

**Title 35 Mississippi State Tax Commission**

**Part X Economic Development**

**Chapter 01 Jobs Tax Credit**

100 Qualifying for and Calculating the Jobs Tax Credit

101 Under Miss. Code Ann. Section 57-73-21, income tax credits are available for:

1. Permanent business enterprises that are primarily engaged in manufacturing, processing, distribution, wholesaling, research and development and warehousing.
2. Permanent business enterprises designated by rule or regulation of the Mississippi Development Authority as air transportation and maintenance facilities, final destination or resort hotels having a minimum of 150 guest rooms, recreational facilities that impact tourism, movie industry studios, telecommunication enterprises, data or information processing enterprises, computer software development enterprises or any technology intensive facility or enterprise.

102 No business enterprise for the transportation, handling, storage, processing or disposal of hazardous waste is eligible to receive this credit.

103 The jobs tax credit is for each net new full time job created as long as the minimum increase has been achieved and maintained. The credit is allowed each year for 5 years beginning in years 2 through 6 after the creation of the job. The year the jobs are created is year 1. The unused portions can be carried forward for up to 5 years from the original year in which the excess credit could not be used. The earliest year's unexpired credit may be used first. These credits may be used in combination with any of the other credits.

1041 For the purposes of this credit, the counties in Mississippi are classified as Tier Three (less developed), Tier Two (moderately developed), and Tier One (developed). The counties are evaluated and ranked each year based on the unemployment rate and per capita income of each county for the most recent 36 month period. They are then divided into the three previously mentioned groups with one-third of the counties in each group. The classification for a specific county can change from year to year based on this evaluation.

1052 This classification is used to determine the minimum number of jobs a business enterprise must create in a given year before it qualifies for the credit. It is also used to determine the amount of credit per job created. The ~~dollar amount of~~ credit per employee and the job levels for each county classification are as follows:

|       | Minimum Annual Increase      |   |
|-------|------------------------------|---|
| _____ | <u>County Classification</u> | <u>in Number of Jobs Credit per Job</u> |

|                              |    |                                  |
|------------------------------|----|----------------------------------|
| Tier One                     | 20 | \$                               |
| 5002.50% of payroll per year |    |                                  |
| Tier Two                     | 15 | \$1,000 per year 5.00% of payro  |
| Tier Three                   | 10 | \$2,000 per year 10.00% of payrc |

103 The jobs tax credit was instituted to encourage construction or expansion of facilities in Mississippi in order to increase employment. The credit is for each net new full time job created as long as the minimum increase has been achieved and maintained. The credit is allowed each year for 5 years beginning in years 2 through 6 after the creation of the job. The unused portions can be carried forward for up to 5 years from the original year in which the excess credit could not be used, but you may use the oldest year's unexpired credit first. They may be used in combination with any of the other credits.

104 For example, a manufacturer expands and creates 50 new jobs in a Tier One county. The year the jobs are created is year 1. The credit may be used in years 2 through 6 on the taxpayer's return. Credit is allowed each year (years 2-6) for the 50 jobs created, plus any unused credit that has been carried forward, but the credit used to reduce the tax actually paid is limited to 50% of the income tax due.

1065 After a taxpayer has qualified for the credit, the credit is not allowed for a year if the net employment increase falls below the minimum required for qualification. The credit is only lost for the year(s) that the taxpayer is below the minimum. A recapture of credit taken in previous year(s) is not required. If the taxpayer's employment level increases back above the minimum, then the taxpayer may use the credit for the remainder of the period, however, the original five year period for the credit (years 2 through 6) is not extended. A taxpayer can only earn credit at a given level of employment for a single ~~one~~ (1) five (5) year period.

1076 To determine whether a taxpayer with an existing facility, ~~including an expansion at an existing facility~~, has created the minimum number of jobs to qualify for the credit, the taxpayer must compare the average annual employment level for the previous year with the average annual employment in the current year. If the amount of the increase exceeds the minimum required, then the employer would qualify for the credit. This allows the credit ~~for~~ employers who have not constructed a new facility, but have substantially increased employment at an existing facility.

1087 To determine whether a taxpayer with a new facility qualifies for the credit, the average employment for the portion of the year after production was started should be compared with the same period for the previous year. If the increase exceeds the minimum, then the taxpayer would qualify for the credit. For example, a calendar year taxpayer begins doing business in Mississippi and constructs a new facility that starts up on June 1, ~~2007~~1998. To determine whether the taxpayer qualifies for the credit, June through December of ~~2007~~1998 should be compared to June

through December of ~~2006~~<sup>1997</sup>. If the increase meets the minimum requirement, then the taxpayer would qualify for the credit.

1098 The amount of increase in jobs necessary to qualify for the credit must occur within 1 year. They may not be accumulated over several years. The credit is allowed for net new full time jobs. Part time jobs may not be combined~~aggregated~~ to create full time jobs.

