC credit from the minimum measure of the franchise tax. The investment qualifies as "exempt" only in those years in which the HLIJC additional annual credit is actually allowed.[53]

Prior to June 17, 2009, Tennessee law did not limit the periods to which this exclusion could be applied. Taxpayers who began their investment period before this date may take the 2/3 exclusion for as long as the qualified assets are on their books.

After June 17, 2009, the periods to which this exclusion can be applied are limited to the years in which the additional annual credit is allowed.

3. Adventure Tourism Zone

There is an additional annual credit for each new qualified job created in an area designated as an "adventure tourism zone (district)." [54] To qualify, taxpayers must first meet all the requirements of the standard job tax credit. The newly created jobs do not need to be adventure tourism jobs.[55] Tourism-related businesses may claim the standard job tax credit[56] because they may be QBEs. This includes restaurants, lodging establishments, or other tourism-related attractions. They may claim the standard job tax credit of $4,500 per each new position, with an offset limit of 50% of their franchise and excise tax and a carry forward of 15 years. To qualify for the standard credit, the tourism related business must:

- File a business plan and receive tentative approval from the Department;
- Make an investment of at least $500,000 in real or tangible property or computer software owned or used within the state within a three-year investment period; and
- Create the minimum required number of new qualified jobs. Effective July 1, 2017, a "qualified job" includes part-time and seasonal adventure tourism jobs created in an adventure tourism district.[57]

Taxpayers that have created a minimum number of positions in an adventure tourism zone and have met the requirements of the standard credit will qualify for the adventure tourism additional annual credit.

Minimum Job Creation within a District/Zone

QBEs located in an adventure tourism district within a Tier 2, 3, or 4 enhancement county may qualify for the additional annual credit with less than 25 positions created. The credit is available if the business creates:

- At least 25 new jobs in a district within a Tier 1 enhancement county;
- At least 19 new jobs in a Tier 2 enhancement county;
- At least 13 new jobs in a Tier 3 enhancement county; or
- At least 10 new jobs in a Tier 4 enhancement county.[58]

For example, a taxpayer located in a Tier 3 enhancement county that filed a business plan, made a capital investment of $500,000 and created 20 new qualified job positions would qualify for the standard job tax credit. If 13 of the new positions were located in an adventure tourism district, the taxpayer would also qualify for the additional annual job tax credit. Note that the 13 jobs do not need to be adventure tourism jobs. They only need to be located in an adventure tourism district.

Note that the job creation requirement in a Tier 3 enhancement county is 20 for the standard job tax credit and 13 for the additional annual adventure tourism credit. Taxpayers who are only creating 13-19 positions in a Tier 3 enhancement county adventure tourism zone will not qualify for either credit because the requirements of the standard credit must first be met.

Length and Amount of Additional Annual Credit

This credit is for a period of three years for businesses located within a district in a Tier 1 or 2 enhancement county and five years for those located in a Tier 3 or 4 enhancement county.

The additional annual credit is $4,500 for each qualified job, if the job remains filled by employees during the year for which the credit is being taken. Taxpayers may use this additional annual credit to offset up to 100% of the taxpayer's franchise and excise tax for that year. Taxpayers may not carry forward any unused additional annual credit. Taxpayers may choose to delay taking this credit, but they must begin to apply the credit no later than the first tax year following the end of the investment period.[59]

Creation of Adventure Tourism Districts

The creation of "adventure tourism districts" is discussed at Tenn. Code Ann. § 11-11-204. Generally, a local governing body votes to create an adventure tourism district within the boundaries of such governing body by developing an adventure tourism district plan. Alternatively, one or more counties or one or more municipalities may enter into an intergovernmental agreement to designate jointly an adventure tourism district that contains areas within the boundaries of more than one local government. Adventure tourism professionals may petition local governing bodies to authorize the creation of an adventure tourism district. They will provide a specific business plan based on quantifiable data demonstrating that the creation of an adventure tourism district would enhance sustainable economic development in the area. Once a local governing body or bodies authorizes the creation of an adventure tourism district, the adventure tourism district plan must be submitted to the Departments of Tourism Development and Revenue for joint approval of the adventure tourism district.[60]

Persons with Disabilities

A job tax credit of $5,000 for each net new *full-time* employee and $2,000 for each net new *part-time* employee is available to employers for the employment of persons with disabilities who are receiving state services directly related to the disabilities.[61] A full-time job is a permanent position providing employment for at least 37.5 hours per week and the person *is enrolled in* minimal health care benefits. A part-time job provides employment for at least 10 hours per week. A part-time employee is not required to be enrolled in health care benefits provided by the employer. An employee working 37.5 hours that is not enrolled in health care may claim the

$2,000 credit afforded part-time positions. A Job Tax Credit for Hiring Persons with Disabilities Business Plan must be filed before the last day of the year in which the employment begins. Additional requirements include:

- A net increase occurs in the number of persons with disabilities employed by the taxpayer within the 90-day period immediately preceding employment.

- The taxpayer provides qualifying employment for at least 12 consecutive months for no less than the minimal hours per week.

- The credit applies initially in the tax year in which the taxpayer increases net new employment of such persons by one or more employees, and in subsequent fiscal years in which additional net increases occur above the level of employment established when the credit was last taken.

- The disabled employee is being served by the Department of Mental Health and Substance Abuse Services, the Department of Intellectual and Developmental Disabilities, the Division of Rehabilitation Services of the Department of Human Services, the Council on Developmental Disabilities, or any other similar state employment incentive program.

Taxpayers claiming the job tax credit for hiring persons with disabilities are not required to make a capital investment or be a QBE in order to claim the credit.

Community Resurgence JTC

A $2,500 credit is available for all new or existing businesses located in a "high-poverty area" that have created at least 10 full-time positions within three years from the effective date of the business plan filed with the Department.[62] This credit does not require a capital investment and can be taken in addition to other job tax credits. It is a one-time credit with a 15-year carryforward and it may offset up to 50% of the combined franchise and excise tax liability. Unlike other credits, it has an *aggregate annual limit* of $12,500,000 for *all* taxpayers.

For the purpose of this credit, the terms "qualified business" and "qualified job" are uniquely defined.

- A qualified business is any business located in a census tract designated as a high poverty area. Note that the term qualified business enterprise is not used.

- A qualified job must be full-time and pay the state's average occupational wage. This definition is unique to the community resurgence job tax credit. The qualified job definition found at Tenn. Code Ann. § 67-4-2109(a)(6) should not be used.[63] Note that the applicable definition does not mention adventure tourism jobs located in an adventure tourism district/zone and does not require the taxpayer to offer health insurance.

For this credit, taxpayers must be located in a "high-poverty area." This means a census tract with a poverty level, all population, in excess of 30%, according to the American Community Survey three-year estimates in 2013,[64] and determined every 10 years thereafter by ECD in consultation with the Comptroller of the Treasury. A taxpayer that has created ten qualifying jobs in two census tracts will not qualify for the community resurgence job tax credit. The minimum of ten qualifying jobs must be created in a single census tract.

Wage Rate Requirements

The table below summarizes the wage rate requirement, if any, for qualified jobs, depending on the type of job tax credit(s) being claimed by the taxpayer.

Type of JTC	Required Wage Rate
Standard	No requirements
Additional Annual:	
Tier 2, 3, or 4	No requirement
Higher Level of Investment	100% industrial wage job
-HLIJC- $10 million investment	150% average occupational wage
Adventure Tourism	No requirement
Community Resurgence	100% average occupational wage Tenn. Code Ann. § 67-4-2004(3)
Back office operations Tenn. Code Ann. § 67-4-2109(a)(6)(D)	100% industrial wage job
Headquarter staff positions - Tenn. Code Ann. § 67-4-2109(g) (prior to repeal July 1, 2015)	150% average occupational wage
An industrial wage job pays the state's average occupational wage, so these terms are almost interchangeable.	

