

Frank M. O'Connell
State Revenue Commissioner



Georgia Department of Revenue
1800 Century Boulevard, NE | Atlanta, Georgia 30345

NOTICE IT-2023-1

RE: Proposal to amend Rule 560-7-8-.47 Qualified Education Expense Credit.

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 Rule 560-7-8-.47.

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 and 48-7-29.16.

The Department of Revenue will consider the Amendment of the above Rule at a regulation hearing held at 1800 Century Boulevard, NE, Atlanta, GA 30345, Room L300, on May 1, 2023, at 10 a.m. All attendees will be required to sign in upon arrival.

The Department must receive all comments regarding the above-referenced Rule from interested persons and parties no later than 10 a.m. on May 1, 2023. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (770) 342-3157. **Please reference "Notice Number IT-2023-1" on all comments.**

Dated: 03/31/2023

Frank M. O'Connell
State Revenue Commissioner

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.47 Qualified Education Expense Credit

The purpose of proposed amendment to Rule 560-7-8-.47 is to bring the rule into conformity with current Georgia law. This credit was amended by House Bill 517 from the 2021 Session of the General Assembly. Paragraphs have been renumbered and are listed below. Specific changes are denoted in the attached Rule.

- Paragraph (1) provides the purpose for this rule.
- Paragraph (2) provides the definitions.
- Paragraph (3) provides for the coordination of the Department of Revenue, the Georgia Department of Education, and the Office of Commissioner of Insurance and Safety Fire in administering the credit.
- Paragraph (4) specifies the annual audit rules.
- Paragraph (5) provides the required Form 990 submission.
- Paragraph (6) specifies the rules of the calendar year report.
- Paragraph (7) provides examples of the timing of reports.
- Paragraph (8) provides the procedures following audit report failures.
- Paragraph (9) provides the procedures following failures to report and defines confidential information.
- Paragraph (10) specifies credit limitations for individuals, corporations, and pass-through entities.
- Paragraph (11) provides the credit and specifies the credit limitations specific to business enterprises.
- Paragraph (12) provides the credit caps.
- Paragraph (13) specifies the reporting of available credits.
- Paragraph (14) provides the process for preapproval of the contribution.
- Paragraph (15) specifies the process for confirming the contribution.
- Paragraph (16) specifies the process of claiming the credit.
- Paragraph (17) specifies the process of claiming the credit electronically.
- Paragraph (18) specifies the rules for credit carryforwards.

- Paragraph (19) specifies the rules for claiming the contribution as a deduction and as a credit.
- Paragraph (20) provides the rules for awarding scholarships.
- Paragraph (21) provides the rules for designating the contribution.
- Paragraph (22) provides the effective date of the regulation.

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-8
RETURNS AND COLLECTIONS**

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560-7-8-.47 Qualified Education Expense Credit.

560-7-8-.47 Qualified Education Expense Credit.

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of O.C.G.A. § 48-7-29.16, which provides a credit for qualified education expenses. Other provisions and conditions regarding student scholarship organizations and the qualified education expense credit are set forth in O.C.G.A. § 48-7-29.16 and Chapter 2A of Title 20.

~~(2) **Definitions for purposes of O.C.G.A. § 48-7-29.16, Chapter 2A of Title 20, and this regulation.**~~

(a) "Qualified Education Expense Credit" means the credit allowed pursuant to O.C.G.A. § 48-7-29.16.

(b) "Fiscal Year" means the taxable year of the SSO.

(c) "Calendar Year Report" means the annual informational report that must be prepared on a calendar year basis and submitted to the Department of Revenue ~~by January 12 of the year following the calendar year.~~

(d) "Audit Report" means the annual audit report that is prepared by an independent certified public accountant after completing the annual audit that is required by O.C.G.A. § 20-2A-2.

(e) "SSO" means a student scholarship organization as defined in O.C.G.A. § 20-2A-1.

(f) "Expenditure of Funds" means the expenditure of lawful money of the United States and does not include other intangible assets such as stocks, bonds, etc.

(g) "Federal Poverty Level" means the poverty guidelines issued each year in the Federal Register by the Department of Health and Human Services.

(h) "Form 990" means the annual information returns and electronic notices of the Federal Form 990 series filed with the Internal Revenue Service including Form 990, Form 990-EZ, and Form 990-N.

(i) "Business Enterprise" means an insurance company or the headquarters of an insurance company as defined in O.C.G.A. § 48-7-29.16.

(3) Coordination of Agencies.

(a) Each SSO must annually submit notice to the Department of Education, in accordance with the Department of Education's guidelines, concerning their participation as an SSO.

(b) The Department of Education will maintain on its website a current list of all SSOs that have provided notice.

