

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 11- 07**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Eligibility and creation requirements for the enhanced franchise, excise tax industrial machinery credit provided by Tenn. Code Ann. § 67-4-2009 with regard to the expansion of a qualified headquarters facility.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

**FACTS**

In [YEAR], the [TAXPAYER], established a Tennessee “qualified headquarters facility” (the “Facility”), as the term is defined in Tenn. Code Ann. § 67-6-224(b)(9). The Facility consisted of two separate locations in the [TENNESSEE CITY] Metropolitan Statistical Area. The first location is a production facility (the “Production Facility”) that [REDACTED INFORMATION]. The second location is a back-up facility (the “Back-up Facility”), which [REDACTED INFORMATION]. The Production Facility and the Back-up Facility are treated as a single

location for purposes of the “qualified headquarters facility” credit provided by Tenn. Code Ann. § 67-6-224. This investment is hereafter referred to as “Investment 1.”

In [YEAR], [TAXPAYER] announced a plan to significantly increase capacity following a merger with [COMPANY X]. Under the plan, the Production Facility would handle all production for [TAXPAYER]. [REDACTED INFORMATION]. In connection with its application as a “qualified data center” (“QDC”), as the term is defined in Tenn. Code Ann. § 67-6-102(76), [COMPANY X] announced plans to spend [DOLLAR AMOUNT – TOTAL INVESTMENTS ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] in capital improvements in Tennessee. The majority of this expenditure related to servers, computer software and other hardware (“Computer Equipment”). [TAXPAYER] also committed to create at least [NUMBER – NUMBER OF JOBS CREATED ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] new jobs in connection with the investment. This investment is hereafter referred to as “Investment 2.”

[REDACTED INFORMATION]

Also in connection with Investment 2, [TAXPAYER] submitted its Business Plan for Job Tax Credits and received a letter dated [DATE] from the Department tentatively approving its Business Plan for the investment period starting with the fiscal year ended [DATE]. In connection with Investment 2, [TAXPAYER] qualified for the job tax credit, the industrial machinery exemption for sales and use tax purposes pursuant to Tenn. Code Ann. §§ 67-6-206(a) and 67-6-102(42)(K)(2008 supp.), and the industrial machinery credit provided by Tenn. Code Ann. § 67-4-2009(4)(A). [TAXPAYER], was granted an industrial machinery exemption for sales tax purposes effective [DATE].

In [YEAR] [TAXPAYER] announced plans to increase investment in one of its U.S. facilities [REDACTED INFORMATION]. In connection with the new investment, [TAXPAYER], plans to invest at least [DOLLAR AMOUNT – TOTAL INVESTMENTS ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] in [REDACTED INFORMATION] required for the facility expansion. [TAXPAYER], also plans to create at least [NUMBER – NUMBER OF JOBS CREATED ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] new jobs as part of the facility expansion.

[REDACTED INFORMATION] The potential new investment is referred to hereafter as “Investment 3.”

If Tennessee is chosen as the site for Investment 3, [TAXPAYER] will file a Tennessee Enhanced Industrial Machinery Credit Business Plan with a start date of [DATE]. [TAXPAYER] will also seek to be designated as a “qualified headquarters facility,” as the term is defined in Tenn. Code Ann. § 67-6-224(b)(9).

### **QUESTIONS PRESENTED**

1. Which purchases made by [TAXPAYER] will be included in the required capital investment calculation for purposes of determining the enhanced industrial machinery credit that can be applied against [TAXPAYER]’s franchise, excise tax liability?

2. What is the percentage of the purchase price of industrial machinery that [TAXPAYER] will be eligible to take as a franchise, excise tax industrial machinery credit based on the estimated required capital investment?
3. Is custom software treated as industrial machinery for purposes of the enhanced industrial machinery franchise, excise tax credit?
4. When is [TAXPAYER] eligible to apply the enhanced industrial machinery credit against its Tennessee franchise, excise tax liability?
5. What percentage of its franchise, excise tax will [TAXPAYER] be permitted to offset against its franchise, excise tax industrial machinery industrial machinery credit?