Common Law Employer

The common law employer is the entity eligible for the job tax credit and the entity that has representation in the payroll factor on Schedule N. The guidance for determining which entity is the common law employer is the same for JTC and apportionment purposes. **Generally, the common law employer is the entity that utilizes and controls the workers.** The entity that issues an employee's Form W-2 may be a common paymaster, staff leasing company, or a professional employer organization that is not the common law employer. See Chapter 14 for more information on determining the common law employer.

TENN. COMP. R. & REGS. 1320-06-01-.30 ("Rule 30") provides the authority to use "the usual common law rules" in determining the employer-employee relationship and in identifying the common law employer.[65] Under these rules, a person is generally considered an "employee" if the taxpayer includes the person as an employee for payroll taxes imposed by FICA. *However, there are circumstances under the common law where an employee for whom FICA is paid may not be considered an employee of that entity.* The following common law concepts may be considered when determining which entity is the employer for job tax credit and apportionment purposes. Auditors will consider the particular facts of each case and use their judgment in weighing the following:

- The *degree of control* exercised over the manner in which the work is performed. This is the most important factor in the analysis. This element is generally met if a laborer works exclusively for an entity that exercises significant managerial control over the worker and most aspects of the worker's duties and responsibilities. If determining which entity is the common law employer remains unclear after considering the degree of control exercised, the following factors are considered, but they may not be equally weighted.

  - The right to hire and terminate the employee;
  - The right to reassign the employee to another client while the employee is performing services for the service recipient;
  - Bears the cost of employee benefits;
  - Issues the Form W-2 and files employment taxes in the entity's name; and
  - Whether the work performed is part of the principal's regular business.

The entity that controls and utilizes a worker is the common law employer and is the entity that the worker would generally identify as their true boss.

TN Department of Revenue

Order of Use – One-time Credits and Credits with Carryovers

Taxpayers with various types of credits generally do not need to be concerned with the order in which they are used to offset tax on their franchise and excise tax returns. It is the Department's intent to use credits in a manner that is most advantageous to the taxpayer. The state's computer system and tax credit Schedules X and T apply credits without carryovers before those with carryovers. For example, the gross premiums tax credit, Tennessee income tax credit, and additional annual job tax credit offset the tax first because any of these credit amounts not used in the year earned are lost.

Tax Planning

1. Investment Period

A tax planning opportunity exists for taxpayers when choosing their investment period. The investment period may not exceed three years, but multiple business plans (each covering an investment period that is less than or equal to three years) may be established as long as the capital investment and job creation requirements are met for *each individual* business plan/investment period. For example, a QBE files a business plan with an investment period beginning January 1, Year 1 and ending December 31, Year 3. It makes the required capital investment of $500,000 in both Years 1 and 3 and 50 qualified jobs are added in Years 1, 2, 3, and 4. Since the jobs added in Year 4 are outside the investment period, they will not qualify for the credit. However, if two business plans were filed (one for Years 1 and 2, and another for Years 3 and 4), then the qualified jobs added in all of these years could be claimed.

2. Credit Selection: Enhancement County or HLIJC Additional Annual Credit

Taxpayers may qualify for *both* the enhancement county additional annual credit *and* the HLIJC additional annual credit, but because the taxpayer may only claim one of these credits per investment period, they must choose which one to claim. Depending on the level of investment made and the number of jobs created, one of these credits may be more advantageous for the taxpayer to claim than the other.

For example, a QBE makes a capital investment of $101,000,000 and creates 100 industrial wage jobs in a Tier 3 enchantment county. If the enhancement county additional annual credit is claimed, the taxpayer would earn a credit of $4,500 for each of the 100 jobs for five years, totaling $ 2,250,000 ($4,500 x 100 jobs x 5 years). However, if the HLIJC additional annual credit is claimed, the taxpayer would earn a total credit of $1,500,000 ($5,000 credit x 100 jobs x 3 years)

and would qualify for the Schedule G exclusion of 2/3 of the net book value of assets that are part of the capital investment made to qualify for the HLIJC credit.[66]

Survival of Credits in Reorganizations and Unitary Group Carryover Issues

1. Corporation Becomes SMLLC Disregarded to Parent

When a corporation that creates a JTC carryover converts to an LLC and then becomes a disregarded SMLLC that files with its parent, the carryover stays with the taxpayer that generated it and cannot be used by a different taxpayer. Since the LLC is no longer a taxpayer in its own right, the loss carryover is essentially lost unless the LLC becomes regarded at a later date, thus becoming a taxpayer again.[67]

2. Merger

Any available carryovers of a corporation that merges out of existence into another entity are lost. They may not be used by the surviving entity.

3. Taxpayer Sells its Disregarded SMLLC that Created the JTC

When a corporation (taxpayer) sells its disregarded SMLLC that created the JTC carryover, the JTC carryover stays with the taxpayer parent.[68] In a situation where the disregarded SMLLC creates new Tennessee jobs while filing with the parent, the resulting credit actually belongs to the parent, because the SMLLC is disregarded to the parent (the taxpayer) and treated like a division of the parent. Therefore, if the SMLLC is sold to a third party, any existing JTC carryover will remain with the taxpayer parent.

4. Unitary Group of Financial Institutions

A unitary group of financial institutions may take any qualified credit, including the JTC, that was generated by any group member that is in existence as a member of the group at the end of the group's tax year, provided that such credit has not previously been taken by the member itself before it joined the group or by another unitary group of financial institutions at the time the financial institution generating the credit was a member of that group.[69]

Audit Documentation

Auditors must verify certain assertions made by the taxpayer concerning their qualification to receive the job tax credit. Verifications may be accomplished in a variety of ways. Auditors should determine the best method of verification based on the information available, the most efficient use of time, and the level of reliability of documentation. For example, an invoice provides better evidence than an in-house depreciation schedule, a footnote to an audited financial statement provides better evidence than a verbal statement, a report filed with a state or federal agency provides better support than an in-house spreadsheet.

This section discusses suggested documentation that taxpayers should expect to be a part of most JTC audits. Actual documents retained as audit workpapers may vary because of the type of credit(s) claimed and issues unique to a given taxpayer. The discussion in this section is generally limited to the standard JTC credit entailing non-tourism jobs.[70]

Most taxpayer-provided documents in a JTC audit will be similar to those suggested on the Job Tax Credit: Recommended Documentation sheet (RD) that is mailed with tentative approval letters. It can also be found on the Department's website.[71] It informs taxpayers of the job/position and investment documentation that should be maintained (preferably in an electronic format) for availability for verification of the job tax credit. It suggests that unique position numbers be maintained and reported on the job/position lists provided to the Department in support of the credit claimed.

> ⚠ **Taxpayers that assign unique position numbers to all positions can show position increases more easily than those that rely solely on position titles and employee names.**

Beginning in 2018, the RD informs taxpayers that they *may use templates from the Department's website* to provide most of the recommended documentation.

The following schedule templates can be found on the Department's website. These schedules encompass information suggested on the RD sheet:

- JTC Reconciliation
- Required Capital Investment

- Position List 90 Days Prior
- Position List(s) at Year End
- List 12 Months After End of Investment Period
- JTC Carryover

In cases where the taxpayer provides electronic data, but does not use the above templates, the auditor may import the taxpayer's data into these templates to perform audit work. The Department's retained audit workpapers will generally include these template schedules.

> ⚠ **Taxpayers are encouraged to use the templates on the Department's website, as it simplifies the audit process and reduces the possibility for mistakes.**

1. Retained Documents and Workpaper Organization

Many JTC audit workpapers begin as taxpayer-prepared schedules. Taxpayer-provided schedules are generally saved intact and all audit work done is documented on copies of these schedules. The original and audit copies are cross referenced in the audit file.

