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Update on Georgia's BEST Tax Credits

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The Business Expansion Support Act of 1994 (the BEST Act) offers Georgia business enterprises income tax credits to increase employment, sponsor childcare, invest in manufacturing property and equipment, and retrain employees. Two state agencies, the Georgia Department of Revenue (DOR) and the Georgia Department of Community Affairs (DCA), were authorized to administer BEST Act tax credits. Recent regulatory activity by these two agencies calls into question who qualifies for these tax credits.

The BEST Act defines a "Business Enterprise" eligible for its tax credits as any business engaged in "manufacturing, warehousing and distribution, processing, telecommunications, tourism, and research and development industries." In 1995, the DCA promulgated a rule for one of the BEST Act tax credits, the jobs tax credit, that identified which entities were eligible "Business Enterprises" based on Standard Industrial Classification (SIC) codes. In 2002, that regulation was amended to replace the reference to SIC codes with the North American Industry Classification System (NAICS) codes. Because "Business Enterprise" is identically defined for all BEST Act tax credits and the DOR has yet to adopt a rule on this subject, many taxpayers relied on the DCA jobs tax credit rule to determine eligibility for the other BEST Act tax credits.

In June of 2007, the DCA and the DOR each proposed the adoption of rules identifying NAICS codes of qualifying "Business Enterprises" different from the existing DCA rule. While the proposed DOR rule is generally more restrictive, the new DCA rule in some cases slightly expands the definition of "Business Enterprises," but in other cases restricts it. Following the required notice and comment period, the DCA adopted its amended rule on February 3, 2008, whereas the DOR has yet to adopt its proposed rule. It remains unclear whether the DOR tacitly adopts the amended DCA rule or will seek to enforce on audit the provisions of its proposed rule.