



Department of Economic and Community Development

Bob Rolfe
Commissioner

Bill Lee
Governor

March 26, 2021

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, March 17, 2021, the Tennessee Department of Economic and Community Development received your request for “all documents and information that would show the number of times that the economic development commissioner, along with the revenue commissioner, has determined it was in the best interest of the state as per Title 67 of Tennessee Code Annotated and modified tax credit terms or conditions, or granted credits, using discretionary authority for the period of October 2018 to present.”

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 period since October 2018, ECD’s commissioner has signed approximately twenty-three “best interest” letters. Approximately three of these letters were extensions of the investment period under T.C.A. § 67-6-102(79):



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(79) “Qualified data center” means a data center that has made a required capital investment in excess of one hundred million dollars (\$100,000,000) during an investment period not to exceed three (3) years and that creates at least fifteen (15) net new full-time employee jobs during the investment period paying at least one hundred fifty percent (150%) of the states’ average occupational wage as defined in § 67-4-2004. For purposes of this subdivision (79), “required capital investment” means an increase of a business investment in real property, tangible personal property or computer software owned or leased in the state, valued in accordance with generally accepted accounting principles. A capital investment shall be deemed to have been made as of the date of payment or the date the taxpayer enters into a legally binding commitment or contract for purchase or construction. For purposes of this subdivision (79), “full-time employee job” means a permanent, rather than seasonal or part-time employment position for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37 ½) hours per week with minimum health care, as described in title 56, chapter 7, part 22. The three-year period for making the required capital investment provided for in this subdivision (79) may be extended by the commissioner of economic and community development for a reasonable period, not to exceed four (4) years, for good cause shown. For purposes of this subdivision (79), “good cause” means a determination by the commissioner of economic and community development that the capital investment is a result of the exemption for industrial machinery used by a qualified data center;

Approximately thirteen of the letters were extensions of the investment period under T.C.A. §67-4-2009(3)(I)(vi):

(vi) The credit in this subdivision (3)(I) shall begin to apply in the first year of the investment period; however, if the required capital investment is not met during the investment period, the taxpayer shall be subject to an assessment equal to the amount of any credit taken under this subdivision (3)(I) for which the taxpayer failed to qualify, plus interest;

Approximately six of these letters were extensions of the investment period for the jobs tax credit under T.C.A. § 67-4-2109 (various extensions under this section).

One of these letters was a 90-day waiver under T.C.A. § 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;



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For both the extensions 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,

A handwritten signature in black ink, appearing to read "Summer Johnson".

Summer Johnson
Assistant General Counsel