

Economic Development Incentives

2009 - 2010



TENNESSEE

DEPARTMENT OF ECONOMIC & COMMUNITY DEVELOPMENT

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Tennessee Taxes & Incentives

Headquarters Facility means a facility in this state that houses the international, national or regional headquarters of a taxpayer, where headquarters staff employees are located and employed and where the primary headquarter related functions and services are performed as defined in Tenn. Code Ann. § 67-6-224.

“Headquarters related functions and services” means those functions involving administrative, planning, research and development, marketing, personnel, legal, computer or telecommunications services performed by headquarters staff employees on an international, national, or regional basis. Regional means a geographic area comprised of at least Tennessee and one or more of its contiguous states. “Headquarters related functions and services” does not include functions involving manufacturing, processing, warehousing, distribution, wholesaling, or operating a call center.

“Headquarters staff employees” mean 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 knowledge of advanced type in a field of science or learning.

Qualified Headquarters Facility means a headquarters facility where the taxpayer is making a minimum investment¹ of:

- \$50 million in a building or buildings, newly constructed, expanded or remodeled during the investment period not to exceed six (6) years as defined in Tenn. Code Ann. § 67-6-224(b)² **OR**
- \$10 million and the creation of 100 new full-time jobs paying at least 150% of Tennessee’s average occupational wage during the investment period. The investment period is three (3) years, but can be expanded to five (5) years with the approval of the Commissioner of ECD.
- Qualified jobs pay 150% of the “average occupational wage” for the month of January of the year in which the full-time employee jobs were created - the average wage for all industries as reported by the TN Dept of Labor and Workforce Development in the most recent annual quarterly census of employment and wages super sector data for TN, aggregate of all ownerships.³ The average occupational wage for 2008 was \$35,376 and 150% is \$53,064.
- To qualify for tax credits available to a Qualified Headquarters Facility the taxpayer must first submit and have approved by the Commissioner of Revenue an Application and Investment Plan to Qualify as a Headquarters Facility.⁴



Tennessee Taxes & Incentives

Franchise Tax

- Tax on the greater of apportioned net worth or book value of property owned or used in Tennessee
- Tax rate is 25 cents per \$100 or .0025%

Incentives

- Property under construction and not being utilized is not included
- Property rented from the industrial development corporation may be valued by capitalizing it on the books
- 2/3 of capital investment for Super Job tax credit is excluded from the franchise tax base in those tax years in which the annual super credit is allowed under Tenn. Code Ann. § 67-4-2109(b)(2)(B).

Excise Tax

- Tax is based on the net earnings of the company derived from the business in Tennessee
- Tax rate is 6.5%

Incentives

- All capital losses claimed in the year incurred⁵
- Net operating losses can be carried forward for fifteen (15) years
- Tennessee's excise tax is based on the net earnings of the company derived from business in Tennessee as determined by a three factor apportionment formula of property, payroll and sales with sales double-weighted.
- Tennessee does not have a throwback provision – thus the state does not require companies with sales outside of Tennessee that are not apportioned to or taxed by another state to be included in the numerator of sales in Tennessee.

Job Tax Credit for Headquarters Facility

A taxpayer who makes the \$500,000 minimum capital investment in a headquarters facility and creates 25 net new full-time jobs within twelve (12) months of the effective date of the business plan qualifies for a job tax credit as follows:

- \$4,500 per net new full-time job created.⁶
- Applied to offset up to 50% of the combined franchise and excise tax
- "Capital investment" means a business investment in real property, tangible personal property or computer software owned or leased in Tennessee valued in accordance with generally accepted accounting principles.
- Qualified business enterprises that are in a Tier 2 enhancement county shall have three (3) years in order to create the minimum number of 25 jobs necessary to qualify for the Job Tax Credit.
- Qualified businesses in a Tier 3 county shall have five (5) years to create the minimum number of 25 jobs to receive the Job Tax Credit.



Tennessee Taxes & Incentives

- The Job Tax Credit may offset up to 50% of the combined franchise and excise tax.⁷
- Job Tax Credit for taxpayers investing less than \$1 billion may be carried forward until used, but not more than fifteen (15) years.
- In order to qualify for the Job Tax Credit, the taxpayer must file a business plan⁸ in a manner prescribed by the commissioner of Revenue. The business plan must describe 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 business plan. Tenn. Code Ann. § 67-4-2109(c)(2)(D) as amended by SB2318/HB2275 (effective July 1, 2009).