### **RULINGS**

1. [TAXPAYER]'s purchases of real property, tangible personal property that can be weighed, measured, felt or touched, or is in any other way perceptible to the senses, and all prewritten and custom computer software will be included in calculating the "required capital investment" for purposes of the enhanced industrial machinery credit that can be applied against [TAXPAYER]'s franchise, excise tax liability.
2. Based on the Facts presented, [TAXPAYER] will be eligible for an industrial machinery franchise, excise tax credit of 5% of the purchase price of qualifying industrial machinery purchased for its facility expansion, provided that all applicable statutory requirements are met.
3. Yes. All software, including prewritten canned software and custom software, is treated as industrial machinery for purposes of the franchise, excise tax enhanced industrial machinery credit, provided that all applicable statutory requirements are met.
4. [TAXPAYER] will be eligible to apply the enhanced industrial machinery franchise, excise tax credit against its franchise, excise tax liability during the first year of the investment period, provided that all applicable statutory requirements are met. If the required capital investment is not made during the investment period, [TAXPAYER] will be required to pay an assessment equal to the amount of industrial machinery credit taken plus interest.
5. Assuming that [TAXPAYER] is able to meet all applicable statutory requirements, including the required capital investment requirement, to qualify for the enhanced industrial machinery franchise, excise tax credit, [TAXPAYER] will be permitted to offset 100% of its franchise, excise tax liability by the enhanced industrial machinery franchise, excise tax credit earned in connection with its facility expansion in Tennessee, provided that the Commissioner of Revenue and the Commissioner of Economic and Community Development issue a written determination that it is in the best interest of the State of Tennessee to allow [TAXPAYER] to do so.

### **ANALYSIS**

1. Assuming that [TAXPAYER] Meets all Applicable Requirements Set Forth in Tenn. Code Ann. § 67-4-2009(4) and Other Applicable Statutes Pertaining to the Enhanced Industrial Machinery Franchise, Excise Tax Credit, [TAXPAYER]'s Purchases of Real Property, Tangible Personal Property, and Prewritten and Custom Computer Software Will be Included When Calculating the Required Capital Investment for Purposes of the Credit

Tenn. Code Ann. § 67-4-2009(4)(A), set forth in pertinent part below, provides a credit against the Tennessee franchise, excise tax for the purchase price of "industrial machinery," as defined by Tenn. Code Ann. § 67-6-102(47) and 67-4-2009(4)(A):

There shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to one percent (1%) of the purchase price of industrial machinery purchased during the tax period covered by the return and located in Tennessee.

In addition to other applicable provisions and requirements set forth in Tenn. Code Ann. § 67-4-2009(4) with regard to the industrial machinery franchise, excise tax credit, Tenn. Code Ann. § 67-4-2009(4)(I)(i)-(iv), set forth below, provides for an enhanced industrial machinery credit that is available to taxpayers that meet certain investment requirements:

- (i) If the taxpayer makes a required capital investment in excess of one billion dollars (\$1,000,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to ten percent (10%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(I) shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);
- (ii) If the taxpayer makes a required capital investment in excess of five hundred million dollars (\$500,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to seven percent (7%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(I) shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);
- (iii) If the taxpayer makes a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to five percent (5%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(I)

shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b);

- (iv) If the taxpayer makes a capital investment in excess of one hundred million dollars (\$100,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to three percent (3%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(I) shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b)[.]

Unlike the 1% industrial machinery franchise, excise tax credit provided by Tenn. Code Ann. § 67-4-2009(4)(A), the enhanced industrial machinery credit provided by Tenn. Code Ann. § 67-4-2009(4)(I)(i)-(iv) is contingent on the taxpayer making a sizable “required capital investment,” which is defined by Tenn. Code Ann. § 67-4-2009(4)(I)(vii)(c) set forth below<sup>1</sup>:

“Required capital investment” means an increase of a business investment in real property, tangible personal property or computer software owned or leased in this 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.

The required capital investment to qualify for the enhanced industrial machinery credit ranges from \$100 million to \$1 billion and results in credits ranging from 3% to 10%, depending on the level of the investment. Unlike Tennessee’s sales and use tax statutes, Tennessee’s franchise, excise tax statutes do not define the term “tangible personal property.”

The most basic rule of statutory construction is to ascertain and give effect to the intention and purpose of the legislature. *Worrall v. Kroger Co.*, 545 S.W.2d 736 (Tenn. 1977). Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66 (Tenn. 1991). In seeking to determine the “natural and ordinary meaning” of statutory language, the usual and accepted source for such information is a dictionary. *State v. Givens*, Slip op. 1994 WL406187 (Tenn.Crim.App. Aug. 4, 1994).

