

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA



SEP 22 2021

FLOYD HEALTHCARE
MANAGEMENT, INC.,

Petitioner,

v.

ROBYN A. CRITTENDEN,¹ in her official
capacity as COMMISSIONER, GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

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Chantal Mathurin
Chantal Mathurin, Tax Tribunal Administrator

Docket No.: TAX-CIT-200300

DECISION

I. Introduction

This matter is brought by Petitioner Floyd Healthcare Management, Inc. (“Petitioner” or “Floyd HCM”) against the Commissioner of the Georgia Department of Revenue (“Respondent” or “Department”) in connection with the Department’s refusal to refund Floyd HCM’s overpayment of Georgia unrelated business income (“UBI”) taxes during tax years 2014, 2015, and 2016 (collectively, the “Tax Years”) and the Department’s refusal to provide letters of eligibility allowing Floyd HCM to apply tax credits accrued during the Tax Years to offset its current withholding tax. On January 13, 2020, the Georgia Tax Tribunal (the “Tribunal”) signed a Consent Order, in which Petitioner and Respondent agreed to separate certain threshold legal issues in this case from any remaining factual issues. Specifically, the parties sought a dispositive ruling from the Tribunal, prior to discovery, on the following legal threshold issues:

1. Whether Floyd HCM, a Georgia-based nonprofit entity, is a taxpayer eligible to claim

¹ On July 1, 2021, Robyn A. Crittenden replaced Frank M. O’Connell as Commissioner of the Georgia Department of Revenue. Pursuant to O.C.G.A. § 9-11-25(d)(1), Commissioner Crittenden is automatically substituted as a party, and the case name has been updated accordingly.

the Georgia Quality Jobs Tax Credit (the “Quality Jobs Tax Credit”)?

2. If so, then can the Quality Jobs Tax Credit apply to new quality jobs that do not produce UBI?

Oral arguments were held on June 17, 2020, and the Tribunal ruled on the threshold issues on August 4, 2020. Judgement was rendered in the affirmative as to both issues, in favor of Petitioner. Following discovery, both parties filed Motions for Summary Judgment on June 16, 2021.² The Department responded to Floyd HCM’s Motion on July 15, 2021, and Floyd HCM responded to the Department’s Motion on July 16, 2021. On July 26, 2021, Floyd HCM filed a Sur-reply Brief in Further Support of its Motion. During a scheduling conference call on August 23, 2021, initiated by the court, both parties declined the opportunity to have final oral argument on their respective motions.

After careful consideration of the parties’ motions and arguments and for the reasons set forth below, Floyd HCM’s Motion for Summary Judgment is **GRANTED** and the Department’s Motion for Summary Judgment is **DENIED**.

II. Findings of Undisputed Fact

1.

Floyd HCM is a not-for-profit Georgia corporation with its principal place of business located in Floyd County, Georgia. Floyd HCM operates nonprofit medical centers throughout Northwest Georgia. (Joint Stipulation of Facts, ¶ 1.)

2.

Floyd HCM currently operates Floyd Medical Center and its affiliates. The Floyd family of services also includes Polk Medical Center, Floyd Cherokee Medical Center, Floyd Behavioral

² On June 22, 2021, Floyd HCM filed an amended Motion for Summary Judgment.

Health Center, the Floyd Primary Care Network, Heyman HospiceCare, Floyd Outpatient Surgery Center, Floyd Physical Therapy & Rehab, and the Floyd Family Medicine Residency Program. Other entities affiliated with Floyd include Floyd Physicians, LLC, and the no longer active, Floyd Emergency Physicians, LLC. (Joint Stipulation of Facts, ¶ 2.)

3.

Floyd HCM is exempt from federal corporate income tax pursuant to Section 501(c)(3) of the Internal Revenue Code (“IRC”). (Joint Stipulation of Facts, ¶ 3.)

4.

As a tax-exempt organization, Floyd HCM must file Federal Form 990, Return of Organization Exempt From Income Tax (“Federal Form 990”), with the Internal Revenue Service (“IRS”) each year. Additionally, as a tax-exempt domestic organization with gross income of more than \$1,000 from a regularly conducted unrelated trade or business (“Unrelated Business Income” or “UBI”), Floyd HCM is required to file Federal Form 990-T, Exempt Organization Business Income Tax Return (“Federal Form 990-T”), with the IRS each year. (Joint Stipulation of Facts, ¶ 4.)