Enhanced Job Tax Credit in Tier 2 and Tier 3 Enhancement Counties

Tennessee has enacted legislation that allows for an additional tiered Job Tax Credit. This credit had been created to promote new industry locations and expansions in the more rural areas of the state. The tiers are based on each Tennessee counties' per capita income, unemployment, and poverty level. Analysis has been performed determining each Tennessee counties' tiered status. Projects which locate in a Tier 2 or Tier 3 county will be eligible for this additional credit.

- \$4,500 per net new full-time job applied to offset both Franchise and Excise Tax
- Must increase capital investment by \$500,000 in a qualified business enterprise within a fiscal year and create 25 net new full-time jobs during the investment period of three (3) years in a Tier 2 county and five (5) years in a Tier 3 county.
- Tier 2 counties – Enhanced Job Tax Credit of additional \$4,500 per job can offset up to 100% of the total franchise and excise tax liability each year for three (3) years after the investment period with no carry forward.
- Tier 3 counties – Enhanced Job Tax Credit of additional \$4,500 per job can offset up to 100% of the total franchise and excise tax liability each year for five (5) years after the investment period with no carry forward.
- Credit is in addition to the regular Job Tax Credit as set forth above.

Super Job Tax Credit for Qualified Headquarters Facilities

Tennessee provides a Super Job Tax Credit ("super credit") for taxpayers investing in excess of \$100 million in a qualified project creating 100 or more jobs paying at least 100% of the average occupational wage in the state. However, if a headquarters meets the investment and job creation thresholds (\$10 million and 100 net new full-time employee jobs paying 150% of the average occupational wage) for a Qualified Headquarters Facility then it will also qualify for the super credit as set forth below.

This super credit may be used to offset up to 100% of a taxpayer's Tennessee franchise and excise tax liability annually beginning with the first tax year after the investment and job creation thresholds have been met. The super credit is taken annually, but does not have a carry forward provision.⁹



Tennessee Taxes & Incentives

- The super credit is in addition to the regular job tax credit which will still have the (15) fifteen-year carry forward and normal percentage of offset. The only difference is by qualifying for the super credit, the amount of the regular job tax credit increases to \$5,000 per new average occupational wage job instead of the regular \$4,500.
- In addition to the jobs portion of the credit, a company that qualifies for the super credit may exclude 2/3 of its capital investment made during the investment period from its franchise tax base on Schedule G of the franchise and excise tax return during the tax years in which the additional annual credit is actually taken.
- The super credit investment period is three (3) years, but can be expanded to five (5) years for qualified headquarters facilities investing \$10 million and creating 100 new jobs and to seven (7) years for investments of \$1 billion or more with the approval of the Commissioner of ECD.
- The number of years a company may take the annual super credit of \$5,000 per job is dependent upon the capital investment and number of jobs created as follows:

Capital Investment	Number of Net New Jobs	Number of Years for Annual Credit
\$10,000,000 or more	100 at 150% average occupational wage	3
\$100,000,000 or more	100	3
\$250,000,000 or more	250	6
\$500,000,000 or more	500	12
\$1 billion or more	500	20

Relocation Expense Credit for Qualified Headquarters Positions

In addition to the job tax credit, the State of Tennessee allows a credit against a taxpayer's franchise and excise tax liability equal to any qualified headquarters facility relocation expenses incurred by the taxpayer during the investment period for establishing a qualified headquarters facility provided the taxpayer creates at least 100 net new full-time jobs paying 150% of the average occupational wage. The company must file and receive approval of a Qualified Headquarters Business Plan by the Commissioner of Revenue before taking this credit.

The total budget for the Relocation Expense Credit is determined and calculated by the number of existing headquarters positions paying 150% of the average occupational wage that are relocated to Tennessee as follows:

- \$10,000 per position if between 100 - 249 qualified Headquarters positions are relocated;
- \$20,000 per position if between 250 - 499 qualified Headquarters positions are relocated;
- \$30,000 per position if between 500 - 749 qualified Headquarters positions are relocated;



Tennessee Taxes & Incentives

- \$40,000 per position if 750 or more qualified Headquarters positions are relocated; and
- \$100,000 per position if the taxpayer qualifies for the super credit with a capital investment of \$1 billion or more.

For example, if a company locates its headquarters in Tennessee and moves 200 qualified headquarters positions to the state, the company’s total budget for its Relocation Expense Credit will be \$10,000 x 200 positions or \$2,000,000. This figure is determined by the number of *positions being relocated* and is independent of the number of *persons who actually move to Tennessee*. Based on this projection, if the company relocates 200 existing headquarters positions to Tennessee, but only 100 people actually move to Tennessee, the company has a budget of \$2,000,000 to move the 100 people who actually relocate to Tennessee.

