

Frank M. O'Connell
State Revenue Commissioner



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

NOTICE IT-2023-3

RE: Proposal to adopt Rule 560-7-8-.68 Qualified Foster Child Donation 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 adopt Rule 560-7-8-.68.

Attached to this notice are an exact copy and a synopsis of the proposed Rule. The proposed Rule is being adopted under the authority of O.C.G.A. §§ 48-2-12 and 48-7-29.24.

The Department of Revenue will consider the Adoption of the above Rule at a regulation hearing held at 1800 Century Boulevard, NE, Atlanta, GA 30345, Room L300, on May 2, 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 2, 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-2023-3" 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-.68 Qualified Foster Child Donation Credit

The purpose of proposed Rule 560-7-8-.68 is to provide guidance concerning the implementation and administration of the qualified foster child donation credit under O.C.G.A. § 48-7-29.24. This credit was added by House Bill 424 from the 2021-2022 Session of the General Assembly.

- Rule 560-7-8-.68 is being adopted to provide guidance concerning the implementation and administration of the qualified foster child donation credit. Specific changes are denoted in the attached Rule.
- Paragraph (1) provides the purpose of the regulation.
- Paragraph (2) provides for the coordination of the Department of Revenue and the Division of Family and Children Services of the Department of Human Services in administering the credit.
- Paragraph (3) provides the definitions.
- Paragraph (4) specifies the certification process for foster child support organizations.
- Paragraph (5) specifies the credit cap per year.
- Paragraph (6) provides the credit amount and limitations based on taxpayer type.
- Paragraph (7) provides the Form 990 submission requirement.
- Paragraph (8) specifies the requirements for the contributions report.
- Paragraph (9) specifies the information to be posted on the Department's website.
- Paragraph (10) defines confidential taxpayer information.
- Paragraph (11) provides the process for preapproval of the contribution.
- Paragraph (12) specifies the process for confirming the contribution.
- Paragraph (13) specifies how the credit is claimed.
- Paragraph (14) specifies the process of claiming the credit electronically.
- Paragraph (15) provides the carryforward for the credit.
- Paragraph (16) specifies the rules for claiming the contribution as a deduction and as a credit.
- Paragraph (17) specifies the information to be posted on the qualified foster child support organization's website.

- Paragraph (18) specifies the rules designating the contribution.
- Paragraph (19) specifies the rules for taxpayers who contract with a qualified foster child support organization.
- Paragraph (20) specifies the rules for soliciting contributions.
- Paragraph (21) specifies the procedures for failures to comply with the Code section and the regulations.
- 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-.68 Qualified Foster Child Donation Credit.

560-7-8-.68 Qualified Foster Child Donation Credit.

(1) Purpose. The purpose of this regulation is to provide guidance concerning the administration of the tax credit under O.C.G.A. § 48-7-29.24.

(2) Coordination of Agencies. The Division of Family and Children Services of the Georgia Department of Human Services is the state agency responsible for certifying foster child support organizations and shall establish and maintain a web-based application process for certifying foster child support organizations as qualified organizations.

(3) Definitions.

(a) The terms "qualified contributions", "qualified expenditures", and "foster child support organization" shall have the same meaning as in O.C.G.A. § 48-7-29.24.

(b) "Form 990" means the annual information returns and electronic notices of the Federal Form 990 series filed with the Internal

34 Revenue Service, including Form 990, Form 990-EZ, and Form
35 990-N.

36

37 (c) "Contributions Report" means the report detailing the con-
38 tributions received that must be prepared on a calendar-year basis
39 and submitted to the Department.

40

41 (4) **Certification of Qualified Foster Child Support Organi-**
42 **zation.** The foster child support organization must apply for certi-
43 fication as a qualified foster child support organization using the
44 web-based application process maintained by the Division of
45 Family and Children Services of the Georgia Department of Hu-
46 man Services on its website at: <https://dfcs.georgia.gov/>

47

48 (a) The Division of Family and Children Services of the Geor-
49 gia Department of Human Services will notify the foster child sup-
50 port organization of the approval or denial of certification.