5.

As required by O.C.G.A. § 48-7-25(c)(1) and Ga. Comp. R. & Regs. 560-7-3-.09(5) and (9), Floyd HCM must file copies of the Federal Forms 990 and 990-T each year with the Georgia Department of Revenue (the “Department”). Floyd HCM must also file with the Department each year Georgia Form 600-T, Exempt Organization Unrelated Business Income Tax Return (“Georgia Form 600-T”). (Joint Stipulation of Facts, ¶ 5.)

6.

On or before May 16, 2016, Floyd HCM filed its Federal Form 990-T for taxable fiscal year beginning on July 1, 2014 and ending on June 30, 2015 (“Tax Year 2014”). On or before May

16, 2016, Floyd HCM filed its original Georgia Form 600-T for taxable fiscal year beginning on July 1, 2014 and ending on June 30, 2015 ("Tax Year 2014"). On or before September 13, 2016, PricewaterhouseCoopers filed Floyd HCM's amended Georgia Form 600-T (the "Amended 2014 Return" at Floyd HCM's Request and with Floyd HCM's signature. (Joint Stipulation of Facts, ¶ 6.)

7.

Floyd HCM reported 214 cumulative new quality jobs on its Amended 2014 Return. (Joint Stipulation of Facts, ¶ 7.)

8.

Floyd HCM claimed on its amended return for Tax Year 2014 a total Georgia Quality Jobs Tax Credit of \$1,070,000, and requested a refund of Georgia UBI taxes of \$22,356, the total amount remitted by Floyd HCM as UBI tax for Tax Year 2014. In the letter accompanying the amended return and Form IT-WH, Floyd HCM requested that it be allowed to apply the remaining credit of \$1,047,644 (\$1,070,000 - \$22,356) to offset withholding taxes. (Joint Stipulation of Facts, ¶ 8.)

9.

On or before May 12, 2017, Floyd HCM filed its Federal Form 990-T for taxable fiscal year beginning on July 1, 2015 and ending on June 30, 2016 ("Tax Year 2015"). On or before May 12, 2017, Floyd HCM filed its original Georgia Form 600-T for the taxable fiscal year beginning on July 1, 2015 and ending on June 30, 2016 ("Tax Year 2015"). On or before April 27, 2018, PricewaterhouseCoopers filed Floyd HCM's amended Georgia Form 600-T (the "Amended 2015 Return") at Floyd HCM's request and with Floyd HCM's signature. (Joint Stipulation of Facts, ¶ 9.)

10.

Floyd HCM reported 247 cumulative new quality jobs on its Amended 2015 Return. (Joint Stipulation of Facts, ¶ 10.)

11.

Floyd HCM claimed on its amended return for Tax Year 2015 a total Georgia Quality Jobs Tax Credit of \$1,235,000, and requested a refund of Georgia UBI taxes of \$27,533, the total amount remitted by Floyd HCM as UBI tax for Tax Year 2015. In the letter accompanying the amended return and Form IT-WH, Floyd HCM requested that it be allowed to apply the remaining credit of \$1,207,467 (\$1,235,000 - \$27,533) to offset withholding taxes. (Joint Stipulation of Facts, ¶ 11.)

12.

On or before May 14, 2018, Floyd HCM filed its Federal Form 990-T for taxable fiscal year beginning on July 1, 2016 and ending on June 30, 2017 (“Tax Year 2016”). On or before May 14, 2018, Floyd HCM filed its original 2016 Georgia UBI tax return, which covered the taxable fiscal year beginning on July 1, 2016 and ending on June 30, 2017 (“Tax Year 2016”). On or before December 14, 2018, PricewaterhouseCoopers filed Floyd HCM's amended Georgia 600-T (the “Amended 2016 Return”) at Floyd HCM's request and with Floyd HCM's signature. (Joint Stipulation of Facts, ¶ 12.)

13.

On the Amended 2016 Return, Floyd HCM reported 304 cumulative new quality jobs. (Joint Stipulation of Facts, ¶ 13.)