(c) The Office of Commissioner of Insurance and Safety Fire is the state agency that administers the gross premium tax.

(4) **~~Annual Audit Report.~~**

(a) O.C.G.A. § 20-2A-2 requires that an ~~annual~~-audit be conducted annually by an independent certified public accountant in accordance with generally accepted auditing standards. The audit shall be completed and the audit report issued within 120 days after the end of the SSO's fiscal year.

(b) The audit report must verify that the SSO has complied with all requirements of O.C.G.A. § 20-2A-2.

(c) As is required by O.C.G.A. § 20-2A-3, the ~~annual~~-audit report shall be submitted to the Department of Revenue ~~on or before the January 12 date~~within sixty days following completion of the audit report.

(d) Each SSO shall submit with the audit report a signed declaration certifying that it has complied with and is in compliance with all legal and regulatory requirements imposed by state or federal law. The signed declaration shall be signed by the SSO's president, chief executive officer, or authorized representative.

(5) **~~Fees or Assessments Report.~~** ~~Each student scholarship organization shall submit an annual report to the Department of Revenue by January 12, showing the amount of any fees or assessments retained by the student scholarship organization during the calendar year. The report shall be prepared on a calendar year basis regardless of the fiscal year of the SSO and shall be included on the Form IT-QEE SSO2. Such information shall not be published~~

100 ~~on the Department's website.~~**Form 990.** Each SSO must submit a
101 copy of its most recent Form 990 to the Department of Revenue
102 through the Georgia Tax Center.

103
104 **(6) Calendar Year Report.**
105

106 (a) The calendar year report shall be submitted by the SSO by
107 January 12 of the year following the immediately preceding calen-
108 dar year, subject to the time limits provided for in O.C.G.A. § 20-
109 2A-2 and paragraph (4) of this regulation. See paragraph (7) for
110 examples on the timing of reports. Form "IT-QEE-SSO2" shall be
111 ~~the form~~ used to submit the report. The report shall be submitted
112 electronically in the manner specified by the Department.
113

114 (b) The calendar year report shall be prepared on a calendar-
115 year basis, regardless of the fiscal year of the SSO.
116

117 (c) The calendar year report shall include the following:
118

119 1. The total number and dollar value of individual contributions
120 and qualified education expense credits preapproved; — individual
121 contributions include contributions made by those filing income
122 tax returns as single, head of household, married filing separate,
123 and married filing joint;
124

125 2. The total number and dollar value of corporate, trust, S-cor-
126 poration, and partnership contributions and qualified education ex-
127 pense credits preapproved;
128

129 3. The total number and dollar value of scholarships awarded
130 to eligible students;
131

132 4. The total number of scholarship recipients whose families'

adjusted gross income falls:

(i) Under 125% of the federal poverty level;

(ii) At or above 125% and below or at 250% of the federal poverty level;

(iii) Above 250% and below or at 400% of the federal poverty level; and

(iv) Above 400% of the federal poverty level;

5. The total number of scholarship recipients and the average scholarship dollar amount by each county within which any scholarship recipient resides;

~~5.6.~~ The average scholarship dollar amount by adjusted gross income category as provided in subparagraph (c)4. of this paragraph. For scholarships awarded in a particular calendar year, the SSO shall use that calendar year's federal poverty level. The SSO shall consider the number of persons in the scholarship recipient's family when making the determination under subparagraph (c)4. of this paragraph;

~~(i) Example. For the 2019 calendar year, Form "IT-QEE-SSO2" which is due on January 12, 2020, the SSO shall use the 2019 federal poverty level.~~

~~6.7.~~ A list of donors (which includes ~~the~~each donor's name and address), including the dollar value of each donation and the dollar value of each preapproved qualified education expense credit; ~~and~~

~~7.8.~~ A copy of the last audit report as required under subpara-

graph (4)(c) conducted pursuant to O.C.G.A. § 20-2A-2; and

8-9. The amount of the fees or assessments ~~as required by paragraph (5) of this regulation~~ retained by the SSO during the calendar year.

(d) The Department of Revenue shall post on its website the information received from each SSO under subparagraphs (c)1. through (c)5-6. and (c)8. of this paragraph, except for any confidential taxpayer information received pursuant to subparagraph (c)8. of this paragraph and paragraph (4) of this regulation.

(7) Examples of the Timing of Reports.

(a) An SSO's first year begins on January 1, ~~2019~~2023, and ends on December 31, ~~2019~~2023. By January 12, ~~2020~~2024, the SSO must submit the required calendar year report ~~and the required fees or assessments report~~ for the calendar year that ended December 31, ~~2019~~2023. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, ~~2020~~2024. The SSO must complete the audit by April 29, 2024 and submit the audit report and signed declaration within sixty days of completion of the audit. The audit report submitted on or before January 12, ~~2024~~2025, will include the results of the audit for the year ending December 31, ~~2019~~2023.