- Headquarters positions are defined broadly to include executive, administrative, or professional workers. Tenn. Code Ann. § 67-6-224(b)(5).
- For purposes of the Relocation Expense Credit, “qualified headquarters facility relocation expenses” are those expenses that both the Commissioner of Revenue and the Commissioner of Economic and Community Development determine, in their sole discretion, are necessary to relocate headquarters staff employees to a qualified headquarters facility in conjunction with the initial establishment of such facility Tennessee.
- Relocation Expense Credits are limited to the qualified expenses actually incurred. The company may start to take Relocation Expense Credits in the first year it incurs qualified relocation expenses up to the amount allowed as a Relocation Expense Credit for that year.
- Relocation Expense Credits that exceed the company’s combined franchise and excise liability will be refunded to the company as an overpayment.

Industrial Machinery Credit for Headquarters and Qualified Headquarters

An industrial machinery tax credit of 1% to 10% of the cost of industrial machinery purchased or leased during the tax year and located in Tennessee may be used to offset up to 50% of the total franchise and excise tax liability.¹⁰ Any unused credit may be carried forward for up to fifteen (15) years.¹¹

The credit is for the purchase, installation, and/or repair of qualified industrial machinery as defined in Tenn. Code Ann. § 67-6-102(42). Industrial machinery includes computer equipment and software, including peripheral devices such as printers, external drives, modems and telephone units. For purposes of the 1% credit, the equipment must have been purchased in making the required capital investment for the job tax credit.

Capital Investment ¹²	Percentage of Credit	Must File A Business Plan
Less than \$100,000,000	1%	No
\$100,000,000	3%	Yes



Tennessee Taxes & Incentives

\$250,000,000	5%	Yes
\$500,000,000	7%	Yes
\$1,000,000,000	10%	Yes

The investment period is three (3) years, but may be expanded to five (5) years for qualified businesses investing less than \$1 billion and to seven (7) years for qualified taxpayers investing \$1 billion or more.

Property Tax

- No state property tax

Sales and Use Tax Credit for Qualified Headquarters Facility

A Qualified Headquarters facility locating in this state shall be eligible for a credit of all state sales and use tax paid on qualified tangible personal property except tax at the rate of 0.5% on qualified tangible personal property. Tenn. Code Ann. § 67-6-224(a).

- This incentive is available to a Qualified Headquarters Facility that meets the minimum investment of either: \$50 million in building or buildings either newly constructed, expanded or remodeled, **OR** \$10 million in building or buildings either newly constructed, expanded or remodeled along with the creation of 100 new full-time jobs paying 150% of the average occupational wage for January of the year the job was created.
- Minimum investment may include, but is not limited to, purchase price of building, the cost of building materials, labor, equipment, computer software, parking facilities and landscaping; but shall not include land or inventory.
- The investment period begins one (1) year prior to start of construction, expansion or remodeling and ending one (1) year after substantial completion. In no event shall period exceed six (6) years.
- For purposes of the Sales and Use Tax Credit, "qualified tangible personal property" means building materials, machinery, equipment, furniture, and fixtures used exclusively in the qualified headquarters facility and purchased or leased during the investment period and computer software used primarily in the qualified headquarters facility and purchased or leased during the investment period. Tenn. Code Ann. § 67-6-224(b).
- The taxpayer must file and receive approval of the Qualified Headquarters Business Plan with the Department of Revenue before taking the sales and use tax credits.¹³ With approval from the Commissioner of the Department of Revenue, a taxpayer who qualifies for the sales and use tax credit may enter into a Managed Compliance Agreement with the Department of Revenue.



Tennessee Taxes & Incentives

FastTrack

Tennessee has a state funded program called FastTrack. Included in the program is the FastTrack Infrastructure Development Program (FIDP)-[*Community generated*] and the FastTrack Job Training Assistance Program (FJTAP)-[*Company generated*].

Under the guidelines of this program the state can make grants to local governments to help them meet the public infrastructure requirements for locating and expanding industries as well as address the training needs of a company.

Both programs require application for financial assistance.

FastTrack Infrastructure Development Program (FIDP)

The FastTrack Industrial Development Program is Tennessee's initiative to support the public infrastructure needs of the local community to support expansion or location of industry. Project funding is determined by evaluating each project in terms of capital investment, new jobs created, the types of the created jobs, and the community in which the project locates. Once a targeted funding amount of eligible activity is established, final approval is subject to FIDP funding appropriated by the Tennessee General Assembly and approval by the Department of Economic and Community Development's Loan & Grant Committee. There are state regulations that apply relative to procurement/bidding procedures.