In some cases, taxpayers may not allow auditors to retain certain data or documents, even in a redacted form. If this occurs, the auditor may prepare a detailed narrative that describes the records reviewed and the reason the documents were not retained and made part of the audit file. In all cases, the auditor should adequately document in their workpapers how audit conclusions were reached, either referencing the document copies found in the audit file or the alternative detailed narrative.

Retained documents will generally have comments, notes and tic marks that have been added by the auditor. There may be notations that name the document's source, describe the audit work done, and state the conclusions reached as a result of that work. Taxpayer-provided documents that were not used in the audit should be returned to the taxpayer and not retained in the audit file.

Whenever possible, the audit workpapers should include copies of documents that were relied on by the auditor in reaching conclusions about the credit(s) claimed by the taxpayer. This includes taxpayer-provided and auditor-prepared papers. Generally, JTC audit workpapers will

have five or more sections. Below is an example of the sections and examples of corresponding documentation.

- Business Plan and General Information
  - Business plan
  - Tentative approval letter
- Qualified Business Enterprise (QBE)
  - Document(s) used to verify QBE status.

  Examples include:
  - Page of federal income tax return that shows the NAICS code;
  - Notes to financial statements; or
  - Tennessee sales and use tax exemption certificate (e.g., industrial machinery)
- Required Capital Investment (RCI)
  - Taxpayer-completed RCI template schedule or depreciation schedule.[72]
  - Auditor copy of RCI template schedule or depreciation schedule that includes notations of audit work.
  - Documents reviewed to verify accuracy of RCI list of purchases.

  Examples include:
  - Depreciation schedule;
  - Invoices; or
  - Lease agreement.
- Qualified Job/Position
  - Taxpayer-completed Job/Position List schedule for at least 90 days prior to beginning of the investment period.
  - Taxpayer-completed Job/Position List schedule for each year of investment period.
  - Taxpayer-completed Job/Position List for 12 months after the end of the investment period.
  - Auditor copies of each Job/Position List for each year of the investment period and for 12 months after the end of the investment period that include notations for audit work done to verify that jobs qualify for the credit.

- Documents reviewed to verify jobs listed met all attributes of a qualified job.

Examples include:

- Department of Labor and Workforce Development Premium and Wage Report;
- Employee payroll file documents, payroll registers, or copies of Human Resources computer screenshots;
- Employee benefits handbook for applicable year;
- Health insurance invoice naming employee; or
- Employee-signed form to opt out of insurance.

- JTC Reconciliation

  - Taxpayer-completed JTC Reconciliation schedule, listing the specific jobs by year for which the credit was claimed.
  - Auditor copy of JTC Reconciliation schedule with notations of audit work done, audit findings, and conclusions (including, if applicable, why any jobs were disallowed). Also, if applicable, additional audit work done in verifying additional annual credits for those positions verified for the standard credit.

- JTC Carryover

  - Taxpayer-completed JTC Carryover schedule of credits previously established and available in the audit period.
  - Auditor copy of JTC Carryover schedule that reconciles audit and taxpayer numbers and explains any adjustments to the schedule.

⚠ **The JTC Reconciliation schedule, prepared by the taxpayer, lists the specific jobs/positions by year for which the credit was claimed. This is one of the first JTC schedules that auditors will want to review.**

2. Auditor's Authority to Request Additional Information

Qualification for the credit turns on whether or not the details encompassed in the definitions of "QBE," "required capital investment," "qualified job," and "investment period" have been met. Taxpayers should retain documents to substantiate these requirements.

The Commissioner of Revenue has the authority to conduct audits or require the filing of additional information necessary to substantiate or adjust the findings contained within the

business plan and to determine that the taxpayer has complied with all statutory requirements so as to be entitled to the credit.[73]

3. Audit Summary Report and Sample Language

The JTC section of the Audit Summary Report ("ASR") is of great importance. It must fully describe the audit work done, documents reviewed, and the reasons for allowing or disallowing a credit. Every JTC audit is different and the ASR should describe details unique to the audit.

In general, the ASR should:

- State the requirement (e.g., health insurance must be offered – give citation);
- State what information was reviewed to verify the requirement (e.g., payroll records) and source of the information - (e.g., taxpayer-provided, Labor/Workforce data);
- State what the auditor saw, what the auditor used to calculate from, and what source of information was used to reach the audit conclusion;
- State the conclusion (meets the requirement); and
- Include other information, such as an explanation as to why documents were not retained.

Each audit is unique and the language in the ASR will differ as a result, but auditors should complete the ASR while keeping in mind the five points listed above and provide details such as dates, document names, reference numbers, and detailed explanations of procedures performed. Below is an example of an ASR as it pertains to a job tax credit audit:

- Business Plan
  - *Tenn. Code Ann. § 67-4-2109(b)(1)(B) states a business plan should be filed.* A Business Plan for the investment period 08/01/2016 – 12/31/2018 was received by the Department, tentatively approved, and issued control number 1234. Audit reviewed the Plan and found that the form was fully completed and free from obvious errors. The taxpayer stated on the plan that it is a manufacturer and that it intends to make a $600,000 capital investment and create 20 new manufacturing jobs in Lyles, TN during the investment period.

- Qualified Business Enterprise

  - *Tenn. Code Ann. § 67-4-2109(b)(1)(A) states that only taxpayers that are QBEs may qualify for the credit and Tenn. Code Ann. § 67-4-2109(a)(5) includes manufacturing in the list of QBEs.* Audit reviewed the 2016-2018 federal corporate Forms 1120 and found that the North American Industry Classification System (NAICS) code of 337000 was reported on all returns. That code is used for furniture manufacturers. The Department's computer system shows that the taxpayer was issued an industrial machinery S&U exemption number of 12345. The taxpayer's financial statements for 2016-2018 were read, and Audit concluded that the taxpayer was engaged in only one type of business activity (manufacturing). Based on the above audit work, the auditor concludes that the taxpayer is a QBE-Manufacturer.

- Required Capital Investment

  - *Tenn. Code Ann. § 67-4-2109(b)(1)(A) states that a required capital investment (RCI) must be made in order to qualify for the credit. Tenn. Code Ann. § 67-4-2109(a)(7) defines RCI as being an investment of at least $500,000.* Audit received a list of the capital investments made during the investment period from the taxpayer that totaled $510,000. Only three items were on the list. Audit verified the items listed as to ownership, date, description, amount, and location by tracing these attributes to invoices and to the 2017 depreciation schedule. The invoices (#123, 456, & 789) showed that manufacturing stamping machines were purchased on 1/3/2017 and shipped to Lyles, TN where the taxpayer's manufacturing facility is located. Based on Audit's review of the list, invoices and depreciation schedule, the auditor concludes that the minimum $500,000 RCI was made during the investment period for the expansion of manufacturing activities in Lyles, TN.

- Tier

  - *Tenn. Code Ann. § 67-4-2109(b)(1)(C) states that the minimum number of qualified jobs is dependent on the county location (Tier) of the business expansion that resulted in job creation.* Audit toured the plant in Lyles, TN during the audit. Audit reviewed the 2016-2018 federal tax returns (Form 1120) and the 2016-2018 detailed depreciation schedules. Audit found that the mailing address and physical location of the depreciable assets and

manufacturing plant was Lyles, TN. Audit reviewed the Economic and Community Development enhancement county map dated 7/26/2016, which covered the beginning of the investment period (8/1/2016) and concluded that the expansion that created new jobs was in a Tier 3 enhancement county. Lyles is in Hickman County. *Tenn. Code Ann. § 67-4-2109(b)(1)(C) requires a minimum of 20 qualified jobs be created in a Tier 3 enhancement county in order to qualify for the standard credit.*