~~109~~ If an employer plans to construct a new facility or expand an existing facility in a Tier Three or Tier Two county, then the employer may complete the certification application and make a request in a letter that the current designation of the county be retained in relationship to the expansion. This allows an employer to retain the county designation and the amount of anticipated credit that was in effect for the expansion.

~~110~~ Construction must begin within one (1) year of the certification or it is no longer valid. This initial certification is only good for the credits generated during years two (2) through six (6) after start up of the plant or expansion. This certification to "lock in" the county's classification will not be granted retroactively. For subsequent qualification and credit for increases in employment, the county designation in effect at that time should be used to determine the qualification and the amount of the credit.

~~1104~~ If an employer has qualified for the credit but then reduced employment levels through layoffs or plant closures, the reduction in employment must continue for a minimum of five (5) years before the employer may use the reduced employment levels in the computation of additional credit. If the reduction in employment is for five (5) years or more, then the employer may requalify for the credit on any additional jobs. If the reduction has continued for less than five (5) years, then the employer may requalify in very limited circumstances. Example—if an employer laid off employees because one (1) line of business (such as automotive parts) has been discontinued, but subsequently increased employment because another line of business (such as furniture manufacturing) was started, then the employer may receive the credit for the increase in employment. Such situations will be considered on a case by case basis. The taxpayer should submit a letter with a request to receive the credit and a justification for the request. The credit will be granted at the discretion of the Tax Commissioner.

~~1112~~ The sale, merger, acquisition, reorganization, bankruptcy or relocation from one county to another county within the state of any business enterprise may not create new eligibility in the current or any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The Tax Commissioner shall determine whether qualifying net increases have occurred or proper transfers of credit have been made and may require such information as needed for substantiation and qualification.

~~1123~~ The credit cannot be used by any business enterprise or corporation other than the business enterprise actually qualifying for the credits. Credit received by a partnership, LLC or an S-Corporation may be passed through to offset tax due from the activity that created the credit. The credit is subject to the same limitations that the pass through entity would have had. The tax due on salaries or wages paid by an S-Corporation and guaranteed payments to partners by a partnership cannot be offset by the credit.

~~1134~~ The total of the Jobs Tax Credit, the Headquarters Credit and the Research & Development Skills Credit is limited to 50% of the Mississippi income tax liability. The credit is not refundable.

~~114~~ The form prescribed by the Commissioner which shows the computation of the credit must be attached to the Mississippi state income tax return.

~~115~~ No business enterprise for the transportation, handling, storage, processing or disposal of hazardous waste is eligible to receive this credit.

#### 200 Certification of the Credit

~~201~~~~116~~ An application To apply for this credit: You do not have to submit a certification application for this credit is not required. However, an application must be submitted, unless you want to "lock in" the county classification related to constructing a new facility, but you must attach Form 70-801 showing the computation to the return.

~~202~~ If an employer plans to expand its labor forces in a facility in a Tier Three or Tier Two county, then the employer may complete the certification application and make a request in a letter that the current designation of the county be retained in relationship to the expansion. This allows an employer to retain the county designation and the amount of anticipated credit that was in effect for the expansion.

~~203~~ If there is no construction or expansion of a facility, the expansion in labor forces must take place by the end of the following tax year for the certification and county designation to remain valid. If there is a construction or expansion of a facility, it must begin within one (1) year of the certification for the certification and county designation to remain valid. This initial certification is only good for the credits covered under the specific certification generated during years two (2) through six (6) after the expansion of labor. This certification to lock in the county's classification will not be granted retroactively. For subsequent qualification and credit for additional increases in employment, the county designation in effect at that time should be used to determine the qualification and amount of the credit.

~~117~~ This credit is authorized under Sections 57-73-21(2), 57-73-21(3) and 57-73-21(4) of the Mississippi Code of 1972, as amended.

| 118—This regulation is effective January 1, 2001.

| 204119(Reserved)

# Title 35 Mississippi State Tax Commission

## Part IV Sales & Use

### Sub Part 09 Food and Beverage

#### Chapter 02 Beverage and Food Businesses

100 Levy

1010 The gross proceeds of sales by restaurants, cafes, cafeterias, snack bars, drive-ins, beer parlors, lounges, night clubs, concessions, caterers or other vendors of beverages and food products are taxable at the regular retail rate of tax pursuant to Miss. Code Ann. Section 27-65-17. ~~Credit for the Mississippi wholesale tax paid on purchases of beer and alcoholic beverages may be deducted from the retail tax liability.~~

101 (Reserved)

200 Gross Proceeds of Sales

201 Taxable ~~Gross Income~~ gross proceeds includes Receipts From:

1. Admissions, minimum and cover charges for entertainment;
2. Sales of tangible personal property;
3. Service charges; and
4. Vending machine sales (except full service vending machines)

202 Gratuities or "tips" specifically added as such on the ticket to the cost of the meal, with the entire proceeds of indicated gratuity going to the employee of the restaurant, shall be considered in the same light as gratuities paid directly to the employee and is not considered to be taxable income.

