

Frank M. O'Connell
State Revenue Commissioner



Kelsey Finn
Director, Tax Policy Division

Georgia Department of Revenue
2595 Century Parkway, NE | Atlanta, Georgia 30345

NOTICE ITD-2026-001

RE: Proposal to Amend Rules 560-7-4-.01 and 560-7-8-.34.

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Rules 560-7-4-.01 and 560-7-8-.34.

Attached to this notice are an exact copy and synopsis of the proposed Rule. The proposed Rule is being amended under the authority of O.C.G.A. §§ 48-2-12, 48-7-27, & 48-7-129.

The Department of Revenue will consider the proposed amendment of the above Rule at a remote regulation hearing held at 10:00 a.m. on Thursday, March 5, 2026, which can be accessed through the following link: <https://meet.goto.com/247197533> or via telephone at +1 (571) 317-3116 (local) and 1 866 899 4679 (toll-free) with the access code: 247-197-533. At the beginning of the hearing, attendees will be required to announce themselves and notify the Department if they plan to make oral comments during the hearing.

The Department must receive all comments regarding the above-referenced Rule from interested persons and parties no later than 10 a.m. on March 5, 2026. Electronic comments must be sent to regcomments@dor.ga.gov. Please reference "ITD-2026-001" on all comments.

Dated: January 23, 2026

A handwritten signature in blue ink that reads "Frank M. O'Connell".

Frank M. O'Connell
State Revenue Commissioner

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7-4 NET TAXABLE INCOME (INDIVIDUAL). AMENDED

560-7-4-.01. Net Taxable Income (Individual). Amended

This regulation is being amended to change the form required for forgoing a net operating loss carryback. For tax years beginning on or after January 1, 2023, the net operating loss must be listed on a Form 500 individual return application schedule. For tax years beginning prior to January 1, 2023 Form 500-NOL will continue to be used.

CHAPTER 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.34 Withholding on Nonresident Members of Partnerships, S Corporations, and Limited Liability Companies; Composite Return Alternative

This regulation is being amended in conformity with changes made in S.B. 56 (2023).

Paragraph (3)(c) amends the three options available to individual taxpayers for computing the composite tax. For tax years beginning on or after January 1, 2024, the options are amended to consider changes in the individual tax rate applicable under O.C.G.A. 48-7-20 and the elimination of the personal exemption factor under Option 2.

Paragraph (6)(c) is amended to require the additional withholding forms, if applicable, to be submitted with Form G 1003 to the Department of Revenue.

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4 **Rule 560-7-4-.01 Net Taxable Income (Individual). Amended**

5 (1) The Georgia taxable net income of an individual shall be computed pursuant to O.C.G.A.
6 § 48-7-27.

7 (2) There shall be added to "net income" the amount of deductions reflected therein which
8 resulted from transactions occurring in years in which the individual was not subject to
9 Georgia income tax. Such deductions shall include but not be limited to, contribution
10 carryovers, capital loss carryovers, and net operating loss carryovers.

11 (3) Net Operating Losses

12 (a) An appropriate adjustment shall be made to such "net income" for a net operating
13 loss carryover.

14 (b) For any taxable year in which the taxpayer claims a net operating loss deduction on
15 the Federal income tax return, the amount of such deduction shall be added back to
16 "net income". There shall be allowed as a separate deduction from "net income" an
17 amount equal to the aggregate of the Georgia net operating loss carryovers to such
18 year, plus the Georgia net operating loss carrybacks to such year if such carrybacks
19 are allowed by the Internal Revenue Code of 1986. Any limitations included in the
20 Internal Revenue Code of 1986 on the amount of net operating loss that can be used
21 in a taxable year shall be applied; provided, however, that such limitations,
22 including, but not limited to, the 80 percent limitation, shall be applied to Georgia
23 taxable net income.

24 (c) For any taxable year in which the taxpayer has a Federal net operating loss, the
25 Georgia net operating loss for such taxable year shall be computed by making the
26 same adjustments to the Federal net operating loss that are made to Federal adjusted
27 gross income to determine Georgia taxable net income. In the case of nonresident
28 individuals, trusts, and estates doing business both within and without Georgia, the
29 loss attributable to operations within Georgia shall be computed as provided in
30 O.C.G.A. § 48-7-30. The term "Georgia net operating loss" shall mean the loss
31 computed as provided in this subparagraph. In the event the net Georgia
32 adjustments completely offset the federal net operating loss, there shall be no
33 Georgia net operating loss for the taxable year, and any excess of net Georgia

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34 adjustments over the Federal net operating loss shall constitute Georgia taxable net
35 income.