- Qualified Job
  - *Tenn. Code Ann. § 67-4-2109(a)(6) defines the attributes of a qualified job.* Generally, the job must be full-time (37.5 hours), be offered health insurance, have not existed in the state in the previous 90 days, and provide employment for 12 consecutive months.
  - The taxpayer completed the JTC template schedules found on the Department's website. Audit obtained these schedules in an electronic format and saved them. Copies of the schedules were made for the purpose of documenting audit work done. The schedules included JTC Reconciliation, JTC List 90 Day Prior that covered the period 5/2/2016 - 7/31/2016, JTC Lists for the period 8/1/2016 – 12/31/2016, 2017, 2018, and JTC List 12 Months After for the period 1/1/2019-12/31/2019.
  - Auditor obtained copies of the taxpayer's quarterly state unemployment reports (SUTA) for all quarters filed in 2016-2019, except for the first quarter filed in 2016. The taxpayer's name and FEIN on the SUTA reports were the same as those of the taxpayer as shown on the Business Plan. The wage totals reported on the templates mentioned above (90-day, Year End, and 12 Month) were tied to the SUTA reports without exception. Because the template lists tied to SUTA filings, Audit concluded that the electronic schedules (lists) provided by the taxpayer were complete for the dates indicated and for the taxpayer under audit.
  - The templates (JTC Reconciliation, JTC List Year End 2017 and 2018) completed by the taxpayer reported that 12 jobs were created in 2017 and 3 jobs were created in 2018. These schedules identified the new JTC jobs by position number and employee name. Audit traced the employee names to the 2017 and 2018 SUTA quarterly returns for all quarters after their hire

dates, as reported on the template schedules (JTC List Year End 2017 or 2018). The employee wage amounts reported on the SUTA filings were similar for all quarters after the first quarter and were reconciled to the amounts reported on the templates. Audit concluded that the JTC-employees were in continuous employment after their initial hire dates and that wage data in the templates was consistent with the respective SUTA filings.

– 2016-2018 financial statements and footnotes prepared by an independent accountant were obtained from the taxpayer and read. There was no indication that an affiliated entity existed or that payroll costs were being reimbursed by another entity; so, Audit concluded that the taxpayer was the common law employer of the workers reported on the position lists.

– *Tenn. Code Ann. § 67-4-2109(a)(6)(B) requires that qualified positions must be new to the state.* Audit searched the financial statement footnotes for evidence of a sale, reorganization or other information that might indicate that the claimed jobs had existed in the state as positions of another business prior to being established by the taxpayer. Audit did not find anything that would suggest that there was a sale or reorganization and that the claimed positions existed in the state as positions of another entity prior to being filled by the taxpayer. Also, Audit reviewed the JTC List for the period ended December 31, 2016, to see if any of the 12 jobs claimed in 2017 as new positions were on that list, and none were found. Audit concluded that the positions for which JTC is claimed had not existed in the state as positions of the taxpayer or another business entity for the 90-day period prior to being filled by the taxpayer.

– *Tenn. Code Ann. § 67-4-2109(a)(6)(A)(i) states that a qualified job must work for at least 37.5 hours per week.* Audit added columns to the JTC Lists for the Years Ended December 31, 2017, and 2018, and calculated the number of hours worked per week by employees for which the credit is being claimed. In part, the calculation involved the division of gross pay by the pay rate to determine the number of hours worked. In all cases, the taxpayer's assertion that the positions were full-time was verified by the audit calculation.

- *Tenn. Code Ann. § 67-4-2109(a)(6)(A)(i) states that a qualified job must be a job that is offered (or receives) employer provided health care.* Audit obtained the employee handbooks (2017 and 2018) from the taxpayer and found on page 25 that all employees working over 30 hours per week are offered health insurance. In addition, Audit reviewed the final 2017 and 2018 payroll registers and found that the employees in positions for which the JTC is claimed had insurance deducted from their pay. Based on review of the employee handbooks and payroll registers, Audit concludes that the JTC positions were offered health insurance.

- *Tenn. Code Ann. § 67-4-2109(a)(4) states that a qualified job must be created as a result of the RCI.* The JTC positions highlighted on the JTC Lists for the Years Ended December 31, 2017, and 2018, were indicated as being located in Lyles, TN. All of these positions had position titles of "stamping machine operator." Audit reviewed the JTC Lists for the period ended December 31, 2016, and found no stamping machine operators on that list. This job title was first used after the RCI was made on 1/3/2017. Audit reviewed the 2016 and 2017 depreciation schedules and found that all stamping machines were purchased after 1/1/2017. Audit concluded the positions claiming JTC were created as a result of the RCI.

- *Tenn. Code Ann. § 67-4-2109(a)(6)(A)(i) states that a qualified job must provide employment for at least 12 consecutive months.* Audit reviewed the taxpayer provided schedule JTC List 12 Months After for the period 1/1/2019-12/31/2019. All positions for which the credit is claimed in 2017 and 2018 were found on this 2019 schedule, and the data for each position was materially the same as reported in earlier years. All positions remained full-time status, were offered health insurance, and held the same position title and location. Audit concluded that because all 2017 and 2018 new JTC positions remained filled throughout the investment period, the "net" calculation per Tenn. Code Ann. § 67-4-2109(b)(1)(C) was not applicable.

Audit Procedures

This section discusses general audit procedures that taxpayers should expect to be performed in most JTC audits. The earlier section on *Audit Documentation* discusses the importance of retaining documents that were relied on in the audit process. This section primarily discusses procedures for the standard JTC credit entailing non-tourism jobs.[74]

1. Preliminary Audit Research

The auditor should preliminarily review the JTC Business Plan and Schedules X because these items will be the primary focus of the audit. With this information, the auditor may customize audit procedures to test the requirements of the specific types of credits claimed and to allocate more time to potentially troublesome areas and less time to other areas.

In addition to reviewing Schedule X, auditors will often review Schedules G and N to gain a limited, preliminary knowledge about the level of capital investment and employment within the state. Schedules G and N may show that the value of tangible property and employment in the state increased, however additional audit work is needed to verify that the increase was *related to the expansion detailed in the JTC Business Plan*. For example, Schedule G may increase by $601,000 from one tax year to the next, but this increase may not necessarily be related to the increase in qualified jobs as a result of the taxpayer's capital investment. Similarly, the payroll reported on Schedule N may increase, but the additional expense may not be for qualified jobs that increased as a result of the taxpayer's capital investment.

If possible, any "best interest of the state" provisions should be noted in the preliminary stages of the audit so that audit procedures may be modified, including obtaining the Department's record reflecting the Commissioners' authorizations.

2. Business Plan Review

Verify that the taxpayer filed a JTC Business Plan that was tentatively approved by the Department. These documents can be found in the Department's computer system. Consider whether the representations made in the Business Plan appear to be correct. Even though the Plan was *tentatively* approved, it is the responsibility of the auditor to verify whether this determination was correct. The auditor may:

- Note which "enterprise type" box the taxpayer checked on the Business Plan and make a preliminary conclusion as to its accuracy.

- Note the "effective date" of the Business Plan. This date is the "beginning of the investment period" and is referred to in many audit procedures.

⚠ **The enhancement county tier designation (1, 2, 3, or 4) is determined as of the *beginning* of the investment period. This designation will apply to the *entire* investment period, even if it changes during the investment period.**

- Note the taxpayer name on the Plan. Taxpayers are sometimes confused as to whether the taxpayer or an affiliate should be awarded the credit. Consider whether this might be an issue when planning the audit.

3. Identifying the Common Law Employer

Preliminary audit work includes verifying that the taxpayer under audit is the common law employer. A taxpayer may be the common law employer of workers that receive their Forms W-2 from an employment agency. In this case, the workers would not be included in the taxpayer's State Unemployment Tax Act (SUTA) report, but the labor expense would be reflected in the taxpayer's general ledger and trial balance. Auditors may review the taxpayer's records to identify these types of arrangements. If payments to an employment agency are noted, the related legal agreement should be requested and reviewed in determining the common law employer.