51

52 (5) **Credit Cap.** In no event shall the aggregate amount of tax
53 credits allowed under O.C.G.A. § 48-7-29.24 exceed \$20 million
54 per calendar year or as otherwise provided under O.C.G.A. § 48-7-
55 29.24.

56

57 (6) **Credit Amount.** From January 1 to June 30 of each calen-
58 dar year, the amount of qualified foster child donation credit al-
59 lowed to a taxpayer shall be as follows:

60

61 (a) For an individual taxpayer or head of household, the credit
62 amount shall not exceed the actual amount of qualified contribu-
63 tions made or \$2,500, whichever is less.

64

65 (b) For an individual taxpayer filing a married-filing-separate
66 return, the credit amount shall not exceed the actual amount of

67 qualified contributions made or \$2,500, whichever is less.
68

69 (c) For individual taxpayers filing a married-filing-joint return,
70 the credit amount shall not exceed the actual amount of qualified
71 contributions made or \$5,000, whichever is less.
72

73 1. Example: Taxpayers, a married couple filing jointly, request
74 preapproval for the qualified foster child donation credit for calen-
75 dar year 2023 by electronically submitting Form IT-QFCD-TP1
76 through the Georgia Tax Center. On Form IT-QFCD-TP1, Tax-
77 payers' intended 2023 contribution is \$4,000; therefore, the De-
78 partment preapproves Taxpayers for a qualified foster child dona-
79 tion credit of \$4,000. Taxpayers make a \$3,000 donation to the fos-
80 ter child support organization within 60 days of receiving preap-
81 proval from the Department and before the end of 2023 (this is the
82 only amount of qualified contributions made by Taxpayers to a
83 qualified foster child support organization in 2023). When Tax-
84 payers file their 2023 Georgia income tax return, they can only
85 claim a qualified foster child donation credit of \$3,000 (which is
86 the actual amount of qualified contributions made), and the extra
87 \$1,000 that was preapproved but not contributed cannot be claimed
88 by Taxpayers and cannot be carried forward. Any amount of the
89 \$3,000 qualified foster child donation credit claimed but not used
90 on Taxpayers' 2023 Georgia income tax return shall be allowed to
91 be carried forward to apply to their succeeding five years' tax lia-
92 bility.
93

94 (d) For an individual taxpayer who is a member of a limited li-
95 ability company duly formed under state law (including a member
96 who owns a single-member limited liability company that is disre-
97 garded for income tax purposes), a shareholder of a S corporation,
98 or a partner in a partnership, the credit is limited to the actual
99 amount of qualified contributions made or \$5,000 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 S corporation, or partner in a partnership. In determining such Georgia income, the shareholder, partner, or member shall exclude any income that was subtracted on their 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 \$5,000; the individual taxpayer decides which pass-through entities to include when computing Georgia income for purposes of the qualified foster child donation credit. All Georgia income, loss, and expense from the taxpayer-selected pass-through entities will be combined to determine Georgia income for purposes of the qualified foster child donation 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 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 is also a 20% member of a limited liability company, XYZ Company, which is taxed as a partnership. Taxpayer requests preapproval for the qualified foster child donation credit for calendar year 2023 by submitting Form IT-QFCD-TP1. On Form IT-QFCD-TP1, Taxpayer estimates that the Georgia income from A, Inc. is \$60,000 and that the share of