36 (d) The procedural sequence of taxable years to which a Georgia net operating loss
37 may be carried back or carried over, and the number of years for which a net
38 operating loss may be carried back or carried over, shall be the same as provided in
39 the Internal Revenue Code as adopted for Georgia purposes. The extent to which
40 Georgia adopts the Internal Revenue Code is set forth in the definition of "Internal
41 Revenue Code" in O.C.G.A. § 48-1-2. The terms "Georgia net operating loss
42 carryback" and "Georgia net operating loss carryover" shall mean the Georgia net
43 operating loss carried back or carried over in the manner and for the number of
44 years as provided in this subparagraph.

45 (e) In the event the net operating loss is allowed to be carried back and the taxpayer
46 elects to forgo the carryback period for the federal net operating loss as allowed
47 under the Internal Revenue Code, the taxpayer shall also forgo the carryback period
48 for Georgia purposes. If the taxpayer does not have a federal net operating loss, the
49 taxpayer may make an irrevocable election to forgo the carryback period for the
50 Georgia net operating loss, provided the loss is allowed to be carried back and an
51 affirmative statement is attached to the Georgia return for the year of the loss. Such
52 election (the affirmative statement) must be made on or before the due date for
53 filing the income tax return for the taxable year wherein the loss was incurred,
54 including any extensions which have been granted. For tax years ending prior to
55 January 1, 2023, Form 500-NOL must also be separately filed when the taxpayer
56 forgoes the carryback so that the net operating loss can be established on the
57 Department's system for future years. Such filing must occur on or before the due
58 date for filing the income tax return for the taxable year wherein the loss was
59 incurred, including any extensions which have been granted. Form 500-NOL
60 cannot be filed as an attachment to Form 500. If the net operating loss is allowed to
61 be carried back and if the taxpayer does not elect to forgo the carryback period for
62 the federal net operating loss, the election to forgo the net operating loss period
63 shall not be allowed for Georgia purposes. For tax years beginning on or after
64 January 1, 2023, the establishment of a net loss shall be made via an application
65 schedule contained with the Form 500 individual return.

66 (f) Claim for Refund.

67 1. In the event the taxpayer is entitled to a refund of income taxes by reason
68 of a net operating loss carryback, a net operating loss carryback adjustment
69 claim for refund will be filed on Form 500-NOL and in accordance with
70 O.C.G.A. § 48-7-21(b)(10.1).The taxpayer must file such claim for refund

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71 within three years after the due date for filing the income tax return for the
72 taxable year wherein the loss was incurred (including any extensions which
73 have been granted) as prescribed in O.G.C.A. § 48-7-21(b)(10.1).Such
74 claim for refund shall constitute a claim for credit or refund for purposes of
75 O.C.G.A. § 48-2-35. Within a period of ninety (90) days from the last day
76 of the month in which such claim for refund is filed, the Commissioner shall
77 make, to the extent he or she deems practicable in such period, an
78 examination of the claim for refund to determine the amount of tax decrease
79 attributable to such carryback adjustment upon the basis of the claim for
80 refund and the examination. The decrease so determined shall be applied
81 against any unpaid amount of the tax and the remainder shall, within such
82 ninety (90) day period, be either credited against any income tax then due
83 from the taxpayer, or refunded to the taxpayer. Any such credit or refund
84 made within such ninety (90) day period shall be without interest as
85 provided in O.C.G.A. § 48-7-21(b)(10.1) and shall be subject to further
86 examination as provided in subparagraph (3)(f)3.

87 2. If such claim for refund contains errors of computation which the
88 Commissioner deems cannot be corrected within such ninety (90) day
89 period or which contains material omissions, the Commissioner may
90 disallow without further action any such claim for refund. Alternatively, the
91 Commissioner may request that the taxpayer correct such errors or
92 omissions. In either case, the date upon which the taxpayer later corrects
93 such errors or omissions shall be considered the filing date for the claim for
94 refund for purposes of the aforementioned (90) day no interest period.

95 3. The Commissioner may further examine, subject to the applicable statute of
96 limitations, such claim for refund at a later time and assess as necessary.

97 (g) The provisions of Sections 108, 381, 382, and 384 of the Internal Revenue Code of
98 1986, as amended, as they relate to net operating losses also apply for Georgia
99 purposes. These shall be applied as provided in O.C.G.A. § 48-7-21(b)(10.1)(D)
100 and the regulations thereunder.