Furthermore, auditors may determine if the taxpayer has W-2 employees being controlled and utilized by others. The auditor's review of financial records may show that the taxpayer is being reimbursed for payroll costs. These reimbursements may indicate that the taxpayer is not the common law employer. Again, legal agreements should be reviewed in determining the common law employer that is entitled to claim the workers for purposes of the payroll factor and the job tax credit.

Many audit procedures assume that the taxpayer is the common law employer that issues the W-2s. However, if the taxpayer is the common law employer, but *not* issuing the W-2s, the auditor will need to modify JTC audit procedures related to the Tennessee Premium and Wage Report (SUTA).

4. Qualified Business Enterprise

Auditors must verify that the taxpayer is a QBE. This can be done in various ways. For example, verification may be made by noting the business activity code on the federal income tax return or noting the business activity disclosed in financial statement footnotes.

If the taxpayer has business locations or departments that do not meet the definition of a QBE, auditors may consider modifying audit procedures. Only the new jobs associated with departments or divisions that are QBEs should be considered for the JTC. For example, a taxpayer may have a national headquarters facility and retail stores. The headquarters facility

would constitute a QBE and headquarters staff employees would qualify for the credit, but retail employees would not.

5. Required Capital Investment

Audit work concerning the required capital investment should generally be done *after* verifying that the taxpayer is a QBE with a tentatively approved Business Plan and is the common law employer.

The audit objective concerning the required capital investment is to verify that the taxpayer has made the required capital investment within the investment period[75] necessary to permit the creation or expansion of manufacturing, warehousing and distribution, or other QBEs. The investment must be at least $500,000[76] in real property, tangible personal property, or computer software owned or leased in this state, valued in accordance with GAAP. The new jobs count should not be tested *until* the minimum required capital investment is verified. Not every capital investment needs to be verified; only the first $500,000 ($10 million, if a convention or trade show enterprise).

- An explanation of how the investment caused business expansion, resulting in new jobs, should be made in the audit workpapers. Audit work to verify job increases should not be done *until* this explanation is documented.

⚠ **Only positions newly created as a result of the required capital investment are eligible for the JTC.**

- Calculation of the amount of the required capital investment includes the historical cost (or other GAAP required basis) of capital assets purchased plus values for equipment leased under a finance or operating lease, as valued in accordance with GAAP. The acquired property must be located within the state and may be real property, tangible property, or computer software.
  - Taxpayers are encouraged to complete the **List of Required Capital Investment** template available on the Department's website.[77] This template includes all of the information detailed on the RD sheet. The taxpayer may choose to stop listing its capital asset purchases/leases for the investment period after the minimum required capital investment threshold is met. The list may include finance or operating leases. If monthly operating lease

expenses are included in the required capital investment, the auditor may need to obtain copies of the operating leases to verify their relationship to the expansion that resulted in job creation.

- To verify the accuracy of the required capital investment list, auditors may request GAAP depreciation schedules, sorted by location (state) and general ledger account. Consider tracing the schedule's cost totals to the trial balance or federal Schedule L balance sheet to confirm the schedule's accuracy and that the capital investment was made by the audited taxpayer and not by an affiliate.[78] Consider tracing up to $500,000[79] of depreciable items, per the required capital investment list, to the depreciation schedule and agree all data fields (description, acquisition date, Tennessee location, cost amount).

- An additional step would be to trace some of the listed purchases to the original invoice. This may help to verify the accuracy of the description, acquisition date, Tennessee location, and amount reported on the required capital investment list. Also, information on the invoice may help to determine the asset's connection with the creation or expansion of the QBE.

Finance Leases

Finance leases are included in the required capital investment **and valued at the same amount capitalized on the taxpayer's books**. This is true *even* if some of the lease payments are made *after* the end of the investment period. Conversely, lease payments made *during* the investment period for leases entered into *before* the investment period are not part of the required capital investment.

Operating Leases

Operating leases are shown on the balance sheet,[80] except for leases with a term of 12 months or less and leases of property with a value of less than $5,000. The balance sheet presentation alerts the auditor that operating leases exist, but the amounts shown are generally not the required capital investment amount.

The actual lease payments posted to an income statement account during the investment period, for a lease that began during the investment period, are counted for the required capital investment, even if the lease extends beyond the investment period. For example:

- On the first day of the three-year investment period, a taxpayer enters into a 60-month building lease that is properly treated as an operating lease under GAAP. The 36 payments that are made during the investment period are part of the required capital investment, and the 24 payments made after the end of the investment period are not part of the required capital investment.

If monthly operating lease expenses are included in the required capital investment list, the auditor may request copies of the lease documents to verify expense amounts and to determine the leased asset's relationship to the creation of new qualified jobs.

Items Not Counted Towards Required Capital Investment

Auditors should **exclude** the following items from the required capital investment list:

- Capital investments not related to the QBE business expansion
  - Consider whether the required capital investment list includes capital investments for activities outside the scope of the QBE. (Ex: QBE had some divisions that did not do QBE activities.)
- Capital investments that did not result in the creation of new qualified jobs
  - Determine how the capital investment resulted in the creation of qualified jobs. Generally, job and asset location is one indicator. Also, exclude the investment if it benefited *existing* positions and was not the impetus for the creation of *new* positions.
- Capital investments made outside of the investment period
  - Note the start and end date of the investment period and identify any items in the required capital investment list that were made after the end date or before the start date.[81] Also, if any leases (either finance or operating) are included in the capital investment, ensure that only payment for leases entered into during the investment period are included in the list.[82]

6. Position Increase

This audit objective is to verify the increase in qualified jobs in the first year of the investment period and the "net increase" in qualified jobs in subsequent years within the investment period. See the earlier section on *Net Increase in Qualified Jobs during the Investment Period* for an explanation of how the net increase amount is determined. The taxpayer's total number of positions in the state does not need to increase. However, the qualified positions *related to the required capital investment* do need to increase. "Net increase" means that previous years' qualified jobs that end during the investment period must offset any subsequent years' qualified jobs created, and the credit is only awarded when net increases occur above the level of employment established when the credit was last taken. Auditors must verify that jobs ending or no longer meeting the requirements of a qualified job are considered in arriving at a subsequent year's *net increase* in qualified jobs.

Obtain schedules/lists from the taxpayer

To verify the increase in qualified positions related to the required capital investment, several electronic position listings should be obtained from the taxpayer.[83]

- The Recommended Documentation sheet identifies the following lists:
  - Tennessee positions existing 90 days[84] before the investment period began;
  - Tennessee positions for each fiscal year in the investment period; and
  - Tennessee positions for the first year[85] following the investment period.

There will generally be a total of five lists. **Taxpayers should highlight or otherwise identify the positions for which the job tax credit is being claimed on these schedules.** There are templates for these lists/schedules on the Department's website that taxpayers are encouraged to use. In addition, there is a template called *JTC Reconciliation*[86] in which the taxpayer may list the qualified jobs claimed each year. The audit copy of this schedule is used to show the jobs allowed or disallowed by Audit and the reason(s) why. Most of the audit work is done on other schedules and may then summarized on the JTC Reconciliation.

⚠ **Audit work done to verify position increases may be suspended until the taxpayer identifies the specific positions for which they are claiming the job tax credit.**

State Unemployment Tax Act (SUTA) reports

Auditors may compare the JTC position lists provided by the taxpayer with the taxpayer's SUTA filings to gain assurance that the positions lists are complete and applicable to the taxpayer under audit. The employer's name and FEIN should be the same for the SUTA reports and JTC position lists. The annual wages reported on the JTC List Year End schedule and the quarterly wages reported on the SUTA filings may be reconciled.

The JTC position lists provided by the taxpayer gain legitimacy when they can be tied to SUTA filings. This audit procedure provides assurance that the lists are accurate and complete and that they reflect true Tennessee positions/employees of the taxpayer for the time period indicated. This audit step helps to show that the taxpayer-provided list contains positions that are the taxpayer's and not those of an affiliate, that the positions are not filled by contract laborers, and that the list has not omitted positions so as to claim them later on as new positions.

