



Department of Economic and Community Development

Bob Rolfe
Commissioner

Bill Haslam
Governor

October 17, 2018

VIA EMAIL

Deborah Fisher
Executive Director
Tennessee Coalition for Open Government
fisher@tcog.info

RE: public records request – tax credit documents

Dear Ms. Fisher:

On Thursday, October 11, 2018, the Tennessee Department of Economic and Community Development received your request to “inspect all documents and agreements from 2013 to today in which the economic development commissioner, along with the revenue commissioner, have determined it was in the best interest of the state as per T.C.A. 67-4-2109 and modified tax credit terms or conditions or granted credits using their discretionary authority. This could include, but not be limited to, actual agreements with companies with the modified terms and documents associated with the “best interest” determination.”

ECD cannot release copies of documents or agreements wherein ECD’s commissioner modified tax credit terms or conditions using his discretionary authority. These documents are confidential under Tenn. Code Ann. § 67-1-1701-2. According to § 67-1-1701(8):

(8) “Tax information” means a taxpayer’s identity, the nature, source, or amount of the taxpayer’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax collected, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be, examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by, the commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability, or the amount of the liability, of any person for any tax, penalty, interest, fine, forfeiture, or other penalty, imposition or offense, administered by or collected by the commissioner, either directly or indirectly. “Tax information” does not include data in a form that cannot, either directly or indirectly, be associated with, or otherwise be used to identify, directly or indirectly, a particular taxpayer;

Release of these letters would include: a taxpayer’s identity; the nature, source, or amount of the taxpayer’s exemptions or credits; and data furnished to or collected by the commissioner [of revenue]. Therefore, these documents are confidential under § 67-1-1702(a) (“tax information and tax administration information shall be confidential”).

While we cannot release the requested documents, we can provide you information about the process generally. During the current administration, ECD’s commissioner has signed approximately 15



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“best interest” letters. Approximately ten of these letters concerned an extension of the investment period under § 67-4-2109 (b)(2)(B)(vii):

(vii) The taxpayer shall be allowed a period not to exceed three (3) years from the effective date of the business plan in order to make the required capital investment necessary to qualify for the additional annual credit allowed under this subdivision (b)(2)(B). If determined to be in the best interests of the state, the three-year period for making the required investment may be extended by the commissioner of economic and community development for a reasonable period not to exceed two (2) additional years, or four (4) additional years if the investment exceeds one billion dollars (\$1,000,000,000).

Approximately five of these letters concerned a waiver of the “90 day” requirement under § 67-4-2109(b)(3)(E):

(E) The commissioner of revenue, with the approval of the commissioner of economic and community development, is authorized to approve job tax credit 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 ninety (90) days prior to being filled by the taxpayer; provided, that all other requirements to obtain the credit have been satisfied by the taxpayer; and provided, further, that the commissioner of revenue and the commissioner of economic and community development have determined that allowance of the credit is in the best interests of the state;

When assessing whether to make a “best interests” determination, ECD’s commissioner uses the test in § 67-4-2109(a)(1):

(1) “Best interests of the state” means a determination by the commissioner of revenue and the commissioner of economic and community development that the capital investment or jobs are a result of the credit provided in this section. In addition to its use in subsection (b), the definition in this subdivision (a)(1) shall apply to this section in its entirety unless otherwise specifically provided;

For both the extension and 90 day waiver, ECD looks at factors such as job commitment, investment, community where the project is locating, and the need for the determination. For the 90 day waiver, ECD also considers whether the situation involves a potential bankruptcy or “white knight” scenario.

Sincerely,

Summer Johnson
Assistant General Counsel