101 (4) The subtraction provided by subsection (d) of O.C.G.A. § 48-7-27 shall be allowed for the
102 Texas Franchise Tax and for other states which have a tax on the entity which is on or
103 measured by income. Such subtraction shall not be available for a tax on the entity which
104 is on or measured by gross receipts and other taxes which are not on or measured by
105 income. Such subtraction shall be computed as provided in this paragraph. First, determine
106 the Georgia taxable net income before apportionment of the entity. For purposes of this

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107 paragraph, Georgia taxable net income shall include income, gains, losses, and deductions
108 from the entity which are separately reported and included on the partners', shareholders',
109 or members' returns. For purposes of this paragraph, Georgia taxable net income shall not
110 include wages paid to the partner, shareholder, or member. However, if such wages are
111 taxed by another state, the partner, shareholder, or member may be eligible for the credit
112 provided by O.C.G.A. § 48-7-28. Second, multiply such Georgia taxable net income by the
113 entity's apportionment ratio in Texas or such other state. Third, multiply such result by the
114 partner's, member's, or shareholder's direct or indirect distributive share percentage used
115 for Federal income tax purposes. Provided, however, if any separately reported item (such
116 as guaranteed payments) is allocated directly to a partner, shareholder, or member, such
117 item shall be excluded from the above computation and allocated to such partner, member,
118 or shareholder and multiplied by the entity's apportionment ratio in Texas or such other
119 state and then combined with the result above.

- 120 (a) For example, an individual has a 50% distributive share percentage of partnership
121 A which paid the Texas Franchise Tax. Partnership A's apportionment ratio in
122 Texas was 80%. Partnership A's Georgia taxable net income before directly
123 allocated items and before apportionment was \$10,000. \$2,000 of guaranteed
124 payments were deducted to arrive at the \$10,000 and were paid to the individual.
125 50% of partnership A's income of \$10,000 was included on the individual's federal
126 income tax return. Partnership B also has a 50% distributive share percentage of
127 Partnership A. As such, 50% of partnership A's income of \$10,000 was reported on
128 Partnership B's return. The individual who has a distributive share percentage of
129 Partnership A also has a 40% distributive share percentage of Partnership B. 40%
130 of partnership B's income was included on the individual's federal income tax
131 return. The percentage the individual would be allowed is 70% (50% for
132 Partnership A plus 40% of 50% for Partnership B). As such, \$5,600 (70% x \$10,000
133 x 80%) of the Georgia taxable net income before directly allocated items could be
134 subtracted by the individual. The individual would also include \$1,600 of the
135 guaranteed payment (\$2,000 x 80%). As such, a total of \$7,200 could be subtracted
136 by the individual.

137
138 Authority: O.C.G.A. §§ 48-2-12, 48-7-27.
139

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5 **Rule 560-7-8-.34 Withholding on Nonresident Members of Partnerships, S Corporations,**
6 **and Limited Liability Companies; Composite Return Alternative**

7 (1) **Definitions. As used in this regulation, the following terms are defined as follows:**

8 (a) **Taxable income sourced to this state.** The term "taxable income sourced to this
9 state" means the entity's income allocated or apportioned to Georgia pursuant to
10 Code Section 48-7-31 or as otherwise provided by law. The entity's income shall
11 include the sum of the following items:

- 12 1. The nonresident member's share of the Georgia separately stated income,
13 guaranteed payments, loss, deduction or expense of the entity; and
14 2. The nonresident member's share of the Georgia nonseparately stated
15 income, loss, deduction or expense of the entity;

16 (b) **Entity.** The term "entity" shall mean a Subchapter 'S' corporation, a partnership, or
17 a limited liability company which is treated as a partnership or Subchapter 'S'
18 corporation for Federal income tax purposes and which is required to file a
19 partnership or Subchapter 'S' corporation return. However, the term "entity" does
20 not include a Subchapter 'S' corporation that is treated as a 'C' corporation for
21 Georgia purposes.

22 (c) **Nonresident.** The term "nonresident" shall mean an individual or fiduciary member
23 who resides outside this state and all other members whose headquarters or
24 principal place of business is located outside this state. Such nonresident
25 determination shall be made on the last day of the tax year of the entity.

26 (d) **Individual.** The term "individual" shall mean a natural person.

27 (2) **Withholding.**

28 (a) **Withholding Requirements.** Withholding is required at the rate of 4 percent with
29 respect to the nonresident member's share of taxable income sourced to this state,
30 unless exempted by this regulation or O.C.G.A. § 48-7-129. The filing of estimated
31 tax payments by the member does not relieve the entity from the responsibility of
32 the withholding requirement.