Employee names associated with the credit may be traced to SUTA filings to confirm that the employee was subject to Tennessee unemployment tax for the period covered by the filing. However, auditors should **not** rely too heavily on the limited information provided on SUTA reports, because they:

- Include part-time employees;
- Several employees listed could have filled one position;
- A large increase in total wages could be the result of large bonuses to a few people, rather than new full-time positions;
- The SUTA report filer may not be the common law employer; and
- Certain attributes of a qualified job are not found in the SUTA report (positions offered health insurance, positions result from RCI, and tier location of positions).

Gain an understanding of how the required capital investment created new jobs

The JTC Business Plan describes the planned investment and job creation in a few sentences, but the audit workpapers may include a more detailed narrative. Auditors will need to understand how new qualified jobs are tied to the capital investment that created them and then customize

audit procedures accordingly. Each taxpayer and JTC audit will have a unique set of facts. Most new positions will have a common element, such as being associated with a new plant or a machine at a certain location. For example:

- If the investment is located at a unique address, the qualified jobs will generally be at that address.
- Once this association is noted, audit procedures may be customized to verify that only position increases at that location are allowed, unless additional information is received. For example:
  - A new accounting position may qualify for the credit even though it is not located near the required capital investment and is only indirectly related to the required capital investment. The new accounting position qualifies because it was created as a result of the required capital investment.

The auditor's template JTC List Year End schedule has a column "RCI" that the auditor may use to indicate that this attribute (job creation was a result of the required capital investment) was tested. Depreciation records, financial statements, and invoices may document the location of the required capital investment.

Position is newly created in this state (90-day rule)

The position must be newly created in this state during the investment period and after the RCI is made. It cannot have existed anywhere in this state as a job/position of the taxpayer or of another business entity for at least 90 days[87] prior to being filled by the taxpayer.[88] Both the RD list and website templates recommend that the taxpayer provide a list of positions that existed during the 90-day period *prior* to the beginning of the investment period. Positions for which the job tax credit is claimed generally should not be found on the template "JTC List 90 Days Prior."

For example:

- An investment period begins April 1.
- The JTC 90 Days Prior list is provided for January 1 – March 31st.

- A position created/filled on June 10 is listed as a position on JTC List 90 Days Prior as of March 15.
- Because the number of days between these dates is 87 (under 90) the position filled on June 10 does not qualify for the credit.

Auditors may review financial statement footnotes and consider whether the taxpayer was involved in an acquisition/merger, spinoff, or other restructuring. Based on their findings, auditors may develop audit procedures to demonstrate that the new positions claimed were (or were not) positions previously filled by the taxpayer or by another entity.

Positions of the taxpayer or an employment agency that existed during the 90-day period prior to the start of the investment period as temporary positions, part-time positions, or positions without benefits are not qualified jobs if they subsequently become full-time positions with benefits, because they previously existed as a position in the state during the 90-day period before the beginning of the investment period.[89]

Full-time position

Qualified positions must generally be full-time positions (37.5 hours per week).[90] Audit verification may be done in a number of ways. Auditors may calculate the average hours per week by dividing gross wages by the wage rate to determine the total number of hours worked for the time period covered by the JTC position lists. Alternatively, auditors may review detailed payroll records and printouts to verify the number of hours worked.

It is not necessary for the employee to work 37.5 hours *every* week during the year, as long as the *average* number of hours worked/paid per week is at least 37.5 hours. However, workers that *consistently* work less than 37.5 hours per week *do not* qualify for the credit.

Taxpayers may erroneously claim that a position is full-time when the required number of hours falls short to meet the statutory definition[91] of “full-time.” For example, shift workers may work three 12-hour shifts per week, for a total of 36 hours. These employees would not be considered full-time employees, even if they are paid for 40 hours.

Full-time, salaried employees may not maintain a record of the hours they work. In this case, it may be assumed that they worked 37.5 hours, unless there is sufficient evidence to the contrary.

Permanent positions providing employment for 12 consecutive months

A qualified job is one that provides 12 consecutive months of employment. During this time period, the attributes of 1) a full-time position (37.5 hours per week) and 2) that is offered/receives health insurance, must continue to be met. To verify that this requirement was met, an auditor may:

- Note the position creation date and the hire and termination dates of employees associated with a JTC position, as shown on the JTC lists provided by the taxpayer.

- Test the accuracy of the dates reported on the lists - **possible procedures**:

  - Review the payroll register or similar records that show payroll data for the JTC-associated employee(s) that includes details as to the number of hours worked and days of employment;
  - Trace JTC-associated employee(s) to quarterly SUTA reports and note the total wage amounts. Consider whether the wage amounts support that the employee(s) were full time employees for the entire quarter;
  - Review the employee payroll file and note key dates and wage rates. This information may substantiate representations made on the JTC lists.

    - For example, one may compute the number of hours worked/paid during a year for an employee. Divide the total wages per the JTC list or SUTA report by the wage rate to arrive at the number of hours worked. Note that 1,950 hours are worked annually if 37.5 hours are worked each week of a 52-week year. Modify this calculation to consider the position start date and the 12-month-out-date.

  - Determine the number of days that a position was vacant before being refilled. This must be 90 days or less to be a qualified job.

Taxpayers do not have to wait 12 months before claiming a job tax credit for a position that, with the exception of the 12-month requirement, otherwise meets all the other requirements of a qualified job. If it later turns out that the job does not last 12 months, the taxpayer should amend the return on which it took the credit and reduce the credit accordingly.

Position is offered or receives employer provided health insurance

A qualified job is one in which the employee was offered or receives employer provided health insurance.[92] The taxpayer provided JTC lists should indicate whether health insurance was offered/received by each position for which the credit is claimed. To test this assertion, auditors may:

- Obtain the applicable employee handbook and note the employer's policy as to the offering of health insurance.
- Review detailed payroll registers and note any deductions for company-provided health insurance for JTC-associated employees.
- Obtain the employer's detailed health insurance invoice and trace JTC-associated employees to it.
- Obtain employee-signed documents indicating their choice to opt out of the company-provided health insurance.

Auditors may document audit work done with tic marks on the audit copies of JTC List Year End schedules.

JTC audits in which position numbers are not maintained/provided by the taxpayer

Some taxpayers do not use position numbers. Their JTC lists will show employee names only. Because multiple employees may hold one position, the auditor's task of testing the net increase in qualified positions may be more difficult. A taxpayer's failure to provide position numbers does not invalidate the credit. However, the taxpayer must *still* demonstrate that it has met all of the requirements to claim the credit. Taxpayers will need to group together all employees that held a unique position, and the auditor will need to test each employee for employee-specific attributes such as working 37.5 hours per week.

7. JTC Credit Carryover

Tax assessments may not be made in tax years that are no longer open under the statute of limitations, but adjustments *can* be made to the credit carryover tables for such tax years and the correct credit carryforward may be applied to tax years that *are* open under the statute of limitations. Attached to Schedule X is a Job Tax Credit Carryover schedule that taxpayers should complete to keep track of their job tax credit carryovers. The auditor will review the taxpayer's

JTC carryover schedule and may note in the ASR the agreement or any differences between the taxpayer and auditor-prepared carryover schedules.

8. Tier Minimums – Job Creation

Prior to July 1, 2016, the minimum number of qualified jobs that was required to be created was 25, regardless of their enhancement county location. Subsequent to July 1, 2016, the minimum number of jobs required to be created in a Tier 3 and Tier 4 enhancement county is 20 and 10, respectively.[93]

Auditors should:

- Verify the location(s) of the qualified jobs.
  - The RD asks taxpayers to provide the exact location of the position, including the county. The JTC lists/templates available on the Department's website request this information as well. Auditor verification of the location of new positions can be done in numerous ways. For example, the position's duties (e.g., running a certain machine) or its supervisor's location might help establish the position's location.
- Based on the physical location of the new positions, auditors should determine the enhancement county, or counties, as of the date of the beginning of the investment period. Enhancement county maps are issued every July 1, and tier designations may change between years. However, the map in effect at the beginning of the investment period, as stated in the business plan, is the map that should be used.
  - Certain new adventure tourism positions located in an adventure tourism district should be counted as one-half of one position when determining whether a tier minimum has been met (do not round position numbers up).