(b) An SSO's first fiscal year begins on May 1, ~~2019~~2023, and ends on April 30, ~~2020~~2024. By January 12, ~~2020~~2024, the SSO must submit the required calendar year report ~~and the required fees or assessments report~~ for the calendar year that ended December 31, ~~2019~~2023. No audit report will need to be submitted for this first year since the due date for completing the audit report falls

199 after the deadline of January 12, ~~2020~~2024. The SSO must com-
200 plete the audit by August 28, 2024 and submit the audit report and
201 signed declaration within sixty days of completion of the audit.
202 The audit report submitted on or before January 12, ~~2021~~2025, will
203 include the results of the audit for the fiscal year ending April 30,
204 ~~2020~~2024.

205
206 (c) An SSO's first fiscal year begins on December 1, ~~2019~~2023,
207 and ends on November 30, ~~2020~~2024. By January 12, ~~2020~~2024,
208 the SSO must submit the required calendar year report ~~and the re-~~
209 ~~quired fees or assessments report~~ for the calendar year that ended
210 December 31, ~~2019~~2023. No audit report will need to be submitted
211 for this first year since the due date for completing the audit report
212 falls after the deadline of January 12, ~~2020~~2024. By January 12,
213 ~~2021~~2025, they must submit the required calendar year report ~~and~~
214 ~~the required fees and assessments report~~ for the calendar year that
215 ended December 31, ~~2020~~2024. No audit report will need to be
216 submitted for this second year since the due date for completing
217 the audit report falls after the deadline of January 12, ~~2021~~2025.
218 The SSO must complete the audit by March 30, 2025 and submit
219 the audit report and signed declaration within sixty days of com-
220 pletion of the audit. The audit report submitted on or before Janu-
221 ary 12, ~~2022~~2026, will include the results of the audit for the fiscal
222 year ending November 30, ~~2020~~2024.

223
224 (8) **Failure of the Audit Report to Verify or Failure to**
225 **Submit the Audit Report as Required under O.C.G.A. § 20-2A-**
226 **2.** Notwithstanding O.C.G.A. §§ 20-2A-7, 48-2-15, 48-7-60, 48-7-
227 61 and paragraph (9) of this regulation, if the audit report submit-
228 ted by the SSO fails to verify: that the SSO obligated its annual
229 revenue received from donations for scholarships or tuition grants,
230 including any interest earned on deposits and investments of such
231 funds, as required under O.C.G.A. § 20-2A-2; that obligated reve-

nues were designated for specific student recipients within the time frame required under O.C.G.A. § 20-2A-2; and that all obligated and designated revenue distributed to a qualified school or program for the funding of multiyear scholarships or tuition grants complied with this regulation; then the Department shall post on its website the details of such failure to verify. If the audit report is not submitted by the required time, the SSO shall be deemed to have failed all three ~~of the~~ requirements. Until the noncompliant SSO submits an amended audit (or the required audit report in the case of a failure to submit the audit report by the required time), which to the satisfaction of the Department contains the verifications required under O.C.G.A. § 20-2A-2, the Department shall not preapprove any contributions to the noncompliant SSO.

(9) **Failure to Report and Confidentiality.** Any SSO that does not submit the audit report, ~~or the calendar year report, or fees or assessments report~~ as required under this regulation or receives a qualified opinion or a disclaimer on their audit report from an independent certified public accountant or otherwise fails to comply with the requirements of Chapter 2A of Title 20 shall be given written notice of their failure and shall have ~~90~~ninety days from receipt of such notice to correct all deficiencies.

(a) If the SSO fails to correct all deficiencies within ~~90~~ninety days of receipt of notice from the Department, such SSO shall:

1. Be immediately removed from the Department of Education's list of approved SSOs.

2. Be required to cease all operations as an SSO and transfer all scholarship account funds to a properly operating SSO within ~~30~~thirty calendar days of receipt of notice from the Department of removal from the approved list; and

265
266 3. Have all applications for preapproval of tax credits under
267 O.C.G.A. § 48-7-29.16 rejected by the Department on or after the
268 date that the Department of Education removes the SSO from its
269 list of approved SSOs.

270
271 (b) Except for the audit report information posted under sub-
272 paragraph (d) of paragraph (6), information reported under subpar-
273 agraphs (c)1. through (c)5-6. of paragraph (6) of this regulation,
274 and details of any failure to report and verify under paragraph (8)
275 of this regulation, all information or reports provided by SSOs to
276 the Department shall be confidential taxpayer information, gov-
277 erned by O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61.