FastTrack Job Training Assistance Program (FJTAP)

The FastTrack Job Training Assistance Program is Tennessee's initiative to support industrial recruitment and expansion through direct training assistance for newly hired employees, employees in upgraded positions, and employees retained through instruction. FJTAP staff assists each individual company to develop customized training plans and to provide funding. Eligibility for FJTAP support and levels of funding for training assistance are determined by:

- The amount of company investment
- The number of new hires
- The types of skills and knowledge that must be obtained by prospective or newly hired employees

Job Specific Training (*Training assistance is targeted to production/technician level individuals.*)

- Classroom - formal instruction relating to specific skills presented in a classroom environment
- On-the-Job Training - instruction that focuses on the development of specific skills and knowledge vital to production. Training is provided by company technicians or instructors mutually acceptable to FJTAP and the company.
- Vendor - manufacturer of actual manufacturing equipment or service provider being used by the client may be utilized to deliver specific skills training.



Tennessee Taxes & Incentives

- System Support - instruction associated with plant-wide applications. Instruction may include new methods for increasing mechanization, quality, materials handling, etc.
- Development and Coordination – supports the cost associated with the development of instructional materials and coordination of the overall training program.

Travel

- Supporting the expense of travel for the purpose of training can be considered as a viable option for the training of new hires and especially for persons who will serve as a company instructor.

Job Based Training (JBT)

Program to offer potentially faster reimbursement monies associated with training. Once the project commitment is determined and cost per job established, this quick start program may offer the company an accelerated portion of training dollars.

- After the first 3 months (60 work days) The Company records are reviewed *{proper documentation will be required}* for number of new jobs created.
- Calculation is made to determine salary paid to those new jobs multiplied by 25%.
- Calculation is made of predetermined cost-per-job multiplied by the number of jobs created during this period.

The company will be entitled to Job Based Training dollars for whichever above scenario is LESS.

- After 3 additional months the same calculation is run, with proper documentation, to allow an additional 25% computation on salaries for jobs created during the period, compared to the calculation of number of new jobs multiplied by again, the established cost-per-job.

The company is again entitled to JBT dollars for whichever scenario is LESS.

Depending on the number of new jobs to be created during the periods of review, it may be possible for the company to receive the entire training commitment ***IF the total committed job number is reached.***

It is the company's elective to pursue the training commitment in either type of reimbursement method or in a combination thereof. If the commitment is not met in JBT, then direct training can be used for the balance ***IF the total job commitment is met.***



Tennessee Taxes & Incentives

Employee Recruitment and Screening (Provided by Dept. of Labor & Workforce Dev.)

The Tennessee Department of Labor and Workforce Development, Job Service Division, will provide recruitment and screening services. Utilizing the client/company's prepared job specifications, Job Service will recruit the number of persons requested by the company. The persons will be screened using the company's specifications. Those persons meeting the specifications will be referred to the company for employment considerations.

Workforce Development

- Leadership Training - is directed toward providing supervisors, team leaders, and managers with the interpersonal skills necessary to motivate and lead production workers towards the accomplishment of organizational goals.
- Team Training - is provided for manufacturing/production employees where interpersonal communication is important in fostering interdependence, cooperation, commitment, motivation, etc.
- Instructor Certification - Certification of company personnel insures the availability of certified instructors not only at startup but also on a long term basis. The weeklong certification seminar provides candidates with the facilitation skills necessary to deliver a wide range of programs.

State Industrial Access Program (SIAP)

Other state assistance can be considered for providing needed transportation improvement for the project. Through the State Industrial Access Program (SIAP), local governments submit their requests on behalf of new industry moving into their communities, which the Department of Transportation reviews to determine the most feasible design.

Industrial Revenue Bond Financing

Industrial revenue bond financing is available in Tennessee for both taxable and tax-free situations.

All Tennessee tax and tax-based incentive information herein is provided for informational purposes only. For more specific information on whether a facility qualifies as a headquarters or a Qualified Headquarters Facility and what incentives are potentially available please contact your ECD Business Development Specialist.

¹ The investment amount must be exclusive of the purchase price for land and inventory. The investment amount shall include, but not be limited to, the purchase price of an existing building, cost of building materials, labor, equipment, furniture, fixtures, computer software, parking facilities, landscaping, if purchased during the investment period. For more information on the minimum



Tennessee Taxes & Incentives

investment requirements see Tenn. Code Ann. § 67-6-224(b)(7)(A) & (B) as amended by Tenn. Pub. Chap. No. 530, Public Acts 2009 (effective July 1, 2009).

² “Investment period” means that the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility. However, in no event shall the investment period exceed six (6) years. Tenn. Code Ann § 67-6-224(b)(6).