14.

Floyd HCM claimed on its amended return for Tax Year 2016 a total Quality Jobs Tax Credit

of \$1,520,000 and requested a refund of Georgia UBI taxes paid of \$27,556, the total amount remitted by Floyd HCM as UBI for Tax Year 2016. In the letter accompanying the amended return and Form IT-WH, Floyd HCM requested that it be allowed to apply the remaining credit of \$1,492,444 (\$1,520,000 - \$27,556) to offset withholding taxes. (Joint Stipulation of Facts, ¶ 14.)

15.

All of the jobs that were included in Floyd HCM's Quality Jobs Tax Credit calculation during the Tax Years were filled by individuals employed by Floyd HCM, specifically. All of the new quality jobs that were included in Floyd HCM's Quality Jobs Tax Credit calculation during the Tax Years were located in Georgia. (Joint Stipulation of Facts, ¶ 15.)

16.

For each of the Tax Years, Floyd HCM did not receive any of the Georgia jobs or investment tax credits enumerated in O.C.G.A. § 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for the jobs included in Floyd HCM's Quality Jobs Tax Credit calculation during the Tax Years. (Joint Stipulation of Facts, ¶ 16.)

The 2019 Grant Letters

17.

On August 19, 2019, the Department issued an Estimate Correction Notice, Letter ID: L0610056840, which reported that, for Tax Year 2014, Floyd HCM had overpaid its UBI by \$465.70, and the Department therefore was crediting Floyd HCM's Estimated Tax Account in the amount of \$304.70, which represented the \$465.70 overpayment minus a \$161.00 penalty. (Joint Stipulation of Facts, ¶ 17.)

18.

On September 3, 2019, the Department issued a second letter, Letter ID: L1019886152,

reporting that it had approved Floyd HCM's refund claim of \$27,533 for Tax Year 2015. On September 6, 2019, the Department issued a check payable to Floyd HCM for the refund amount of \$27,533. (Joint Stipulation of Facts, ¶ 18.)

19.

On September 3, 2019, the Department issued Letter ID: L0365711024, which reported that it had approved Floyd HCM's refund claim of \$21,573 for Tax Year 2016. On September 6, 2019, the Department issued a check payable to Floyd HCM for the refund amount of \$21,517. (Joint Stipulation of Facts, ¶ 19.)

20.

On the same day, the Department issued Letter ID: L0421877040 to Floyd HCM, which reported it had processed a Form IT-WH for the Quality Jobs Tax Credit for "tax year ending 2016," and approved a credit of \$21,517 to offset withholding tax. (Joint Stipulation of Facts, ¶ 20.)

21.

On September 3, 2019, the Department issued Letter ID: L1256956808, stating that it had processed a Form IT-WH for the Quality Jobs Tax Credit for "tax year ending 2016" and approved a credit of \$1,186,013 for Floyd HCM to use to offset withholding tax beginning in September 2019. (Joint Stipulation of Facts, ¶ 21.)

22.

On September 3, 2019, the Department issued Letter ID: L1495618864, stating that it had processed Floyd HCM's Form IT-WH for the Quality Jobs Tax Credit for Tax Year 2016 and approved Floyd HCM's request for a Quality Jobs Tax Credit of \$1,498,483 which Floyd HCM could use to offset withholding tax beginning in August 2019. (Joint Stipulation of Facts, ¶ 22.)

The 2019 Revocation Letters

23.

On September 13, 2019, the Department issued Letter ID: L1919943496, which stated that the Department had erroneously approved refunds and erroneously issued withholding benefit approval letters relating to Floyd HCM's Quality Jobs Tax Credit, because the new or relocated quality jobs provided by Floyd HCM "do not appear to be from unrelated business income activities." (Joint Stipulation of Facts, ¶ 23.)

24.

The Revocation Letter also stated: "The Department hereby revokes all prior approved/issued refunds and withholding benefit approval letters relating to the quality jobs tax credit," including the following relevant letters:

- Letter ID L1019886152 [Tax Year 2015] \$27,533 refund
- Letter ID L0365711024 [Tax Year 2016] \$21,573 refund
- Letter ID L1256956808 Withholding benefit [Tax Year 2015] \$1,186,013
- Letter ID L0421877040 Withholding benefit [Tax Year 2015] \$21,517
- Letter ID L1495618864 Withholding benefit [Tax Year 2016] \$1,498,483

The Department also denied "the refund claimed and any withholding benefit requested for the tax year ending 6/30/15 and any other year where the quality jobs [credit] was claimed." (Joint Stipulation of Facts, ¶ 24.)