BLACK’S LAW DICTIONARY 1494 (8<sup>th</sup> ed. 2004) defines the word “tangible” as “. . . having or possessing physical form; capable of being touched and seen; perceptible to touch; capable of being possessed . . . .” “Tangible property” is defined by BLACK’S LAW DICTIONARY 1254 (8<sup>th</sup> ed. 2004) as “. . . property that has physical form and characteristics”

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<sup>1</sup> Tenn. Code Ann. § 67-4-2009(4)(I)(vii)(c) was amended by Section 23 of Chapter 530 of the Public Acts of 2009 to include all computer software. The amendment was effective June 25, 2009 but is applicable to all business plans filed on or after July 1, 2009.

and “tangible personal property” is defined as “. . . property that can be weighed, measured, felt or touch, or is in any other way perceptible to the senses.”

Because computer hardware is in a physical form that is capable of being seen and touched, it is tangible personal property. Thus, [TAXPAYER]’s investment in computer hardware for its facility expansion will be included in the calculation of the total required capital investment for purposes of the enhanced industrial machinery credit. Likewise, furniture, fixtures, equipment and any other property that is capable of being seen and touched will be included in the calculation of [TAXPAYER]’s “required capital investment,” as defined by Tenn. Code Ann. § 67-4-2009(4)(l)(vii)(c) for purposes of the Tennessee franchise, excise tax industrial machinery credit.

Computer software is not defined for purposes of the “required capital investment” definition contained in Tenn. Code Ann. § 67-4-2009(4)(l)(vii)(c). However, Tenn. Code Ann. § 67-4-2009(4)(A)(ii) references Tenn. Code Ann. § 39-14-601 to define “computer software” and other related terms for purposes of the industrial machinery franchise, excise tax credit. Tenn. Code Ann. § 39-14-601(7) defines “computer software” as follows:

“Computer software” means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer, computer system, or computer network whether imprinted or embodied in the computer in any manner or separate from it, including the supporting materials for the software and accompanying documentation.

Since this definition is used to define “computer software” for purposes of “industrial machinery” that qualifies for the Tennessee franchise, excise tax industrial machinery credit, it appears reasonable to conclude that the intent of the Tennessee General Assembly when enacting the enhanced industrial machinery credit that is available to certain taxpayers under the provisions Tenn. Code Ann. § 67-4-2009(4)(l)(i)-(iv) was that the term “computer software” would have the same meaning set forth in Tenn. Code Ann. § 39-14-601(7). It does not make logical sense that the term “computer software” would somehow have a different definition when purchased for purposes of the required capital investment necessary to qualify for the enhanced industrial machinery credit. This is especially true since no other definition of “computer equipment” is specified when the industrial machinery franchise, excise tax credit is enhanced due to a taxpayer’s increased required capital investment level.

The definition of “computer software” contained in Tenn. Code Ann. § 39-14-601(7) makes no distinction between prewritten software, and custom software. Thus, [TAXPAYER]’s investment in computer software, regardless of the type of software, will be included in the calculation of [TAXPAYER]’s total “required capital investment” for purposes of the enhanced industrial machinery franchise, excise tax credit, provided that the software otherwise falls within the “required capital investment” definition contained in Tenn. Code Ann. § 67-4-2009(4)(l)(vii)(c).

2. [TAXPAYER] will be Eligible for an Industrial Machinery Franchise, Excise Tax Credit of 5% of the Purchase Price of Qualifying Industrial Machinery Purchased for its Facility Expansion, Provided that All Applicable Statutory Requirements are Met

In [YEAR] [TAXPAYER] announced plans to increase investment in one of its U.S. facilities. In connection with the new investment announced in [YEAR], the Facts presented state that [TAXPAYER], plans to invest at least [DOLLAR AMOUNT – TOTAL INVESTMENTS ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] in [REDACTED INFORMATION]. in connection with the facility expansion. In addition, at least [NUMBER – NUMBER OF JOBS CREATED ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] new jobs will be created as part of the facility expansion.