³ Current Occupational Wage data can be found on the website for the Tennessee Department of Labor and Workforce Development - www.state.tn.us/labor-wfd/wages/intro.htm

⁴ For information on how to obtain an Application and Investment Plan to Qualify as a Headquarters Facility please contact your local ECD Jobs Development Specialist.

⁵ A taxpayer that has established its headquarters in Tennessee is allowed to convert unused net operating losses (NOLs) to a credit against its franchise tax liability if, and only if, the taxpayer is unable to use the NOLs or loss carryover to offset net income during the current year and it is determined to be in the best interests of the state by the Commissioner of Revenue and the Commissioner of Economic and Community Development. If a NOL is converted to a credit against the franchise tax, it is no longer available as a deduction for excise tax purposes. Tenn. Code Ann. 67-4-2109(j).

⁶ Legislation effective July 1, 2009 sets the job tax credit for all counties at \$4,500 per new full-time job. For jobs created prior to 2009 in non-economically distressed counties such as Hamilton County, Knox County, Loudon County, Montgomery County, Shelby County and Williamson County the job tax credit was \$2,000 per job. Tier 2 and Tier 3 enhancement counties are entitled to additional enhanced incentives as detailed below. For information on which counties qualify as enhancement see “Tennessee Job Tax Credit Enhancement Counties” map available from ECD.

⁷ A taxpayer that has established its headquarters in Tennessee may be allowed to offset up to 100% of its franchise and excise tax liability by its job tax credits earned and not expended as of June 1, 2006 or by any carry forward of such credits if it is determined by the Commissioner of Revenue and Commissioner of Economic and Community Development to be in the best interests of the state. Tenn. Code Ann. 67-4-2109(c)(2)(G)(ii). A taxpayer that makes a capital investment in excess of \$1 billion may be allowed to carry forward any unused credit until fully utilized if it is determined by the Commissioner of Revenue and Commissioner of Economic and Community Development to be in the best interests of the state. Tenn. Code Ann. § 67-4-2009(4)(c) as amended by Tenn. Pub. Chap. No. 530, Public Acts 2009 (effective July 1, 2009).

⁸ For information on how to obtain the appropriate Job Tax Credit Business Plan forms please contact your local ECD Jobs Development Specialist.

⁹ Taxpayers making a capital investment of \$1 billion in the State of Tennessee may carry forward any unused credits until fully utilized if the Commissioner of Revenue and Commissioner of ECD determine that the allowance of such additional carry forward is in the best interests of the state. Section 1(b)(3)(D) of Tenn. Pub. Chap. No. 530, Public Acts 2009 (effective July 1, 2009) amending Tenn. Code Ann. § 67-4-2109(b)(1)(D) and (b)(2)(B)(vi).

¹⁰ A taxpayer that has established its qualified headquarters in Tennessee shall be allowed to offset up to 100% of its franchise and/or excise tax liability by the Industrial Machinery Credit if the Commissioner of Revenue and the Commissioner of Economic and Community Development determine that increasing



Tennessee Taxes & Incentives

the percentage of offset above that allowed is in the best interests of the state. Tenn. Code Ann. 67-4-2009(4)(H).

¹¹ Taxpayers making a capital investment of \$1 billion in the State of Tennessee may carry forward any unused credits until fully utilized if the Commissioner of Revenue and Commissioner of ECD determine that the allowance of such additional carry forward is in the best interests of the state. Section 15 of Tenn. Pub. Chap. No. 530, Public Acts 2009 (effective July 1, 2009) amending Tenn. Code Ann. § 67-4-2009(4)(C).

¹² For purposes of the Industrial Machinery Credit the “capital investment” means an increase of a business investment in real property, tangible personal property or software owned in Tennessee and/or leased property in Tennessee valued according to 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. Tenn. Code Ann. § 67-4-2009(4)(I)(v).

¹³ If the taxpayer is new to the State of Tennessee and does not already have a Tennessee sales and use tax account, then a tax registration form will need to be completed so that a sales and use tax account may be established for the new headquarters location. If the taxpayer has an active sales and use tax account, it may be necessary for the taxpayer to submit a tax registration form for the new headquarters facility. This is to ensure that a sales and use tax account is active for the proper location. Once a sales and use tax account has been established for the headquarters facility the Department will issue a direct pay authority to the taxpayer. This authority is location-specific and will be granted by a letter from the Commissioner. This authority is granted with the understanding that the taxpayer will report and pay the sales and use tax directly to this Department. The taxpayer is required to maintain records of these purchases and to make them available for audit.