25.

On September 13, 2019, the Department issued a second Revocation Letter, Letter ID: L0256041288, stating that the Department had issued the Tax Year 2015 refund in the amount of \$27,533 in error. In addition, the Department issued a third Revocation Letter on September 13,

2019, Letter ID: L1462927688, stating that the Department had issued the Tax Year 2016 refund in the amount of \$21,573 in error. (Joint Stipulation of Facts, ¶ 25.)

III. Standard of Review

To prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue as to any material fact as to each element of its claim and that the undisputed facts, when viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. O.C.G.A. § 9-11-56(c); see also Lau's Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991); Zantzing v. Comm'r, 2014-2 Ga. Tax Tribunal, Jan. 31, 2014.

IV. Conclusions of Law

A. The Department's Interpretation of Regulation 560-7-7-.51 is Not Entitled to Deference

The Department argues that both the Quality Jobs Tax Credit statute and the Quality Jobs Tax Credit regulation mandate that a claimant for the Quality Job Tax Credit file Georgia income tax returns and apply to a taxpayer's Georgia income tax liability despite the fact that neither the Quality Jobs Tax Credit statute nor the regulation promulgated by the Department itself explicitly state that an income tax return must be filed in order to claim the credit. In fact, the phrase "income tax return" does not appear in the Quality Jobs Tax Credit statute at any point. Code Section 48-7-40.17(g) of the Quality Jobs Tax Credit authorizes the Department to issue rules implementing the Quality Jobs Tax Credit. The Department has done that by promulgating Rule 560-7-8-.51, which further defines some requirements in the statute and establishes procedures to claim the credit. See O.C.G.A. § 48-7-40.17(g). The Department cites Sewon America, Inc. v. Comm'r, a 2017 case heard before the Tribunal, which adopted the Chevron test in its determination that this very

regulation was valid (albeit, for a different issue). Sewon America, Inc. 2014-2. The United States Supreme Court laid out the test as follows:

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 842-843 (1984).

In the Sewon America, Inc. case, the Tribunal used the Chevron test to, first, determine that the statute in question was silent regarding the specific issue at hand, and second, that the Department's interpretation was reasonable. Sewon America, Inc. 2014-2. This case differs from the Sewon America, Inc. case because the Tribunal feels, and has already ruled previously, that the Quality Jobs Tax Credit statute directly addresses the precise issue in question. In the Tribunal's Order on Threshold Issues, the Tribunal laid out the definition of "taxpayer", defined in the Georgia Code as "any person required by law to file a return or to pay taxes..." Order on Threshold Issues. The Tribunal presumed then, as it does now, that "the legislature 'meant what it said and said what it meant.'" Id.; see also Deal v. Coleman, 294 ga. 170, 172-73 (2013). The Tribunal stated further that "absent language of limitation, the Tribunal must therefore presume that the General Assembly meant that a person required by Georgia law to file any return or pay any taxes satisfied the definition of 'taxpayer.'" Id. Since the General Assembly's intention is clear regarding what is required to qualify for the Qualified Jobs Tax Credit, the Tribunal "'must give effect to the unambiguously expressed intent' of the legislature." Sewon America, Inc. 2014-2; see

also Chevron, 467 U.S. at 842-843. Therefore, the Department's interpretation that an "income tax return" must be filed in order to qualify for the Quality Jobs Tax Credit is not entitled to deference.

Further, a new Georgia law has changed the circumstances where administrative deference is granted to the Georgia Department of Revenue's interpretation of tax law. Effective April 29, 2021, "All questions of law decided by the tribunal, including interpretations of constitutional, statutory, and regulatory provisions, shall be made without any deference to any determination or interpretation, whether written or unwritten, that may have been made on the matter by the Department of Revenue, except such requirement shall have no effect on the judicial standard of deference accorded to rules promulgated pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'" O.C.G.A. § 50-13A-14(a).