Such an investment will qualify for the enhanced industrial machinery franchise, excise tax credit provided by Tenn. Code Ann. § 67-4-2009(4)(l)(iii), set forth below, provided that all applicable statutory requirements are met:

If the taxpayer makes a required capital investment in excess of two hundred fifty million dollars (\$250,000,000) during the investment period, the credit allowed in subdivision (4)(A) shall be equal to five percent (5%) of the purchase price of industrial machinery located in this state and purchased in the process of making the required capital investment. The credit shall be subject to subdivisions (4)(A)-(H), except that a taxpayer making the required capital investment for purposes of this subdivision (4)(l) shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b).[.]

For this purpose, Tenn. Code Ann. § 67-4-2009(4)(l)(vii)(c) defines a “required capital investment” as follows:

“Required capital investment” means an increase of a business investment in real property, tangible personal property or computer software owned or leased in this 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.

Assuming that [TAXPAYER]’s planned facility expansion meets all applicable statutory requirements, its new investment of [DOLLAR AMOUNT – TOTAL INVESTMENTS ARE SUFFICIENT TO QUALIFY FOR TAX INCENTIVES SOUGHT] in [REDACTED INFORMATION] purchases in Tennessee will be eligible for an enhanced industrial machinery franchise, excise tax credit of 5% of the purchase price of qualifying industrial machinery.

3. All Software, Including Prewritten and Custom Software, will be Treated as Industrial Machinery for Purposes of the Franchise, Excise Tax Enhanced Industrial Machinery Credit, Provided that all Applicable Statutory Requirements are Met.

As discussed in the Analysis for question one above, Tenn. Code Ann. § 67-4-2009(4)(A), set forth in pertinent part below, provides a credit against the Tennessee franchise, excise tax for the purchase price of “industrial machinery,” as defined by Tenn. Code Ann. § 67-6-102(47) and 67-4-2009(4)(A):

There shall be allowed against the sum total of the taxes imposed by the franchise tax law, compiled in part 21 of this chapter, and by the excise tax law, compiled in this part, a credit equal to one percent (1%) of the purchase price of industrial machinery purchased during the tax period covered by the return and located in Tennessee. For purposes of this section, "industrial machinery" means:

- (i) "Industrial Machinery" as defined by § 67-6-102; or
- (ii) "Computer," "computer network," "computer software," or "computer system" as defined by § 39-14-601, and any peripheral devices, including, but not limited to, hardware, such as printers, plotters, external disc drives, modems, and telephone units, purchased by a taxpayer in the process of making the required capital investment in Tennessee described in § 67-4-2109(a), if as a result of making such purchase and meeting the other requirements set forth in § 67-4-2109(b), the taxpayer qualifies for the job tax credit provided therein[.]

Tenn. Code Ann. § 39-14-601(7) defines "computer software" as follows:

"Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer, computer system, or computer network whether imprinted or embodied in the computer in any manner or separate from it, including the supporting materials for the software and accompanying documentation.

The above definition of "computer software" makes no distinction between prewritten canned computer software and custom computer software. Tenn. Code Ann. § 67-4-2009(4)(l)(iii) states that a taxpayer who is eligible for the enhanced industrial machinery franchise, excise tax credit "shall be entitled to the credit for the items listed in subdivision (4)(A)(ii) regardless of whether the taxpayer meets any of the requirements of, or qualifies for, the job tax credit provided in § 67-4-2109(b)[.]"

Accordingly, all of [TAXPAYER]'s purchases of "computer software," which includes prewritten canned and custom software, purchased by [TAXPAYER] in connection with its planned facility expansion will be treated as industrial machinery for purposes of the franchise, excise tax enhanced industrial machinery credit, provided that all applicable statutory requirements are met.

4. [TAXPAYER] Will be Eligible to Apply the Enhanced Industrial Machinery Franchise, Excise Tax Credit Against its Franchise, Excise Tax Liability During the First Year of the Investment Period, Provided that all Applicable Statutory Requirements are Met

Tenn. Code Ann. § 67-4-2009(4)(l)(vi) makes the following provisions with regard to the time period in which a taxpayer qualifying for the enhanced industrial machinery franchise, excise tax credit may apply the credit:

The credit in this subdivision (4)(l) 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 (4)(l) for which the taxpayer failed to qualify, plus interest[.]