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- 33 (b) **Certain Retirement Accounts.** A member which is an individual retirement
34 account as defined by Internal Revenue Code §§ 408(a) and 408(b), a Roth IRA as
35 defined by Internal Revenue Code § 408A, or a qualified employer plan as defined
36 by Internal Revenue Code § 409A(d)(2) is not subject to withholding. On a one
37 time basis, the administrator of such retirement account or plan must certify to the
38 entity in writing using Form NRW-Exemption, that this exception applies. Such
39 certification must be attached to the entity's income tax return each year.
- 40 (c) **Annual Income Less than \$1,000.00.** An entity is not required to withhold tax for
41 a nonresident member if the aggregate annual nonresident member's share of
42 taxable income sourced to this state is less than \$1,000.00.
- 43 (d) **Withholding Under other Provisions of Law, Ordering, etc.** The nonresident
44 member's share of taxable income sourced to this state is not subject to withholding
45 under O.C.G.A. § 48-7-129 if such income is subject to withholding under other
46 provisions of Georgia law. The nonresident member's share of taxable income
47 sourced to this state shall not include payments to a member in a capacity other than
48 as a member (e.g., salaries from Subchapter 'S' corporations, rents, or royalties).
- 49 (e) **Exempt Organizations.** The nonresident member's share of taxable income
50 sourced to this state of an exempt organization which results in unrelated business
51 taxable income, as defined by Internal Revenue Code § 512, will be subject to
52 withholding. The nonresident member's share of taxable income sourced to this
53 state of an exempt organization that does not result in unrelated business taxable
54 income is not subject to withholding. In such latter case, the exempt organization
55 shall annually certify in writing to the entity using Form NRW-Exemption, that the
56 nonresident member's share of taxable income sourced to this state does not result
57 in unrelated business taxable income. Such certification must be attached to the
58 entity's income tax return each year.
- 59 (f) **Insurance Companies.** An insurance company which actually pays a tax to
60 Georgia on its premium income is not subject to Georgia income tax and the
61 withholding requirements under O.C.G.A. § 48-7-129. In this case, the insurance
62 company shall annually certify in writing to the entity using Form NRW-
63 Exemption, that this applies. Such certification must be attached to the entity's
64 income tax return each year.
- 65 (g) **C-Corporation, Individual, or Fiduciary Members.**
- 66 1. Withholding is not required for the nonresident member's share of taxable
67 income sourced to this state for a C-Corporation, an individual, or a
68 fiduciary member which meets the conditions listed below. On a one time

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69 basis and on or before the due date (without extension) for filing the entity's
70 income tax return for the taxable year for which the withholding is required,
71 such member must certify to the entity in writing that this exception applies.
72 Such certification must be attached to the entity's income tax return each
73 year. Such member must:

74 (i) Agree to be subject to personal jurisdiction in this State for all
75 income tax purposes, file returns, and pay all Georgia tax liabilities
76 due, for the current year and future years in which it is a member
77 and the entity owns property in Georgia, does business in Georgia,
78 or otherwise derives income from Georgia sources; and

79 (ii) Will make estimated income tax payments if required.

80 2. In the event such member certifies to such entity and such member fails to
81 satisfy the requirements of subparagraph (g)1. of this paragraph, then
82 withholding will be due as originally required as if such certification had
83 not been made for the year or years of such failure.

84 3. Entities except Subchapter 'S' corporations shall provide the certification
85 required by subparagraph (g)1. of this paragraph on Form NRW-
86 Exemption. Subchapter 'S' corporations shall use Form 600S-CA. A
87 Subchapter 'S' corporation that has already obtained the Form 600S-CA for
88 purposes of the Georgia Subchapter 'S' corporation election shall not be
89 required to obtain the form a second time.

90 (h) **Partnerships and Limited Liability Companies.** See paragraph (4) relating to
91 "Tiered Situations" and paragraph (5) relating to "Exception in Tiered Situations"
92 for additional rules applicable to partnerships and limited liability companies
93 (treated as partnerships for Federal income tax purposes) that are members of
94 entities subject to this regulation.