The Department argues that their interpretation is entitled to deference as the agency tasked with interpreting and applying the Quality Jobs Tax Credit. The cases cited by the Department are all prior to the new law enacted on April 29, 2021. The Department does not allege that its interpretation of the Quality Jobs Tax Credit is codified in any rules promulgated pursuant to the Georgia Administrative Procedure Act. Thus, the Department does not meet the exception laid out above and its interpretation of the Quality Jobs Tax Credit is not entitled to deference, even as the agency tasked with applying the statute.

B. The Record Has Not Been Expanded

The Department argues that the Tribunal did not have a full factual record before it and that after the Tribunal's Order on Threshold Issues, the parties engaged in substantial discovery including the deposition of Floyd HCM's CFO Clarice Cable. Prior to the Order on Threshold Issues, the parties agreed to "separate the threshold legal issues in this case from any remaining

factual issues.” Consent Order. Specifically, the parties sought a dispositive ruling from the Tribunal, prior to discovery, on the following legal threshold issues:

- 1) Whether Floyd HCM, a Georgia-based nonprofit entity, is a taxpayer eligible to claim the Georgia Quality Jobs Tax Credit?
- 2) If so, then can the Quality Jobs Tax Credit apply to new quality jobs that do not produce unrelated business income?

On August 4, 2020, after hearing oral arguments, the Tribunal ruled in the affirmative as to both questions, finding that Floyd HCM is a taxpayer eligible to claim the Quality Jobs Tax Credit and that the Quality Jobs Tax Credit can apply to new quality jobs that are not related to UBI-generating activities. Order on Threshold Issues. In its Motion for Summary Judgement, the Department asks the Tribunal to revisit the issues that were the subject of the Order on Threshold Issues. The Department asserts that “facts confirmed in this case during discovery show that exempt healthcare organizations like Floyd are not eligible to claim the QJTC.” Resp’t Br. Supp. Summ. J. 1-2. Specifically, the facts the Department points to are that Floyd:

- 1) Floyd does not file Georgia corporate income tax returns or pay Georgia corporate income tax and did not do so for the tax years at issue 2014-2016;
- 2) Floyd only paid UBI tax on its UBI for 2014-2016;
- 3) None of the jobs that Floyd claimed in 2014-2016 as “quality jobs” relate to its UBI activities and all of the jobs claimed relate exclusively to its tax-exempt activities; and
- 4) Floyd could not have claimed any of the other job tax credits related to and referenced by the QJTC because it is neither a “business enterprise,” nor does it engage in any of the business activities referenced in those tax credit statutes.

As the Department stated in its Brief in Response to Floyd HCM's Motion for Summary Judgment, it is well-settled in Georgia courts that in the case of an expanded record, the rearguing of issues is allowed. Resp't Br. Resp. Pet'r's Summ. J. 2.; see also Davis v. Foreman, 311 Ga. App. 755, 777 (2011); see also Fuller v. Greenville Banking Co., 230 GA. App. 63, 65 (1997). In this case, however, the Tribunal finds that the record has not been expanded. Thus, the Tribunal will not revisit the issues that were the subject of the August 4, 2020, Order on Threshold Issues.

1. Floyd does not file Georgia corporate income tax returns or pay Georgia corporate income tax and did not do so for the tax years at issue 2014-2016

The first fact put forth by the Department is that Floyd HCM did not file Georgia corporate income tax returns, nor did they pay Georgia corporate income tax for the Tax Years. This fact does not expand the record. In the Joint Stipulation of Facts, dated February 7, 2020, submitted by the parties prior to the Tribunal's Order on Threshold Issues, it is stated that Floyd HCM is a tax-exempt organization that files Federal Form 990 (Return of Organization Exempt from Income Tax) and Federal Form 990-T (Exempt Organization Business Income Tax Return) with both the Internal Revenue Service and the Georgia Department of Revenue. Joint Stipulation of Facts, ¶ 2-4, February 7, 2020. Floyd HCM also files Georgia Form 600-T, the Exempt Organization Unrelated Business Income Tax Return. Id. at ¶ 4. As a tax-exempt organization, it is reasonable to assume that Floyd HCM did not file a Georgia corporate income tax return or pay Georgia corporate income tax.