278
279 **(10) Credit Limitations for Individuals and Corporations.**
280 The amount of qualified education expense credit granted to a tax-
281 payer shall not exceed:

282
283 (a) For an individual taxpayer, except as otherwise provided in
284 this paragraph, the credit is limited to the lesser of the actual
285 amount expended or the dollar amount provided in O.C.G.A. § 48-
286 7-29.16.

287
288 (b) For an individual taxpayer filing a married filing separate
289 return, the credit is limited to the lesser of the actual amount ex-
290 pended or ~~\$1,250.00~~\$2,500.00 per tax year.

291
292 (c) For an individual taxpayer who is a member of a limited lia-
293 bility company duly formed under state law (including a member
294 who owns a single-member limited liability company that is disre-
295 garded for income tax purposes), a shareholder of a Subchapter 'S'
296 corporation, or a partner in a partnership, the credit is limited to the
297 lesser of the actual amount expended or ~~\$10,000~~\$25,000 per tax

year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter 'S' corporation, or partner ~~in~~of a partnership. In determining such Georgia income, the shareholder, partner, or member shall exclude any income that was subtracted on their individual Georgia return because the entity paid tax at the pass-through entity level in Georgia as provided in Regulation 560-7-3-.03. If the individual taxpayer is a member, partner, or shareholder in more than one pass-through entity, the total credit allowed cannot exceed ~~\$10,000~~\$25,000; the individual taxpayer decides which pass-through entities to include when computing Georgia income for purposes of the qualified education expense credit. All Georgia income, loss, and expense from the taxpayer's selected pass-through entities will be combined to determine Georgia income for purposes of the qualified education expense credit. Such combined Georgia income shall be multiplied by the applicable marginal tax rate to determine the tax that was actually paid. If the taxpayer is filing a joint return, the taxpayer's spouse may also claim a credit for their ownership interests and shall separately be eligible for a credit as provided in this subparagraph. If the taxpayer(s) chooses to be preapproved pursuant to this subparagraph, for all purposes of claiming the credit, they shall be subject to the provisions of this subparagraph and shall not be entitled to claim any other amounts provided in O.C.G.A. § 48-7-29.16 and this regulation. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated as allowed when the return is filed, the excess amount cannot be claimed by the taxpayer and cannot be carried forward.

1. Example: Taxpayer, an individual taxpayer, is the sole shareholder of A, Inc., an S corporation; Taxpayer is also a 50% partner; in BC Company, a partnership, and Taxpayer is also a

331 20% member of a limited liability company, XYZ Company,
332 which is taxed as a partnership. Taxpayer requests preapproval for
333 the qualified education expense credit for calendar year ~~2019~~2023
334 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpay-
335 er estimates that ~~the Taxpayer's~~ Georgia income from A, Inc. is
336 ~~\$120,000~~\$300,000, and that Taxpayer's share of Georgia income
337 from BC Company is ~~\$60,000~~\$150,000. Taxpayer chooses not to
338 include any income from XYZ Company when estimating Georgia
339 income for purposes of the qualified education expense credit;
340 therefore the Department preapproves Taxpayer for
341 ~~\$10,000~~\$25,000 qualified education expense credit (since
342 ~~\$10,000~~\$25,000 is less than ~~\$10,350~~\$25,875 (5.75% of
343 ~~\$180,000~~\$450,000)). ~~The~~ applicable marginal tax rate for
344 ~~2019~~2023 is 5.75%. Taxpayer makes a ~~\$10,000~~\$25,000 donation
345 to the SSO within ~~60~~sixty days of receiving preapproval from the
346 Department and before the end of ~~2019~~2023. When Taxpayer files
347 Taxpayer's ~~2019~~2023 Georgia income tax return, Taxpayer re-
348 ceived a salary from A, Inc. of ~~\$50,000~~\$100,000 and A, Inc.'s ac-
349 tual Georgia income is ~~\$60,000~~\$100,000. Taxpayer's actual share
350 of Georgia income from BC Company is ~~\$20,000~~\$100,000 and
351 Taxpayer received a guaranteed payment from BC Company of
352 ~~\$15,000~~\$45,000. Taxpayer's actual share of Georgia income from
353 XYZ Company is \$5,000 (~~the~~ Taxpayer can choose to include this
354 company even though it was not considered at the time of preap-
355 proval). Taxpayer can only claim ~~\$8,625~~\$20,125 qualified educa-
356 tion expense credit (which is 5.75% of the ~~\$150,000~~\$350,000 actu-
357 al income from Taxpayer's selected pass-through entities), and the
358 extra ~~\$1,375~~\$4,875 cannot be claimed by Taxpayer and cannot be
359 carried forward. Any amount of the ~~\$8,625~~\$20,125 qualified edu-
360 cation expense credit claimed but not used on the taxpayer's
361 ~~2019~~2023 Georgia income tax return shall be allowed to be carried
362 forward to apply to ~~the Taxpayer's~~ succeeding five years' tax lia-
363 bility.