95 (3) **Composite Returns.**

96 (a) **Alternative to Withholding.** In lieu of withholding, the entity may elect to file a
97 composite income tax return for one or all of its nonresident members using Form
98 IT-CR. The filing of the composite return shall constitute the election. Such election
99 shall be irrevocable and must be made by the due date of the composite return
100 (including extensions, if approved). Once the due date has expired, the composite
101 return shall not be amended to include or exclude members. However the return
102 must be amended to exclude members who, pursuant to subparagraph (d) of this

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103 paragraph, were not eligible to be included on the composite return (i.e. members
104 having income within Georgia from sources other than the entity). The computation
105 of tax is done by creating a schedule as described in subparagraph (b) of this
106 paragraph. Individuals, corporations, partnerships, limited liability companies,
107 estates, trusts, Qualified Subchapter S Trusts, and Electing Small Business Trusts
108 may be included on the composite return. However, a corporation is still required
109 to file a separate net worth tax return to pay the net worth tax that is due to Georgia.
110 Nonresident members whose aggregate annual share of taxable income sourced to
111 this state is less than \$1,000.00 may also be included on the composite return.

112 (b) **Creating a Schedule.** The entity will create its own schedule following the
113 examples on Form IT-CR showing the name, address, and identification number,
114 and amount of income as provided in subparagraph (c) of this paragraph for each
115 member included in the computation. The schedule must also include the name,
116 address, identification number, and amount of the nonresident member's share of
117 taxable income sourced to this state of any nonresident member not included in the
118 computation of the composite return.

119 (c) **Computing the Tax.** Using the schedule created pursuant to subparagraph (b) of
120 this paragraph, the members shall compute the tax as indicated in subparagraphs 1.
121 and 2. of this subparagraph. The election of options may be changed annually;
122 however, such election shall not be changed after the filing of the return. The
123 member's income from the entity's business done in Georgia shall be the
124 nonresident member's share of taxable income sourced to this state adjusted as
125 provided in this subparagraph. Deductions will not be allowed on the composite
126 return for items of loss, deduction or expense which are subject to other limitations
127 imposed on computing either Federal taxable income, Federal adjusted gross
128 income, or Georgia taxable income, or are otherwise limited by the Internal
129 Revenue Code or the O.C.G.A., such as charitable contributions, investment
130 interest expense, I.R.C. § 179 expense, casualty losses, capital losses, etc. Also,
131 deductions based on self-employment, self-employed health insurance, Keogh or
132 SEP or other deductions normally allowed in computing Adjusted Gross Income
133 are not allowed on a composite return.

134 1. The following three options shall be available for individual members.
135 Option 1 and Option 2 are only available for nonresident individual
136 members not having income within Georgia from sources other than the
137 entity:

138 (i) **Option 1 - Filing Status.** For tax years beginning prior to January 1,
139 2024, the entity may elect to compute the tax by multiplying the

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140 member's income from the entity's business done in Georgia by the
141 applicable tax rate. The "applicable tax rate" shall be that rate
142 provided in O.C.G.A. § 48-7-20 which applies to each individual
143 member based on the individual member's filing status. For tax years
144 beginning on or after January 1, 2024, the entity may elect to
145 compute the tax by multiplying the member's income from the
146 entity's business done in Georgia by the tax rate provided in
147 O.C.G.A. § 48-7-20 regardless of filing status.

148 (ii) Option 2 - Standard Deduction and Dependents. For tax years
149 beginning prior to January 1, 2024, tThe entity may elect to compute
150 the tax by reducing the member's income from the entity's business
151 done in Georgia by the personal exemption and credit for
152 dependents as provided below and then multiplying such income by
153 the applicable tax rate. The "applicable tax rate" shall be that rate
154 provided in O.C.G.A. § 48-7-20 which applies to each individual
155 member based on the individual member's filing status. Under this
156 option, the member is allowed to take a standard deduction and a
157 personal exemption and credit for dependents; however, the member
158 should apportion these adjustments so that adjustments are allowed
159 only to the extent that they apply to Georgia income. For tax years
160 beginning on or after January 1, 2024, the entity may elect to
161 compute the tax by reducing the member's income from the entity's
162 business done in Georgia by the member's standard deduction and
163 credit for dependent and multiplying such income by the tax rate
164 provided in O.C.G.A. § 48-7-20 regardless of filing status.

165 (iii) Option 3 - Highest Marginal Tax Rate. If the above eOption 1 and
166 eOption 2 are not available for use by the entity in computing the
167 tax due for an individual member who has income within Georgia
168 from sources other than the entity or if the entity otherwise elects for
169 such individual, a composite return may be filed using this third
170 option. In such case the individual member shall be allowed to be
171 included on the composite return provided the highest marginal tax
172 rate provided in O.C.G.A. § 48-7-20 for tax years beginning prior to
173 January 1, 2024 is applied to the member's income from the entity's
174 business done in Georgia to determine the amount of the tax. For tax

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175 years beginning on or after January 1, 2024 the specified tax rate
176 provided in O.C.G.A. § 48-7-20 shall be used. Should such
177 individual member be required to otherwise file a Georgia return,
178 then the income that was included using ~~o~~Option 3 shall be excluded
179 from the individual member's return.