Moreover, the fact that Floyd HCM does not file Georgia corporate income tax returns or pay Georgia corporate income tax does not change the analysis of the Tribunal's prior ruling on the Order on Threshold Issues. Since the Quality Jobs Tax Credit lacks language of limitation, the Tribunal must presume that "the General Assembly meant that a person required by Georgia law to file any return or pay any taxes satisfied the definition of 'taxpayer.'" Order on Threshold Issues.

2. Floyd only paid UBI tax on its UBI for 2014-2016

The second fact put forth by the Department is that Floyd HCM only paid UBI tax on its UBI for the Tax Years. This fact, similar to the first does not expand the record either. It was known at the time that arguments were heard on the Threshold Issues that Floyd HCM only paid UBI tax on its UBI for the Tax Years. See Joint Stipulation of Facts, ¶ 5-7, February 7, 2020; see also Order on Threshold Issues.

3. None of the jobs that Floyd claimed in 2014-2016 as “quality jobs” relate to its UBI activities and all of the jobs claimed relate exclusively to its tax-exempt activities

The third fact put forth by the Department is that none of the jobs that Floyd HCM claimed during the Tax Years as “quality jobs” relate to its UBI activities and all of the jobs claimed relate exclusively to its tax-exempt activities. This fact is addressed directly in the Tribunal’s Order on Threshold Issues. In this order, the Tribunal held that “there is no requirement in the definition of ‘new quality job’ that the employment produce UBI.” Order on Threshold Issues. Therefore, this fact does not expand the record because it was clearly contemplated and ruled on prior to discovery.

4. Floyd could not have claimed any of the other job tax credits related to and referenced by the QJTC because it is neither a “business enterprise,” nor does it engage in any of the business activities referenced in those tax credit statutes

The final fact that the Department points to is that Floyd HCM could not have claimed any of the other job tax credits referenced by the Quality Jobs Tax Credit (Code Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9) and that it is neither a “business enterprise,” nor does it engage in any of the business activities referenced in the above listed tax credit statutes. This fact is not relevant to the questions that were the subject of the Threshold Issues. The only requirement stated in the Quality Jobs Tax Credit statute regarding the eight enumerated job tax credits is that a taxpayer must elect not to receive any of those other tax

credits. See O.C.G.A. § 48-7-40.17(b). Department Regulation 560-7-8-.51 states that “[t]his election is deemed to have been made when the taxpayer claims the quality jobs tax credit on its state income tax return.” Ga. Comp. R. & Regs. 560-7-8-.51(4)(g)(1). That is what occurred in this case.³ Thus, Floyd HCM’s eligibility for the other job tax credits is not relevant and the Tribunal finds that the record is not expanded by this assertion.

C. New Quality Jobs Defined

In order to qualify for the Quality Jobs Tax Credit, a taxpayer must establish at least 50 new quality jobs in Georgia or relocate at least 50 new quality jobs into Georgia within two years of the first date on which the taxpayer withholds wages for employees in this state. O.C.G.A. §48-7-40.17(b)-(b2). A “new quality job” is defined as employment for an individual which:

- (1) Is located in this state;
- (2) Has a regular work week of 30 hours or more;
- (3) Is not a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for; and
- (4) Pays at or above 110 percent of the average wage of the county in which it is located.

O.C.G.A. § 48-7-40.17(a)(2)(A)-(D).

A taxpayer must also elect not to receive any tax credits provided for by Code Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 to the extent such credits are connected in any way to the quality jobs. O.C.G.A. §48-7-40.17(b)-(b2). As stated earlier, the Department is authorized, pursuant to Code Section 48-7-40.17(g), to issue rules implementing the Quality Jobs Tax Credit and has done so by promulgating Rule 560-7-8-.51.

³ It is important to note that Floyd HCM disputes this fact – that they did not engage in any required business activities, nor could it have qualified for any of the eight job tax credits. Pet’r’s Resp. Resp’t Summ. J. 7.