(d) For a corporate taxpayer, fiduciary taxpayer, an S corporation that makes the election to pay tax at the entity level under O.C.G.A. § 48-7-21, or a partnership that makes the election to pay tax at the entity level under O.C.G.A. § 48-7-23, the credit is limited to the lesser of the actual amount expended or 75 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability. S corporations and partnerships that elect to pay taxes at the entity level cannot pass the credit through to their shareholders or partners. A fiduciary entity cannot pass through the credit through to its beneficiaries.

1. Example: Taxpayer, a Corporation, requests preapproval for the qualified education expense credit for calendar year ~~2019~~2023 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates its income tax liability for the ~~2019~~2023 tax year to be \$100,000; therefore the Department preapproves Taxpayer for \$75,000 qualified education expense credit for calendar year ~~2019~~2023. Taxpayer makes a \$75,000 donation to the SSO within ~~60~~sixty days of receiving preapproval from the Department and before the end of ~~2019~~2023. When Taxpayer files ~~their~~its ~~2019~~2023 Georgia income tax return, Taxpayer's income tax liability for tax year ~~2019~~2023 is \$80,000; Taxpayer can only claim \$60,000 of qualified education expense credit (which is 75% of ~~their~~its actual income tax liability for tax year ~~2019~~2023), and the extra \$15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$60,000 qualified education expense credit claimed but not used on the taxpayer's ~~2019~~2023 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

2. Example: Taxpayer, a S Corporation electing to pay tax at the entity level, requests preapproval for the qualified education

397 expense credit for calendar year 2023 by submitting Form IT-
398 QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates its income
399 tax liability for the 2023 tax year to be \$100,000; therefore the De-
400 partment preapproves Taxpayer for \$75,000 qualified education
401 expense credit for calendar year 2023. Taxpayer makes a \$75,000
402 donation to the SSO within sixty days of receiving preapproval
403 from the Department and before the end of 2023. When Taxpayer
404 files its 2023 Georgia income tax return, Taxpayer's income tax
405 liability for tax year 2023 is \$80,000. Taxpayer can only claim
406 \$60,000 of qualified education expense credit (which is 75% of its
407 actual income tax liability for tax year 2023), and the extra
408 \$15,000 cannot be claimed by Taxpayer and cannot be carried
409 forward. Any amount of the \$60,000 qualified education expense
410 credit claimed but not used on the taxpayer's 2023 Georgia income
411 tax return shall be allowed to be carried forward to apply to the
412 taxpayer's succeeding five years' tax liability but shall not be al-
413 lowed to be passed through to and used by the shareholders.

414
415 (e) Except as provided in subparagraph (10)(d) of this regula-
416 tion, when the taxpayer is a pass-through entity which has no in-
417 come tax liability of its own, the tax credits will be considered
418 earned by its members, shareholders, or partners based on their
419 profit/loss percentage at the end of the year and the limitations of
420 subparagraph (10)(c) of this regulation. The expenditure is made
421 by the pass-through entity but all credit forms (preapproval, claim-
422 ing, and reporting) will be filed in the name of its members, share-
423 holders, or partners and the credit can only be applied against the
424 shareholders', members', or partners' tax liability on their income
425 tax returns. The pass-through entity shall provide all necessary in-
426 formation to the student scholarship organization so that the preap-
427 proval, claiming, and reporting forms can be filed in the name of
428 its members, shareholders, or partners.

429

430 (11) Credit and Credit Limitations Specific to Business En-
431 terprises. The amount of qualified education expense credit
432 granted to a business enterprise against its gross premium tax lia-
433 bility owed pursuant to O.C.G.A. § 33-8-4 is limited to the lesser
434 of the actual amount expended or 75 percent of the business enter-
435 prise's gross premium tax liability. Such credit shall not exceed one
436 million dollars.

437
438 ~~(11)~~(12) **Credit Cap.** In no event shall the total amount of tax
439 credits allowed under O.C.G.A. § 48-7-29.16 exceed:

440
441 (a) One hundred million dollars per year for calendar years be-
442 ginning on or after January 1, 2019, and ending on or before De-
443 cember 31, 20282022; and

444
445 (b) ~~Fifty-eight~~One hundred twenty million dollars per year for
446 the calendar years beginning on or after January 1, ~~2029~~2023, ~~and~~
447 ~~for all subsequent calendar years.~~

448
449 (c) In no event shall the aggregate amount of tax credits al-
450 lowed under this paragraph to all business enterprises for gross
451 premium tax liability owed exceed six million dollars.