180 (iv) For each individual member for whom the entity uses either Option
181 1 or Option 2 in computing the tax liability, the entity must obtain a
182 signed statement each year from the respective individual member,
183 using Form CR-AFF, verifying that the member does not have
184 income from sources within Georgia other than the entity and
185 verifying the individual member's Georgia filing status.

186 2. All non-individual members shall apply the tax rate provided in subsection
187 (a) of O.C.G.A. § 48-7-21 to the member's income from the entity's business
188 done in Georgia to determine the amount of tax.

189 (d) **Members Excluded from the Composite Return.** Any nonresident member
190 excluded from the composite return is subject to the withholding provisions and is
191 required to file a Georgia income tax return, unless otherwise exempted by this
192 regulation or O.C.G.A. § 48-7-129. Likewise, any nonresident member included in
193 the computation of a composite return is not subject to the withholding provisions
194 and is not required to file a Georgia income tax return to report the entity's income.
195 Except as provided in subparagraph (c)(1)(iii) of this paragraph, nonresident
196 members having income within Georgia from sources other than the entity may not
197 be included in the entity's composite return and shall be subject to the withholding
198 tax imposed by O.C.G.A. § 48-7-129, unless otherwise exempted by this regulation
199 or O.C.G.A. § 48-7-129.

200 (e) **Composite Return Due Date.** The due date of the composite return of a calendar
201 year entity is the same as for a calendar year individual. Extension dates are the
202 same as for individuals. A fiscal year entity should file its return on a fiscal year
203 basis and should file its return by the 15th day of the fourth month after the fiscal
204 year end. Estimated tax payment dates are the same as for individuals. A fiscal year
205 entity shall adjust its estimated payment dates and extension dates as if it is an
206 individual filing a fiscal year return. Form IT-303 (application for extension) should
207 be used if an extension of time to file is needed. Form IT-303 only extends the time
208 to file. Accordingly, any tax that is due should be remitted by the original due date
209 of the composite return on Form IT560C. Tax remitted at the time the IT-CR is due
210 should be remitted along with the payment voucher (Form CR-PV).

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- 211 (f) **Amended Composite Returns.** Except as prohibited by subparagraph (a) of this
212 paragraph, amended composite returns may be filed during the same periods as
213 individual returns, and may be filed by using the Form IT-CR and checking the
214 amended box.
- 215 (g) **Consent Agreements.** When filing a composite return for shareholders, it is not
216 necessary to include copies of the consent agreements required by O.C.G.A. § 48-
217 7-27(d)(2). However, consent agreements must be attached to the S Corporation
218 return as provided in such code section.
- 219 (h) **Composite Return Net Operating Losses.** The following shall apply with regard
220 to net operating losses:
- 221 1. A net operating loss computed on a composite return may be carried
222 forward to another composite return year for each member. A net operating
223 loss computed on a composite return may not be carried back. For an
224 individual member, the income for the year or years that the loss is being
225 carried to, must be recomputed using the option (as specified in
226 subparagraph (3)(c)1.) that was used for the loss year before the loss is
227 carried to that year.
- 228 2. A net operating loss cannot be carried from a year whereby the member was
229 excluded on the composite return to a year whereby the member is included
230 on the composite return.
- 231 3. A net operating loss must be carried forward from a year where the member
232 was included on the composite return to a year the member files the
233 member's own tax return.
- 234 4. Any limitations included in the Internal Revenue Code of 1986 on the
235 amount of net operating loss that can be used in a taxable year shall be
236 applied for each member; provided, however, that such limitations,
237 including, but not limited to, the 80 percent limitation, shall be applied to
238 the income computed pursuant to this paragraph.
- 239 (4) **Tiered Situations.** Except as provided in paragraph (5), in situations whereby the
240 nonresident member is an entity, or where such nonresident member is owned by
241 subsequent entities, the following shall apply:
- 242 (a) Withholding is only required by an entity that:
- 243 1. Does business in Georgia on its own and not as a result of being a member;
244 or