9. Additional Annual Credits

Audit procedures regarding any additional annual credits should be performed *after* the auditor has determined the positions that qualify for the standard credit. Additional annual credit audit procedures may be documented in the JTC Reconciliation worksheet. Columns may be added to this electronic schedule for each attribute tested. Tic marks can reference audit work done and audit findings.

[1] Legislative summaries found on the state's website provide a quick summary of yearly changes beginning in 2002. In addition, the forms section of the website provides various versions of Schedule X for: 1) tax years beginning on or after July 1, 2016, 2) tax years beginning on or after January 1, 2009, 3) tax years beginning January 1, 2006, through December 31, 2008, and 4) tax years beginning before January 1, 2006. See Important Notice #07-02 for 2006 JTC changes.
[2] Tenn. Code Ann. § 67-4-2109(b)(1).
[3] Tenn. Code Ann. § 67-4-2109(b)(2)(E).
[4] Defined in Tenn. Code Ann. § 67-4-2109(a)(5).
[5] Means a facility in this state that houses the international or national headquarters of a taxpayer, where headquarters staff employees are located and employed and where the primary headquarters-related functions and services are performed. A *regional* headquarters only qualifies if it has filed a business plan prior to July 1, 2015. Tenn. Code Ann. § 67-6-224(b)(3).
[6] See Letter Ruling 17-16.
[7] Tenn. Code Ann. § 67-4-2109(a)(7).
[8] Tenn. Code Ann. § 67-4-2109(a)(2)(A).
[9] Tenn. Code Ann. § 67-4-2109(a)(2)(B)-(C).
[10] Part 2 was added by a 2016 amendment to the code and expands the definition.
[11] Tenn. Code Ann. § 67-4-2109(a)(6)(i).
[12] Tenn. Code Ann. § 56-7-22.
[13] However, the Commissioner of Revenue, with the approval of the Commissioner of Economic and Community Development, is authorized to approve job tax credits in cases where the newly created position existed in this state as a job position of the taxpayer or of another business entity less than 90 days prior to being filled by the taxpayer, *if* all other requirements to obtain the credit have been satisfied by the taxpayer and the Commissioners of Revenue and Economic and Community Development have determined that allowance of the credit is in the *best interests of the state*. Tenn. Code Ann. § 67-4-2109(b)(3)(E).
[14] Tenn. Code Ann. § 67-4-2109(a)(6)(D).
[15] Tenn. Code Ann. § 67-4-2109(a)(3).
[16] See definitions at Tenn. Code Ann. §§ 11-11-203 and 11-11-204(c).
[17] For jobs created on or after July 1, 2017, and applications submitted on or after July 1, 2017.
[18] Tenn. Code Ann. § 67-4-2109(a)(6)(A)(ii).
[19] Tenn. Code Ann. § 50-7-306.
[20] Tenn. Code Ann. § 67-4-2109(a)(4).
[21] Tenn. Code Ann. § 67-4-2109(b)(3)(C).
[22] Tenn. Code Ann. § 67-4-2109(b)(1)(C).
[23] Prior to July 1, 2011, the allotted time period in which to make the capital investment and job creation was 12 months.
[24] Tenn. Code Ann. § 67-4-2109(b)(1).
[25] Prior to July 1, 2016, taxpayers creating jobs in any of the enhancement county Tiers (1, 2, or 3) had to create a minimum of 25 jobs to qualify for the job tax credit. Effective for tax years ending on or after July 1, 2016, a Tier 4 enhancement county was established along with revised

minimum job creation requirements of 25 (Tiers 1 and 2), 20 (Tier 3), and 10 (Tier 4). Tenn. Code Ann. §§ 67-4-2109(b)(1)(C) and 67-4-2109(b)(3)(C).

[26] The JTC standard and additional annual credits will be allowed for new high-skill, high-wage qualified jobs in high-technology areas, emerging occupations, or skilled manufacturing, regardless of whether net employment is increased. However, this applies only to new jobs created by a taxpayer who failed to meet the net increase requirement due to worker layoffs or reductions, where such workers have been certified by the federal Department of Labor's Office of Trade Adjustment Assistance as having been adversely affected by foreign trade, so as to be eligible for assistance in accordance with the federal Trade Adjustment Assistance Reform Act of 2002, compiled in U.S.C. Title 19. A taxpayer must meet the other JTC requirements and must provide evidence to the Commissioner of Revenue of the certification of eligibility for assistance for the taxpayer's adversely affected worker group. Tenn. Code Ann. § 67-4-2109(b)(3)(G).

[27] Tenn. Code Ann. § 67-4-2109(b)(3)(A); Letter Ruling 13-23.

[28] Tenn. Code Ann. § 67-4-2109(b)(1)(B).

[29] Tenn. Code Ann. § 67-6-206(d).

[30] Tenn. Code Ann. § 67-4-2109(b)(3)(C). A QBE in a Tier 3 or Tier 4 enhancement county has 5 years in which to create the minimum required number of jobs.

[31] If the taxpayer qualifies for the additional annual credit for higher level investments, the credit increases to $5,000 per qualified job. Tenn. Code Ann. § 67-4-2109(b)(3)(A).

[32] A taxpayer that has established its international or national headquarters in this state and has met the requirements to qualify for the credit provided in Tenn. Code Ann. § 67-6-224, or a taxpayer that has established an international, national, or regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, may offset up to 100% of its franchise and excise tax liability if the Commissioners of Revenue and Economic and Community Development determine that increasing the percentage of offset permitted to the taxpayer is in the best interests of the state. They will determine the percentage of tax liability allowed to be offset and the period during which the increased offset may continue. Tenn. Code Ann. § 67-4-2109(b)(3)(F).

[33] The carryforward time limit may be modified for applications received and approved by the Commissioner of Revenue and the Commissioner of Economic and Community Development *on or before January 1, 2011*. If the required capital investment exceeds $1 billion, the time limitations otherwise applicable to the carryforward of unused JTCs will not apply, and any unused credit may be carried forward until fully used, if the Commissioners of Revenue and Economic and Community Development have determined that the allowance of the additional carryforward is in the best interests of the state. Tenn. Code Ann. § 67-4-2109(b)(3)(D).

[34] Tenn. Code Ann. § 67-4-2109(b)(2)(E).

[35] Tenn. Code Ann. § 67-4-2109(b)(2)(A).

[36] The numbers listed are the minimum jobs required for the standard credit. The minimum number of jobs required was revised for tax years ended on or after July 1, 2016, with taxpayers only having to create 20 qualified jobs in a Tier 3 enhancement county and 10 qualified jobs in a Tier 4 enhancement county. Tenn. Code Ann. § 67-4-2109(b)(1)(C). The best interest of the state provision that would allow fewer than 25 qualified jobs was found at Tenn. Code Ann. § 67-4-2109(b)(3)(B) and was deleted by Public Chapter 451, effective July 1, 2019.