452
453 ~~(12)~~(13) **Reporting the Availability of the Credit.** The De-
454 partment shall post on its website the current amount of qualified
455 education expense credits available.

456
457 ~~(13)~~(14) **Preapproval of the Contribution.**

458
459 (a) The taxpayer must electronically submit Form IT-QEE-TP1
460 through the Georgia Tax Center to request preapproval of the qual-
461 ified education expense credit from the Department of Revenue.
462 The Department will not preapprove any qualified education ex-

pense credit where the Form IT-QEE-TP1 is submitted or filed in any other manner. Each SSO shall be registered with the Department to facilitate the web-based preapproval process for Form IT-QEE-TP1.

(b) The contributor should not submit Form IT-QEE-TP1 to the Department of Revenue until the contributor's recipient SSO is listed on the Department of Education's website. If the contributor's recipient SSO is not listed on the website at the time that the Department of Revenue attempts to verify the SSO's listing, the Department of Revenue shall deny the request. If at a later date the contributor's recipient SSO becomes listed, it will be necessary for a new Form IT-QEE-TP1 to be submitted by the contributor to the Department of Revenue.

(c) The electronic Form "IT-QEE-TP1" shall include the following information:

1. The name of the SSO listed on the Department of Education's website to which the contribution will be made. The SSO should be listed on the Department of Education's website before the Form "IT-QEE-TP1" is filed with the Department of Revenue;

2. The taxpayer identification number of the SSO to which the contribution will be made;

3. The name, address and taxpayer identification number of the contributor;

4. The type of taxpayer;

5. If the contributor is an individual, the filing status;

496 6. If the contributor is an individual filing a joint return, the
497 name and identification number of the joint filer;:

498
499 7. The intended contribution amount;:

500
501 8. If the contributor is a corporation, fiduciary, electing S cor-
502 poration, or electing partnership, 75% of the estimated income tax
503 liability the corporation, fiduciary, electing S corporation, or elect-
504 ing partnership expects for the tax year of the corporation, fiduci-
505 ary, S corporation, or partnership in which the contribution will be
506 made;:

507
508 9. If the contributor is a business enterprise requesting preap-
509 proval for credit against its gross premium tax liability, 75% of the
510 estimated gross premium tax liability the business enterprise ex-
511 pects for the tax year of the business enterprise in which the con-
512 tribution will be made;

513
514 ~~9.~~10. Tax year end of the contributor;:

515
516 ~~10.~~11. Calendar year in which the contribution will be made;:

517
518 ~~11.~~12. Any other information the Commissioner of the De-
519 partment of Revenue may require;: and

520
521 ~~12.~~13. Certification that all information contained on the Form
522 "IT-QEE-TP1" is true to his/her best knowledge and belief and is
523 submitted for the purpose of obtaining preapproval from the
524 Commissioner.

525
526 (d) The qualified education expense credit shall be allowed on
527 a first-come, first-served basis. The date the Form IT-QEE-TP1 is
528 electronically submitted shall be used to determine such first-

529 come, first-served basis.

530

531 (e) The Department will notify each taxpayer and the taxpayer's
532 selected SSO of the tax credits preapproved and allocated to such
533 taxpayer within thirty days from the date the Form IT-QEE-TP1
534 was received.

535

536 (f) On the day any Form IT-QEE-TP1 is received for a calendar
537 year that causes the calendar year limit in paragraph ~~(11)~~(12) of
538 this regulation to be reached, ~~then~~ the remaining tax credits shall
539 be allocated among the applicants who submitted the Form IT-
540 QEE-TP1 on the day the calendar year limit was exceeded on a pro
541 rata basis based upon the amounts otherwise allowed by O.C.G.A.
542 § 48-7-29.16 and this regulation. Only credit amounts on Form IT-
543 QEE-TP1(s) received on the day the calendar year limit was ex-
544 ceeded shall be allocated on a pro rata basis.

545

546 (g) The contribution must be made by the taxpayer within sixty
547 days of the date of the preapproval notice received from the De-
548 partment and within the calendar year in which it was preapproved.

549

550 (h) In the event it is determined that the contributor has not met
551 all the requirements of O.C.G.A. § 48-7-29.16, then the amount of
552 the qualified education expense credit shall not be preapproved or
553 the preapproved qualified education expense credit shall be retro-
554 actively denied. With respect to such denied credit, tax ~~and~~, inter-
555 est, and penalties shall be due if the qualified education expense
556 credit has already been claimed.