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- 245 2. Owns property in Georgia on its own and not as a result of being a member;
- 246 (b) Any withholding that occurs may be passed through each tier by attaching the G-
- 247 2-A, of the entity in the tiered situation that was required to withhold pursuant to
- 248 subparagraph (4)(a), and providing a schedule which allocates such withholding tax
- 249 between the members at each tier based upon the profit/loss percentage. Failure to
- 250 include this documentation will result in the disallowance of the withholding credit.
- 251 A composite return may be completed at any level. However, if the composite
- 252 return is not filed by the entity meeting either condition 1. or 2. of subparagraph (a)
- 253 of this paragraph, withholding is still required by such entity, unless otherwise
- 254 exempted by this regulation or O.C.G.A. § 48-7-129. Tax withheld at one level can
- 255 be claimed on a composite return at another level.
- 256 (c) A member which is an entity or a corporation must include its pro rata share of the
- 257 entity's gross receipts in its own single factor apportionment formula in determining
- 258 how much of its income is Georgia income. In determining its income, the member
- 259 includes its share of the entity's income before the entity apportions and allocates
- 260 its income.
- 261 (d) In determining whether withholding is required, only the members that directly own
- 262 an interest in the entity subject to withholding shall be considered.
- 263 For example:
- 264 1. An entity that is subject to the nonresident withholding requirements has
- 265 several members. One nonresident member is also a member in several
- 266 other entities that are subject to the withholding requirements. Each of the
- 267 entities must withhold on that nonresident member whether or not the total
- 268 income/loss from all the entities would result in a net loss for that member.
- 269 A loss from one entity cannot be used to offset the income in another entity
- 270 for that member.
- 271 2. Company A is subject to the nonresident withholding requirements and is
- 272 in a tiered situation. Company B is a nonresident member of Company A.
- 273 Company B has nonresident members, of which one is an exempt
- 274 organization called Company C. Company A is required to withhold on all
- 275 of Company B's share of taxable income sourced to this state.
- 276 (5) **Exception in Tiered Situations.**
- 277 (a) Nonresident withholding shall not be required for a member which is also an entity
- 278 provided such entity on an annual basis in writing:

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- 279 1. Elects to withhold at the rate of 4 percent with respect to its nonresident
280 members' shares of taxable income sourced to this state in the same manner
281 and subject to the same requirements, exceptions (including the exception
282 provided in this paragraph but excluding the exception provided in
283 subparagraph (2)(c)), etc. as if such entity itself was subject to O.C.G.A. §
284 48-7-129 and this regulation;
- 285 2. Agrees to be subject to personal jurisdiction in this State for all income tax
286 purposes including the withholding required by O.C.G.A. § 48-7-129,
287 together with related interest and penalties; and
- 288 3. Provides such election and such agreement in writing to the entity in which
289 it is a member, using Form NRW-Exemption, on or before the due date
290 (without extension) for filing the entity's income tax return for the taxable
291 year for which the withholding is required. Form NRW-Exemption must be
292 attached to the entity's income tax return each year.
- 293 (b) In the event such entity makes the election as provided in subparagraph (a)1. of this
294 paragraph and such entity does not withhold at the rate of 4% if required to do so,
295 then such exception shall not apply and withholding will be due as originally
296 required as if such election had not been made.
- 297 (c) Each entity in subsequent tiers shall be entitled to make such election and such
298 agreement provided the entity in which it is a member makes such election.
299 However, failure by any entity in any tier to withhold at the rate of 4% if required
300 to do so shall cause withholding to be due as originally required and as if such
301 elections were not made by any entity in any tier.
- 302 (6) **Withholding Procedures.**
- 303 (a) **Registration.** All entities required to withhold taxes under O.C.G.A. § 48-7-129
304 must register with the Georgia Department of Revenue by completing Registration
305 Application CRF-002. Registration for withholding requirements is to be separate
306 and apart from the registration required for the payment of payroll taxes.
- 307 (b) **Payment of Taxes.**
- 308 1. With respect to the nonresident member's share of taxable income sourced
309 to this state, payment of taxes withheld shall be due on or before the due
310 date for filing the income tax return for the partnership, Subchapter 'S'
311 corporation, or limited liability company as prescribed in subsection (a) of
312 O.C.G.A. § 48-7-56 without regard to any extension of time for filing such

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313 income tax return. Payment should be remitted with the required Form G-
314 7-NRW.