O.C.G.A. § 48-7-40.17(g). This rule states that the election not to receive any of the eight enumerated credits listed above “is deemed to have been made when the taxpayer claims the quality jobs tax credit on its state income tax return.” Ga. Comp. R. & Regs. 560-7-8-.51(4)(g)(1). If these conditions are met, the taxpayer is allowed the Quality Jobs Tax Credit, with no requirement that the quality jobs produce UBI.

The Tribunal previously ruled, in its August 4, 2020, Order on Threshold Issues, that Floyd HCM is a taxpayer eligible to claim the Quality Jobs Tax Credit. Order on Threshold Issues. The parties have stipulated that Floyd HCM did not receive any of the Georgia jobs tax credits or investment tax credits provided for by Code Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for each of the Tax Years. Joint Stipulation of Facts, ¶ 16. Therefore, to determine the amount of Floyd HCM’s Quality Jobs Tax Credit, the Tribunal must now determine whether Floyd HCM established at least 50 new quality jobs in the state for each of the Tax Years.

(i) New Quality Jobs Determination

The parties’ have not expressly stipulated to the accuracy of any calculations contained within the record. See Joint Stipulation of Facts, 1 n.1. However, nothing in the file known to the court indicates that the Department has had any objection to Floyd HCM’s calculations regarding the amount of the credit for the Tax Years. Floyd filed its Amended 2014 Tax Return, accompanied by Form IT-WH, on September 13, 2016. Id. at ¶ 7, 9. Then, Floyd filed its Amended 2015 Tax Return, accompanied by Form IT-WH, on April 27, 2018. Id. at, ¶ 10. Finally, Floyd filed its amended 2016 Tax Return, accompanied by Form IT-WH, on December 14, 2018. Id. at ¶ 13. The first opportunity for the Department to object or raise a concern regarding Floyd HCM’s

calculations would have been during the Review Period,⁴ provided for by Department Regulation 560-7-8-.51(7)(b)(2). See Ga. Comp. R. & Regs. 560-7-8-.51(7)(b)(3). However, that did not occur.

The Department reviewed and accepted the credit amount and issued an Estimate Correction Notice for Tax Year 2014 on August 19, 2019,⁵ and eligibility letters⁶ for Tax Years 2015 and 2016 to Floyd HCM stating that they could claim any excess quality jobs tax credit against its withholding tax liability for each of those Tax Years on September 3, 2019. See Joint Stipulation of Facts, ¶ 17-22. Then, on September 13, 2019, the Department issued revocation letters stating that the withholding benefit approval letters relating to Floyd HCM's Quality Jobs Tax Credit were issued erroneously. See Id. at ¶ 23-25. This was yet another opportunity for the Department to object to Floyd HCM's calculations. However, the sole premise for the revocation of eligibility, as stated by the Department in the revocation letters, was that "[t]he quality jobs do not appear to be from unrelated business income activities." Id. at ¶ 23.

The next opportunity for the Department to contest Floyd HCM's calculations was during the current proceedings. In its Brief in Support of its Amended Motion for Summary Judgment, Floyd HCM walked through its calculations for each of the Amended Returns that were filed for the Tax Years. Pet'r's Br. Supp. Am. Summ. J. 13-16. The Department, in all of its briefs, including its Response Brief to Floyd HCM's Amended Motion for Summary Judgment, has been silent as to this issue. The Tribunal finds that the Department's statements in the revocation letters, along with the Department's silence regarding this issue in their briefs, indicates an absence of any dispute of

⁴ Department Regulation 560-7-8-.51(7)(b)(2) provides for a review period of 120 days from the date that the Form IT-WH is received to make a determination of the amount eligible to be used against withholding tax. See Ga. Comp. R. & Regs. 560-7-8-.51(7)(b)(2).

⁵ It is interesting to note that Department Regulation 560-7-8-.51 does not provide a remedy for what would happen if the Department fails to issue or deny the Letter of Eligibility within 120 days.

⁶ Subsection (7)(b)(3) states that a letter of eligibility will be sent to the taxpayer stating, "the tax credit amount which may be applied against withholding and when the taxpayer may begin to claim the tax credit against withholding tax." Ga. Comp. R. & Regs. 560-7-8-.51(7)(b)(3).

the actual calculations of credit amounts claimed by Floyd HCM on their respective amended returns.