557

558 (i) Notwithstanding any laws to the contrary, the Department
559 shall not take any adverse action against donors to SSOs if the
560 Commissioner preapproved a donation for a tax credit prior to the
561 date the SSO is removed from the Department of Education list

pursuant to O.C.G.A. § 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with O.C.G.A. § 48-7-29.16(f)(3).

(j) Once the calendar year limit is reached for a calendar year, taxpayers shall no longer be eligible for a credit pursuant to O.C.G.A. § 48-7-29.16, for such calendar year. If any Form IT-QEE-TP1 is received after the calendar year limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

~~(14)~~(15) **Letter of Confirmation.** Form IT-QEE-SSO1 shall be provided by the SSO to the taxpayer to confirm the contribution.

~~(15)~~(16) **Claiming the Credit.** A taxpayer claiming the qualified education expense credit, unless indicated otherwise by the Commissioner, must submit Form IT-QEE-TP2 with the taxpayer's Georgia tax return when the qualified education expense credit is claimed. A software program's Form IT-QEE-TP2 that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(a) A business enterprise claiming the qualified education expense credit against its gross premium tax liability must claim the credit in the manner required by the Office of Commissioner of Insurance and Safety Fire.

~~(16)~~(17) **E-filing Attachment Requirements.** If a taxpayer claiming the credit electronically files their tax return, the Form IT-QEE-SSO1 shall be required to be attached to the return only if the Internal Revenue Service allows such attachments when the data is transmitted to the Department. In the event the taxpayer

595 files an electronic return and such information is not attached be-
596 cause the Internal Revenue Service does not, at the time of such
597 electronic filing, allow electronic attachments to the Georgia re-
598 turn, such information shall be maintained by the taxpayer and
599 made available upon request by the Commissioner.
600

601 ~~(17)~~(18) **Carry Forward.** Any credit which is claimed but not
602 used in a taxable year shall be allowed to be carried forward to ap-
603 ply to the taxpayer's succeeding five years' tax liability. However,
604 any amount in excess of the credit amount limits in paragraphs
605 (10) and (11) of this regulation shall not be eligible for carryfor-
606 ward to the taxpayer's succeeding years' tax liability nor shall such
607 excess amount be claimed by or reallocated to any other taxpayer.
608

609 ~~(18)~~(19) **Taxpayer Must Add Back Portion of Federal De-**
610 **duction on State Return if Taxpayer Takes State Credit.**
611 O.C.G.A. § 48-7-29.16(h)(1) provides that no qualified education
612 expense credit shall be allowed under O.C.G.A. § 48-7-29.16; with
613 respect to any amount deducted from taxable net income by the
614 taxpayer as a charitable contribution to a bona fide charitable or-
615 ganization qualified under Section 501(c)(3) of the Internal Reve-
616 nue Code. If the taxpayer is allowed the state income tax deduction
617 in place of the charitable contribution deduction as allowed by the
618 Internal Revenue Service, for purposes of this paragraph such de-
619 duction shall be considered a charitable contribution to the extent
620 such deduction is allowed federally. Accordingly, the taxpayer
621 must add back to Georgia taxable income that part of any federal
622 deduction taken on a federal return for which a Georgia qualified
623 education expense credit is allowed under O.C.G.A. § 48-7-29.16.
624

625 (a) If a taxpayer's itemized deductions are limited federally
626 (and therefore limited for Georgia purposes) because their Federal
627 Adjusted Gross Income exceeds a certain amount, the taxpayer is

only required to add back to Georgia taxable income that portion of the federal charitable deduction that was actually deducted pursuant to the following formula. The federal charitable deduction that must be added back to Georgia taxable income shall be the amount of the federal charitable contribution relating to the qualified education expense credit multiplied by the following ratio. The numerator is the amount of the itemized deductions subject to limitation and allowed as itemized deductions after the limitation is applied. The denominator is the total itemized deductions that are subject to limitation before the limitation is applied.

1. For example. A taxpayer has a \$2,500 charitable contribution relating to the qualified education expense credit and has property taxes of \$1,500 both of which are subject to limitation. The taxpayer also has ~~investment mortgage~~ interest expense of \$10,000 (which is not limited). Accordingly, the taxpayer's total itemized deductions before limitation are \$14,000. After applying the federal limitation, the taxpayer is allowed \$13,000 in itemized deductions. As such only \$3,000 (\$13,000 less the \$10,000 ~~investment mortgage~~ interest expense which is not limited) of the original \$4,000 charitable deduction and property taxes are allowed to be deducted. Applying the ratio from the subparagraph above, the taxpayer must add back \$1,875 of the charitable contribution to their Georgia taxable income $(\$2,500) \times (\$3,000 / \$4,000)$.