315 (c) **Withholding Statement.** A Form G-2-A (Withholding on Nonresident Members
316 Share of Taxable Income Sourced to Georgia) showing the amount of the
317 nonresident member's share of taxable income sourced to this state, the nonresident
318 member's name, address, tax identification number, the amount of the Georgia tax
319 withheld, and any other information the Commissioner requires must be furnished
320 to the nonresident member and filed in duplicate with the Commissioner on or
321 before the earlier of the date the income tax return is filed or the due date for filing
322 the income tax return of such partnership, Subchapter 'S' corporation, or limited
323 liability company as prescribed in subsection (a) of O.C.G.A. § 48-7-56 without
324 regard to any extension of time for filing such income tax return. The duplicate
325 Form G-2-A must be submitted to the Department of Revenue along with Form G-
326 1003 (transmittal form) and Forms G2-RP and G2-LP, if applicable, for such
327 taxable year.

328 (d) **Credit for Withholding; Tax Year for Which Credit can be Claimed.**
329 Nonresident members are required to submit a copy of Form G-2-A with their
330 Georgia Income Tax Return in order to receive credit for any Georgia income taxes
331 withheld. Tax withheld from an on resident member's share of taxable income
332 sourced to this state must be claimed as a credit for the member's tax year in which
333 the withholding tax year of the entity ends.

334 For example:

335 1. **Calendar Year Taxpayers.** A calendar year S Corporation withholds for
336 the 2012 calendar year. An individual shareholder may claim a credit on the
337 shareholder's 2012 individual income tax return (generally filed on or before
338 April 15, 2013) for the 2012 taxes withheld by the S Corporation on the
339 shareholder's behalf.

340 2. **Other than Calendar Year Member.** A calendar year partnership remits
341 with holding taxes for 2012 during 2013 and has a corporate partner with a
342 March 31 year end. The corporate partner may claim a credit in its entirety
343 on its corporate income tax return for the year ended March 31, 2013
344 (generally filed on or before June 15, 2013) for the 2012 taxes withheld by
345 the partnership on its behalf.

346 3. **Other than Calendar Year Entity.** An S Corporation with a January 31,
347 2012 year end remits withholding taxes on behalf of its nonresident
348 shareholders. A calendar year end shareholder may claim a credit on the

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349 shareholder's 2012 individual income tax return (generally filed on or before
350 April 15, 2013) for the taxes withheld by the S Corporation on the
351 shareholder's behalf.

352 (7) **Undue Hardship.**

353 (a) **Establishing Undue Hardship.** To qualify for undue hardship, the entity must be
354 experiencing a significant hardship. The entity must establish undue hardship and
355 each determination will be considered on a case-by-case basis. A written petition
356 must be filed with the Commissioner or his/her delegate requesting an exemption
357 from withholding for an entity based on undue hardship. The petition shall be made
358 at least sixty (60) days prior to the day on which the withholding tax is due and
359 shall be accompanied by a full and complete explanation of the hardship incurred.
360 This sixty (60) day period may be modified or waived by the Commissioner for
361 reasonable cause. The Commissioner or his/her delegate will carefully consider the
362 basis of the hardship and notify the entity in writing whether the petition is accepted
363 or rejected. An accepted petition is valid for one year only, and petitions for undue
364 hardship must be requested annually. Failure to receive the Commissioner's notice
365 shall not relieve the entity from withholding in the manner prescribed by O.C.G.A.
366 § 48-7-129.

367 (b) **Circumstances Which do not Qualify.** The following circumstances will not be
368 considered to constitute undue hardship:

- 369 1. Inability to pay;
- 370 2. Additional cost of record keeping;
- 371 3. Paperwork too cumbersome;
- 372 4. Missing K-1 data, such as social security number, address, etc.;
- 373 5. Unfamiliarity of the filing requirements; or
- 374 6. Inadequate records.

375 (8) **Anti-avoidance Clause.** If the Commissioner reasonably determines that a transaction or
376 payment has been entered into for the purpose of avoiding the provisions of this regulation
377 and O.C.G.A. § 48-7-129, he or she may characterize any payment, or portion thereof,
378 made by the entity to its member so as to reflect the true substance of the transaction.

379 (9) **Effective Date.** The provisions set forth in this regulation will apply to taxable years
380 beginning on or after January 1, ~~2012~~2024. Taxable years beginning before January 1, ~~2012~~

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381 2024 will be governed by the regulations of Chapter 560-7 as they exist before January 1,
382 ~~2012-2024~~ in the same manner as if the amendments thereto set forth in this regulation had
383 not been promulgated.

384
385 Authority: O.C.G.A. §§ 48-2-12, 48-7-129.
386

Proposed