Georgia income from BC Company is \$30,000. Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified foster child donation credit; therefore, the Department preapproves Taxpayer for a qualified foster child donation credit of \$5,000 (since \$5,000 is less than \$5,175 (5.75% of \$90,000) and the applicable marginal tax rate for 2023 is 5.75%). Taxpayer makes a \$5,000 donation to the foster child support organization within 60 days of receiving preapproval from the Department and before the end of 2023. When Taxpayer files the 2023 Georgia income tax return, Taxpayer received a salary from A, Inc. of \$20,000, and A, Inc.'s actual Georgia income is \$30,000. Taxpayer's actual share of Georgia income from BC Company is \$10,000, and Taxpayer received a guaranteed payment from BC Company of \$7,500. Taxpayer's actual share of Georgia income from XYZ Company is \$2,500 (Taxpayer can choose to include this company even though it was not considered at the time of preapproval), Taxpayer can only claim a qualified foster child donation credit of \$4,025 (which is 5.75% of the \$70,000 actual income from Taxpayer's selected pass-through entities), and the extra \$975 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$4,025 qualified foster child donation credit claimed but not used on Taxpayer's 2023 Georgia income tax return shall be allowed to be carried forward to apply to Taxpayer's succeeding five years' tax liability.

(e) For a corporation 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 amount shall not exceed the actual amount of qualified contributions made or 10 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability, whichever is less. Fiduciary entities cannot pass the credit through to their bene-

166 ficiaries. S corporations and partnerships that elect to pay taxes at
167 the entity level may make an irrevocable election to pass all or part
168 of the credit through to their members, partners, or shareholders by
169 completing the “credit allocation to owners” schedule on an origi-
170 nal or amended Form 600S or Form 700.

171
172 1. Example: Taxpayer, a corporation, requests preapproval for
173 the qualified foster child donation credit for calendar year 2023 by
174 electronically submitting Form IT-QFCD-TP1 through the Georgia
175 Tax Center. On Form IT-QFCD-TP1, Taxpayer's intended 2023
176 contribution is \$15,000, and Taxpayer's estimated 2023 income tax
177 liability is \$150,000. Therefore, the Department preapproves Tax-
178 payer for a qualified foster child donation credit of \$15,000 for
179 2023. Taxpayer makes a \$15,000 donation to the foster child sup-
180 port organization within 60 days of receiving preapproval from the
181 Department and before the end of 2023. When Taxpayer files its
182 2023 Georgia income tax return, Taxpayer's 2023 income tax lia-
183 bility is \$80,000. Taxpayer can only claim a qualified foster child
184 donation credit of \$8,000 (\$8,000 is 10% of the actual 2023 Geor-
185 gia income tax liability), and the extra \$7,000 cannot be claimed
186 by Taxpayer and cannot be carried forward. Any amount of the
187 \$8,000 qualified foster child donation credit claimed but not used
188 on Taxpayer's 2023 Georgia income tax return shall be allowed to
189 be carried forward to apply to its succeeding five years' tax liabil-
190 ity.

191
192 2. Example: Taxpayer, a S corporation electing to pay tax at
193 the entity level, requests preapproval for the qualified foster child
194 donation credit for calendar year 2023 by electronically submitting
195 Form IT-QFCD-TP1 through the Georgia Tax Center. On Form
196 IT-QFCD-TP1, Taxpayer's intended 2023 contribution is \$15,000,
197 and Taxpayer's estimated 2023 income tax liability is \$150,000.
198 Therefore, the Department preapproves Taxpayer for a qualified

199 foster child donation credit of \$15,000 for 2023. Taxpayer makes a
200 \$15,000 donation to the foster child support organization within 60
201 days of receiving preapproval from the Department and before the
202 end of 2023. When Taxpayer files its 2023 Georgia income tax re-
203 turn, Taxpayer's 2023 income tax liability is \$80,000. Taxpayer
204 can only claim a qualified foster child donation credit of \$8,000
205 (\$8,000 is 10% of its actual Georgia income tax liability for tax
206 year 2023), and the extra \$7,000 cannot be claimed by Taxpayer
207 and cannot be carried forward. Any amount of the \$8,000 qualified
208 foster child donation credit claimed but not used on Taxpayer's
209 2023 Georgia income tax return shall be allowed to be carried for-
210 ward to apply to the taxpayer's succeeding five years' tax liability
211 but shall not be allowed to be passed through to and used by the
212 shareholders unless an election is made to pass the credit through
213 to the shareholders.