~~(19)(20)~~ **Scholarships.**

(a) For all scholarships, including multi-year scholarships, the SSO shall ~~either: deliver the scholarship check directly to the qualified school or program selected as a result of the private choice of the parent or guardian of the child to whom the scholarship was awarded. The parent or guardian of the student shall come to such~~

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~~qualified school or program and restrictively endorse the check to such qualified school or program for deposit into the account of such qualified school or program as is required by O.C.G.A. § 20-2A-5. Such qualified school or program shall not be allowed to endorse the check over to a different qualified school or program.~~

1. Deliver the scholarship check directly to the qualified school or program selected as a result of the private choice of the parent or guardian of the child to whom the scholarship was awarded. The parent or guardian shall come to such qualified school or program and restrictively endorse the check to such qualified school or program; or

2. Cause such scholarship to be restrictively endorsed electronically in a secure manner by the parent or guardian to the school or program. The applicable financial institution providing for the secure electronic endorsement and transfer of funds shall provide a signed statement to the SSO attesting to the fact that the electronic restrictive endorsement has the same legal effect as a physically endorsed check.

(b) The qualified school or program shall not be allowed to endorse the scholarship award over to a different qualified school or program.

~~(b)~~(c) In the event an SSO awards a multi-year scholarship, the SSO may disburse the entire scholarship at the time the scholarship is awarded.

~~(c)~~(d) For all scholarships, including multi-year scholarships, the qualified school or program shall separately account for each scholarship awarded. Additionally, the income earned on the portion of the scholarship which has not yet been applied to tuition

694 shall be separately accounted for and ~~shall be~~ used to provide tui-
695 tion for such eligible student. The scholarship shall be applied to
696 tuition on the same due dates as the general population of students
697 of such school.

698
699 ~~(d)~~(e) In making a multi-year distribution to a qualified school
700 or program, the SSO shall require that if the designated student be-
701 comes ineligible or for any other reason the qualified school or
702 program elects not to continue disbursement of the multi-year
703 scholarship or tuition grant to the designated student for all the
704 projected years, then the qualified school or program shall imme-
705 diately return the remaining funds and the income earned on such
706 portion to the SSO ~~and the income earned on such portion~~. Upon
707 receipt of such returned scholarship, such SSO shall allocate and
708 obligate such money for scholarships or tuition grants on or before
709 the end of the following calendar year; 100% of such returned
710 money (including the remaining funds and the income earned on
711 such portion) shall be allocated and obligated. Once a qualified
712 school or program receives such returned money and such income
713 earned on such returned money, 100% of such amounts received
714 shall be used for an eligible student.

715
716 1. Once the student scholarship organization designates obli-
717 gated revenues for specific student recipients, in the case of multi-
718 year scholarships or tuition grants for which the student scholar-
719 ship organization distributes the obligated and designated revenues
720 to a qualified school or program annually rather than the entire
721 amount, if the designated student becomes ineligible or for any
722 other reason the student scholarship organization elects not to con-
723 tinue disbursement for all years, then the student scholarship or-
724 ganization shall designate any remaining previously obligated rev-
725 enues for a new specific student recipient on or before the end of
726 the following calendar year.

727

728 ~~(20)~~**(21) Designation of Contributions.** The tax credit shall
729 not be allowed if the taxpayer directly or indirectly designates the
730 taxpayer's qualified education expense for the direct benefit of any
731 particular individual, whether or not such individual is a dependent
732 of the taxpayer.

733

734 (a) In soliciting contributions, an SSO shall not represent, or di-
735 rect a qualified school or program to represent, that in exchange for
736 contributing to the SSO, a taxpayer shall receive a scholarship for
737 the direct benefit of any particular individual, whether or not such
738 individual is a dependent of the taxpayer. Their status as an SSO
739 shall be revoked for any such organization which violates this sub-
740 paragraph and as such the SSO shall be removed from the Depart-
741 ment of Education's list of approved SSOs ~~and, the~~ The Department
742 shall not preapprove any contributions to such SSO.

743

744 ~~(21)~~**(22) Effective Date.** This rule is applicable to years be-
745 ginning on or after January 1, ~~2022~~2023. Years beginning before
746 January 1, ~~2022~~2023 will be governed by the regulations of Chap-
747 ter 560-7 as they existed before January 1, ~~2022~~2023 in the same
748 manner as if the amendments thereto set forth in this regulation
749 had not been promulgated.

750

751 Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.16.