For this purpose, Tenn. Code Ann. § 67-4-2009(4)(l)(vii)(b) defines the “investment period” as follows:

“Investment period” means a period not to exceed three (3) years from the filing of the business plan related to the required capital investment, during which the required capital investment must be made. The three-year period for making the required capital investment may, for good cause shown, be extended by the commissioner of economic and community development for a reasonable period not to exceed four (4) years for a taxpayer that meets the requirements of this subdivision (4)(l)(i) and not to exceed two (2) years for any other taxpayer[.]

[REDACTED INFORMATION].

[TAXPAYER] may apply the enhanced industrial machinery franchise, excise tax credit during the first year of the investment period for the proposed facility expansion, provided that all statutory requirements are met.

For example, if [TAXPAYER]’s investment period began [DATE], [TAXPAYER] may apply against its Tennessee franchise, excise tax liability a credit amounting to 5% of the purchase price of qualifying industrial machinery purchased in the process of making the statutory “required capital investment” in connection with its proposed facility expansion.

If the entire credit is not used during the [DATE] tax period, the remaining credit may be carried forward for up to fifteen years pursuant to the provisions of Tenn. Code Ann. § 67-4-2009(4)(C). If the required capital investment is not made during the investment period, [TAXPAYER] will be required to pay an assessment equal to the amount of the industrial machinery credit taken plus interest.

5. [TAXPAYER] May Offset 100% of its Franchise, Excise Tax Liability by the Enhanced Industrial Machinery Credit Related to its Tennessee Facility Expansion, Provided the Commissioner of Revenue and the Commissioner of Economic and Community Development Issue a Written Determination that it is in the Best Interest of the State of Tennessee to Allow [TAXPAYER] to Do So, and Provided that All Applicable Statutory Requirements are Met.

Although Tenn. Code Ann. § 67-4-2009(4)(B) states that the franchise, excise tax industrial machinery credit is limited to “. . . fifty percent (50%) of the combined franchise and excise tax liability shown by the return before the credit is taken[.]” under certain circumstances, Tenn. Code Ann. § 67-4-2009(4)(H), set forth below, permits an offset of up to 100% of the tax under certain circumstances:

Notwithstanding any provision to the contrary, a taxpayer that has established its international, national, or regional headquarters in this state and has met the requirements

to qualify for the credit provided in § 67-6-224, or a taxpayer that has established an international, national, or regional warehousing or distribution hub in this state and has met the requirements to be a qualified new or expanded warehouse or distribution facility, shall be allowed to offset up to one hundred percent (100%) of its franchise and/or excise tax liability by the industrial machinery credit provided in this subdivision (4), or any carryforward of the industrial machinery credit, if the commissioner of revenue and the commissioner of economic and community development determine that increasing the percentage of offset above that allowed by subdivision (4)(B) is in the best interests of the state. For purposes of this subdivision (4)(H), “best interests of the state” includes, but is not limited to, a determination that the taxpayer established its headquarters or a warehousing or distribution hub in this state, or converted a regional headquarters or regional warehousing or distribution hub in this state into its national or international headquarters or a national or international warehousing or distribution hub, as a result of such action. The commissioner of revenue and the commissioner of economic and community development shall determine the percentage of franchise and/or excise tax liability allowed to be offset, above that otherwise allowed by subdivision (4)(B), and the period during which the increased offset shall continue[.]

The Facts presented state that [TAXPAYER] has established a regional headquarters in Tennessee and has previously met the requirements to qualify for the qualified headquarters facility sales and use tax credit provided by Tenn. Code Ann. § 67-6-224. In addition, [TAXPAYER]’s proposed facility expansion will qualify for the headquarters facility credit provided in Tenn. Code Ann. § 67-6-224.

Assuming that [TAXPAYER] is able to meet all applicable statutory requirements, including the required capital investment requirement, to qualify for the enhanced industrial machinery franchise, excise tax credit, [TAXPAYER] will be entitled to offset 100% of its franchise, excise tax liability by the enhanced industrial machinery franchise, excise tax credit earned in connection with its facility expansion in Tennessee if the Commissioner of Revenue and the Commissioner of Economic and Community Development issue a written determination that it is in the best interest of the State of Tennessee to allow [TAXPAYER] to do so.

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Arnold B. Clapp  
Special Counsel to the Commissioner

**APPROVED:** 

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Richard H. Roberts, Commissioner

**DATE:** 3-15-11