[37] Tenn. Code Ann. § 67-4-2109(b)(3)(C).
[38] Tenn. Code Ann. § 67-4-2109(b)(2)(D).
[39] Tenn. Code Ann. § 67-4-2109(b)(2)(B).
[40] The increase to $5,000 per qualified job applies to *all* qualified jobs, regardless of their wage rate. Tenn. Code Ann. § 67-4-2109(b)(3)(A). *See also* Letter Ruling 13-23.
[41] Tenn. Code Ann. § 67-4-2109(a)(3).
[42] Tenn. Code Ann. § 67-4-2004(3).
[43] Tenn. Code Ann. §§ 67-4-2109(b)(3)(I) and 67-4-2109(g)(9)(i) were deleted from the code for tax years beginning on or after January 1, 2019. Before deletion, these code sections provided that if in the "best interests of the state," the Commissioners of Revenue and Economic and Community Development may lower the number of jobs that must be created in order to qualify for the additional annual credit for higher level investments, but the amount of the credit will also be reduced in direct proportion to the reduction in the job creation requirement. The job creation requirement can never be lowered by more than 50%.
[44] Prior to the 2015 Revenue Modernization Act, an integrated supplier or an integrated customer qualified for the additional annual credit with the six-year duration, regardless of the level of its capital investment or the number of jobs created. Tenn. Code Ann. § 67-4-2109(b)(2)(B)(iii). An integrated supplier or customer was a supplier located within the footprint of the project site as defined at Tenn. Code Ann. § 67-4-2004(28).
[45] Tenn. Code Ann. § 67-6-224(b)(5).
[46] The rate is $5,000 instead of $4,500 because of the special provision at Tenn. Code Ann. § 67-4-2109(b)(3)(A).
[47] See Letter Ruling 11-17 for more information.
[48] Tenn. Code Ann. § 67-4-2109(b)(2)(B)(vii).
[49] Tenn. Code Ann. § 67-4-2109(b)(2)(B)(vi).
[50] *Forever carry-forward if in "best interests of the state"* – If the required capital investment exceeds one billion dollars ($1,000,000,000), the time limitations otherwise applicable to the carry-forward of unused job tax credits under subdivision (b)(1)(D) and subdivision (b)(2)(B)(vi) shall not apply, and any unused credit may be carried forward until fully utilized, if the Commissioner of Revenue and the Commissioner of Economic and Community Development have determined that the allowance of the additional carry-forward is in the best interests of the state. This applies only to applications received and approved by the Commissioner of Revenue and the Commissioner of Economic and Community Development on or before January 1, 2011. Tenn. Code Ann. § 67-4-2109(b)(3)(D).
[51] Tenn. Code Ann. § 67-4-2109(b)(2)(D).
[52] Tenn. Code Ann. § 57-4-2109(b)(3)(A).
[53] Tenn. Code Ann. § 67-4-2108(a)(6)(G).
[54] Public Chapter 383, effective June 1, 2011, created the "additional annual credit for job creation in adventure tourism zones" at Tenn. Code Ann. § 67-4-2109(b)(2)(C). Public Chapter 378, effective May 14, 2013, modified the minimum number of new jobs for enterprises located in Tier 2 and 3 enhancement counties for the "additional annual credit." Public Chapter 1019, effective for tax years beginning on or after July 1, 2016, added Tier 4. Tenn. Code Ann. § 67-4-2109(b)(2)(C).

[55] Tenn. Code Ann. §§ 67-4-2109(b)(1) and (b)(2)(C).
[56] Tenn. Code Ann. § 67-4-2109(a)(5).
[57] Tenn. Code Ann. § 67-4-2109(a)(6).
[58] Prior to 2013, the creation of at least 25 jobs in any county was required.
[59] Tenn. Code Ann. § 67-4-2109(b)(2)(D).
[60] Effective April 19, 2016, Public Chapter 845 redirected responsibilities originally required of ECD to the Department of Tourist Development.
[61] Tenn. Code Ann. § 67-4-2109(f)(2).
[62] Tenn. Code Ann. § 67-4-2109(q), effective July 1, 2015.
[63] Tenn. Code Ann. § 67-4-2109(q)(F).
[64] The 3-year survey no longer exists, so the 5-year survey is used, per ECD.
[65] TENN. COMP. R. & REGS. 1320-06-01-.30(1)(d).
[66] Tenn. Code Ann. § 67-4-2108(a)(6)(G).
[67] Revenue Ruling 06-20.
[68] Revenue Ruling 12-17.
[69] Tenn. Code Ann. § 67-4-2009(6)(C).
[70] A qualified job may be part-time, seasonal and not offer health insurance if the job duties entail adventure tourism and it is located in an adventure tourism district. These jobs count as half a job.
[71] The Recommended Documentation sheet was first mailed in 2014. This sheet formalized the Department's guidance on recommended documentation but did not change it.
[72] Schedule G may provide evidence that owned assets in the state increased, but only additions that resulted in the creation of qualified jobs are considered part of the RCI.
[73] Tenn. Code Ann. § 67-4-2109(b)(1)(E).
[74] A qualified job may be part-time, seasonal and not offer health insurance if the job duties entail adventure tourism and it is located in an adventure tourism district. These jobs count as half a job.
[75]The applicable investment period is found on the Business Plan. It generally cannot exceed three years, unless a statutory exception is met. Tenn. Code Ann. § 67-4-2109(a)(4).
[76] $10 million for businesses engaged in convention or trade shows enterprises.
[77]Alternatively, taxpayers may provide data in other formats including highlighting items on a depreciation schedule.
[78] This work may be done in conjunction with the audit of Schedule G.
[79] Audit work in this area should cease when the required capital investment ($500,000 or $10,000,000) threshold has been verified. If the additional annual credit for higher level investments is claimed, these thresholds could be tested at this time.
[80] ASC 842 is the new GAAP standard regarding leases, effective for fiscal years beginning after December 15, 2018.
[81] The start date is the date shown on Line 1 of the Business Plan that reads "Effective Date of Business Plan," and the end date is generally three years later.
[82] See the previous sections above on *Finance Leases* and *Operating Leases* for more information regarding includable and excludable lease payments.

[83] Copies of the schedules provided by a taxpayer should be made and audit work should be noted on the copy versions.
[84] 36 months, if adventure tourism positions located in an adventure tourism district.
[85] 26 consecutive weeks, for positions providing seasonal employment in an adventure tourism zone.
[86]Audit years prior to 2018 used a worksheet called Job Tax Credit – Net Increase Calculation. This worksheet was revised and renamed JTC Reconciliation for use in audits conducted after January 2017.
[87] However, the Commissioner of Revenue, with the approval of the Commissioner of Economic and Community Development, is authorized to approve job tax credits in cases where the newly created position existed in this state as a job position of the taxpayer or of another business entity less than 90 days prior to being filled by the taxpayer, *if* all other requirements to obtain the credit have been satisfied by the taxpayer and the Commissioners of Revenue and Economic and Community Development have determined that allowance of the credit is in the *best interests of the state*. Tenn. Code Ann. § 67-4-2109(b)(3)(E).
[88] 36 months, if an adventure tourism position that was located in an adventure tourism district that is part-time, seasonal, or not offered health insurance. Tenn. Code Ann. § 67-4-2109(A)(6)(2)(B)(ii).
[89] However, the Commissioner of Revenue, with the approval of the Commissioner of Economic and Community Development, is authorized to approve job tax credits in cases where the newly created position existed in this state as a job position of the taxpayer or of another business entity less than 90 days prior to being filled by the taxpayer, *if* all other requirements to obtain the credit have been satisfied by the taxpayer and the Commissioners of Revenue and Economic and Community Development have determined that allowance of the credit is in the *best interests of the state*. Tenn. Code Ann. § 67-4-2109 (b)(3)(E).
[90] Adventure tourism positions located in an adventure tourism zone may be part-time and seasonal (26 weeks). Audit procedures should be adjusted accordingly. Some of these positions will count as one-half of one position. Tenn. Code Ann. § 67-4-2109(a)(6)(A)(ii).
[91] Tenn. Code Ann. § 67-4-2109(a)(6)(A)(i).
[92] An adventure tourism job located in an adventure tourism district can be a qualified job and not offer health insurance. Tenn. Code Ann. § 67-4-2109(a)(6)(A)(ii)(a).
[93] See the earlier discussion on *Net Increase in Qualified Jobs during the Investment Period*. It covers the counting of qualified jobs in periods after the minimum increase has been met.