214
215 (f) Except as provided in subparagraph (6)(e) of this regulation,
216 when the taxpayer is a pass-through entity that has no income tax
217 liability of its own, the tax credits will be considered earned by its
218 members, shareholders, or partners based on their profit/loss per-
219 centage at the end of the year and the limitations of subparagraph
220 (6)(d) of this regulation. The expenditure is made by the pass-
221 through entity, but all credit forms (preapproval, claiming, and re-
222 porting) will be filed in the name of its members, shareholders, or
223 partners. The credit can only be applied against the shareholders',
224 members', or partners' tax liabilities on their income tax returns.
225 The pass-through entity shall provide all necessary information to
226 the foster child support organization so that the preapproval, claim-
227 ing, and reporting forms can be filed in the name of its members,
228 shareholders, or partners.

229
230 (g) From July 1 to December 31 of each calendar year of the
231 credit, the amount of qualified foster child donation credit allowed

232 to a taxpayer shall be as follows:

233

234 1. For an individual taxpayer or head of household, the credit
235 amount shall not exceed the actual amount of qualified contribu-
236 tions made.

237

238 2. For an individual taxpayer filing a married-filing-separate
239 return, the credit amount shall not exceed the actual amount of
240 qualified contributions made.

241

242 3. For individual taxpayers filing a married-filing-joint return,
243 the credit amount shall not exceed the actual amount of qualified
244 contributions made.

245

246 4. For an individual taxpayer who is a member of a limited lia-
247 bility company duly formed under state law (including a member
248 who owns a single-member limited liability company that is disre-
249 garded for income tax purposes), a shareholder of a S corporation,
250 or a partner in a partnership, the credit is limited to the actual
251 amount of qualified contributions made per tax year; provided,
252 however, that the tax credits shall only be allowed for the Georgia
253 income on which such tax was actually paid by such member of a
254 limited liability company, shareholder of a S corporation, or part-
255 ner in a partnership. In determining such Georgia income, the
256 shareholder, partner, or member shall exclude any income that was
257 subtracted on their Georgia return because the entity paid tax at the
258 pass-through entity level in Georgia as provided in Regulation
259 560-7-3-.03. From July 1 to December 31, the option to indicate
260 pass-through entity ownership is not available on the Georgia Tax
261 Center since the credit is not limited for individual taxpayers dur-
262 ing this time period. Regardless, such members may choose to ap-
263 ply the pass-through entity provisions when claiming the credit, or
264 such provisions will be applied if subparagraph (6)(g)6. of this

265 regulation applies.

266

267 5. For a corporation taxpayer, fiduciary taxpayer, an S corpora-
268 tion that makes the election to pay tax at the entity level under
269 O.C.G.A. § 48-7-21, or a partnership that makes the election to pay
270 tax at the entity level under O.C.G.A. § 48-7-23, the credit amount
271 shall not exceed the actual amount of qualified contributions made.
272 Fiduciary entities cannot pass the credit through to their beneficiar-
273 ies. S corporations and partnerships that elect to pay taxes at the
274 entity level may make an irrevocable election to pass all or part of
275 the credit through to their members, partners, or shareholders by
276 completing the “credit allocation to owners” schedule on an origi-
277 nal or amended Form 600S or Form 700. See examples in subpara-
278 graph (6)(e) of this regulation.

279

280 6. Except as provided in subparagraph (6)(g)5. of this regula-
281 tion, when the taxpayer is a pass-through entity that has no income
282 tax liability of its own, the tax credits will be considered earned by
283 its members, shareholders, or partners based on their profit/loss
284 percentage at the end of the year and the limitations of subpara-
285 graph (6)(g)4. of this regulation. The expenditure is made by the
286 pass-through entity, but all credit forms (preapproval, claiming,
287 and reporting) will be filed in the name of its members, sharehold-
288 ers, or partners. The credit can only be applied against the share-
289 holders', members', or partners' tax liabilities on their income tax
290 returns. The pass-through entity shall provide all necessary infor-
291 mation to the foster child support organization so that the preap-
292 proval, claiming, and reporting forms can be filed in the name of
293 its members, shareholders, or partners.