203 The value of merchandise withdrawn from stock for consumption or any other use by the owner shall be included in gross proceeds of sales taxable at the regular retail rate.

~~402043~~ The value of employee meals prepared by a restaurant and provided at no charge to employees of the restaurant is not included in the restaurants taxable gross proceeds of sales. ~~and merchandise withdrawn from stock shall be included in gross proceeds of sales taxable at the regular retail rate.~~ Restaurants that are operated as a part of a hotel, casino, hospital or other place of business cannot exclude employee meals provided to employees working in other areas of the operation.

205 The value of meals prepared by a restaurant and donated to a charitable organization exempt from federal income tax under IRC Section 501(c) (3) that regularly provides food to the needy and the indigent is not included in the restaurant's taxable gross proceeds of sales.

~~404206~~ Food service companies who operate restaurants or cafeterias are to include any underwriting, management or other fees paid by the client. Clients, who underwrite or

discount meals to their employees and for whom the food service company serves as an agent for food service operations, may obtain a business license for the food service operation and pay the regular retail sales tax on the greater of (a) the meal charges to employees or (b) the cost to the employer of all purchases utilized in the food service operation, with employer costs for food preparation or food service management being expressly excluded from the computation of purchases. This sales tax treatment shall apply regardless of who is the food service operator as long as an agency relationship exists between the client/employers and the food service operator.

~~105~~207 Food sold to schools or students as regular student meals is exempt from sales tax pursuant to Miss. Code Ann. Section 27-65-9(2)(a) and (b). Food served at banquets and luncheons for student groups ~~in lieu of individual meals is exempt from sales tax when the meal is paid for directly by the exempt entity.~~ Food sold by or through school cafeterias and dining halls to non-students such as faculty members, employees, visitors and the public is subject to sales tax. ~~All sales to students and non-students, including meals, by or through campus canteens, soda fountains, dairy bars and similar places of business are taxable.~~ Additional information concerning food sales at schools, colleges and universities can be found in Title 35, Part VI, Subpart 13, Chapter 2 of the Mississippi Administrative Code.

208 (Reserved)

300 Purchases

~~301~~406 Purchases of equipment, fixtures, supplies and advertising materials that are used or consumed in the operation of the business are taxable at the regular retail rate of sales or use tax. ~~Examples would be:~~ include soap, washroom supplies, cleaning materials, etc. as well as reusable napkins or dishes.

~~302~~407 Purchases of merchandise which become a part of products resold are exempt from sales tax. ~~Examples would be:~~ include salt, pepper, flour, shortening, cooking oil, etc.

~~303~~408 Purchases of non-reusable products such as paper or plastic napkins, plates, cups, knives, forks, spoons, wrapping paper, boxes, etc. which accompany food or beverage products sold are exempt from sales tax.

304 Wholesale tax paid on purchases of alcoholic beverages and beer for resale may be taken as a credit against the retail sales tax due on the retail sales of such merchandise.

305 (Reserved)

400 Reporting Requirements

~~401~~409 Adequate records must be maintained to substantiate tax classifications of sales and purchases.

~~402~~410 (Reserved)

500 Local and Private Levies

501 Additional local levies may be applicable to sales by restaurants depending upon where they are located in this state. The local tax shall be invoiced and collected as a separate levy and shall be reported on a separate return.

502 The local levy is due on the same basis as the sales tax and is levied on the sale of prepared foods. Additionally some local levies may also include the sale of beer and/or alcoholic beverages. The basis for each local levy can be found in the appendix B.

503 Restaurants are defined as any place where prepared food and beverages are sold for consumption, whether the food and beverage is consumed on the premises or not. Restaurants do not include any school, hospital, convalescent or nursing home, or any restaurant-like facility operated by or in connection with a school, hospital, medical clinic, convalescent or nursing home providing food for students, patients, visitors and their families.

504 Any person who holds a valid direct pay permit cannot use such permit to cover any local levy. All taxes due from any of the local levies must be paid at the time of purchases and cannot be remitted on a use tax return through the use of a direct pay permit.

505 (Reserved)

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| <u>County Classification</u> | <u>Minimum Annual Increase<br/>in Number of Jobs</u> | <u>Credit per Job</u> |
|------------------------------|--|-----------------------|
|------------------------------|--|-----------------------|

|            |    |                   |
|------------|----|-------------------|
| Tier One   | 20 | 2.50% of payroll  |
| Tier Two   | 15 | 5.00% of payroll  |
| Tier Three | 10 | 10.00% of payroll |

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