Similar to the above analysis on the calculation of the amount of the Quality Jobs Tax Credit for Floyd HCM, the Department is silent as to whether or not the jobs claimed by Floyd HCM meets the four requirements to be considered a new quality job or not. For Tax Year 2014, Floyd HCM reported 214 new quality jobs on its Amended 2014 Tax Return. Joint Stipulation of Facts, ¶ 7. The parties stipulate that all of these quality jobs were located in Georgia. *Id.* at ¶ 15. Floyd HCM contends that each of the new jobs had a regular work week of 30 hours or more, was not previously located in Georgia, and paid a wage of at least 110% of the average wage of the county in which the job is located. Pet'r's Br. Supp. Am. Summ. J. 14. For Tax Year 2015, Floyd HCM reported 247 new quality jobs on its Amended 2015 Tax Return. Joint Stipulation of Facts, ¶ 10. The parties stipulate that all of these quality jobs were located in Georgia. *Id.* at ¶ 15. Floyd HCM contends that each of the new jobs had a regular work week of 30 hours or more, was not previously located in Georgia, and paid a wage of at least 110% of the average wage of the county in which the job is located. Pet'r's Br. Supp. Am. Summ. J. 15. For Tax Year 2016, Floyd HCM reported 304 new quality jobs on its Amended 2016 Tax Return. Joint Stipulation of Facts, ¶ 13. The parties stipulate that all of these quality jobs were located in Georgia. *Id.* at ¶ 15. Floyd HCM contends that each of the new jobs had a regular work week of 30 hours or more, was not previously located in Georgia, and paid a wage of at least 110% of the average wage of the county in which the job is located. Pet'r's Br. Supp. Am. Summ. J. 16. Again, nothing in the file indicates that the Department has had any objection to Floyd HCM's contention that the jobs they reported met the requirements to be considered "new quality jobs" for each of the Tax Years respectively, except the Department's UBI-related argument found in the revocation letters mentioned in the special

stipulations hereof and the Department's respective briefs in this action.

(ii) New Quality Jobs Credit Calculation

Floyd HCM claimed a total Georgia Quality Jobs Tax Credit of \$1,070,000 on its amended return for Tax Year 2014, \$1,235,000 for Tax Year 2015, and \$1,520,000 for Tax Year 2016. Joint Stipulation of Facts, ¶ 8. Floyd HCM submitted detailed calculations along with the requisite forms, in compliance with Department Regulation 560-7-7-.51 and subsections b.1(1)-(5) of the Quality Jobs Tax Credit statute for each individual job credit claimed on their return. The court does not see where the Department has contested any quality job credit calculation despite ample opportunity to do so. The only comment regarding the calculations by the Department that seem to contest the accuracy of Floyd HCM's calculations is Footnote 1 in the Joint Stipulation of Facts, which states that the parties stipulate to the authenticity of the original documents submitted, but that the parties do not stipulate that "the attached documents, or any assumption, assertion, or calculation within those documents, are correct." *Id.* at 1 n.1. The footnote goes on to state that "this stipulation also does not preclude the parties from introducing any additional document or additional evidence in this case." *Id.* The Tribunal is not able to identify, subsequent to the Order on Threshold Issues, introduction by the Department of any additional documents or additional evidence by the Department challenging the calculations of the quality jobs credits for the tax years asserted by Floyd HCM.

V. Conclusion

Accordingly, for the reasons discussed above, Petitioner's Motion for Summary Judgment is **GRANTED** and Respondent's Motion for Summary Judgment is **DENIED**. The Department is therefore ordered to reinstate the prior approved refunds of Floyd HCM's overpayment of Georgia UBI taxes during the Tax Years and to reinstate the letters of eligibility issued prior hereto by the

Department, then subsequently revoked by the Department for the 2015 and 2016 tax years, and issue the requisite letter of eligibility for the 2014 tax year in the gross amount of \$1,070,000 minus the reinstated refund of \$22,356, allowing Floyd HCM to apply tax credits accrued during the Tax Years to offset Petitioner's current withholding tax with the 10 year statutory carry forward period extended to begin upon the date of this decision.

SO ORDERED, this 22 day of September, 2021.



**LAWRENCE E. O'NEAL, JR.
CHIEF JUDGE
GEORGIA TAX TRIBUNAL**