294

295 (h) A taxpayer may apply to make a donation to multiple foster
296 child support organizations, apply to make multiple donations to
297 the same foster child support organization, or apply to make a do-

298 nation both before and after July 1; provided, however, that each
299 donation must be applied for separately.

300
301 (7) **Form 990.** Each qualified foster child support organization
302 must submit a copy of its most recent Form 990 to the Department
303 through the Georgia Tax Center by May 15. If the qualified foster
304 child support organization filed the Form 990-N, then it must sub-
305 mit a copy of the filing confirmation or the listing by the United
306 States Internal Revenue Service of the Form 990-N filing to the
307 Department. If the qualified foster child support organization is not
308 required by federal law to file a Form 990, then the organization
309 must submit the Form 990 Proxy Spreadsheet found on the De-
310 partment's website through the Georgia Tax Center by May 15.

311
312 (8) **Contributions Report.**

313
314 (a) The contributions report detailing the contributions received
315 for the prior calendar year shall be submitted by each qualified fos-
316 ter child support organization by May 15. Form IT-QFCD-FUND2
317 shall be the form used to submit the report. The report shall be
318 submitted electronically through the Georgia Tax Center.

319
320 (b) The contributions report shall be prepared on a calendar-
321 year basis, regardless of the fiscal year of the qualified foster child
322 support organization.

323
324 (c) The contributions report shall include the following:

325
326 1. The total number and dollar value of individual contributions
327 and qualified foster child donation credits preapproved. Individual
328 contributions shall include contributions made by those filing in-
329 come tax returns as single, head of household, married filing sepa-
330 ately, and married filing jointly;

331
332 2. The total number and dollar value of corporation, trust, S
333 corporation, and partnership contributions and qualified foster
334 child donation credits preapproved;

335
336 3. The total number and dollar value of all qualified expendi-
337 tures made;

338
339 4. A list of contributors, including the dollar value of each con-
340 tribution and the dollar value of each preapproved tax credit; and

341
342 5. Any other information required by the Commissioner.

343
344 **(9) Website Posting by the Department.** The following shall
345 be posted on the Department's website:

346
347 (a) The link to the web-based application for certification as a
348 qualified organization by the Division of Family and Children Ser-
349 vices of the Georgia Department of Human Services;

350
351 (b) The list of all qualified foster child support organizations;

352
353 (c) The aggregate amount of tax credits remaining and availa-
354 ble for preapproval for each year;

355
356 (d) The web-based method for taxpayers seeking preapproval
357 status for contributions; and

358
359 (e) The Form 990 and contributions report received from each
360 qualified foster child support organization, except for the infor-
361 mation in subparagraph (c)4. of paragraph (8).

362
363 **(10) Confidential Taxpayer Information.** Except for the in-

364 formation published under paragraph (9), all information or reports
365 relative to O.C.G.A. § 48-7-29.24 and this regulation that were
366 provided by qualified foster child support organizations to the De-
367 partment shall be confidential taxpayer information, governed by
368 O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61, whether such infor-
369 mation relates to the contributing taxpayer or the qualified foster
370 child support organization.

371
372 **(11) Mandatory Electronic Preapproval of the Contribu-**
373 **tion.**

374
375 (a) The taxpayer must electronically submit Form IT-QFCD-
376 TP1 through the Georgia Tax Center to request preapproval of the
377 qualified foster child donation credit from the Department. The
378 Department will not preapprove any qualified foster child donation
379 credit where the Form IT-QFCD-TP1 is submitted or filed in any
380 other manner. Each qualified foster child support organization
381 shall be registered with the Department to facilitate the web-based
382 preapproval process for Form IT-QFCD-TP1.

383
384 (b) The taxpayer should not submit Form IT-QFCD-TP1 to the
385 Department until the taxpayer's recipient foster child support or-
386 ganization is listed on the Department's website. If the taxpayer's
387 recipient foster child support organization is not listed on the web-
388 site at the time that the Department attempts to verify the organiza-
389 tion's listing, the Department shall deny the preapproval request. If,
390 at a later date, the taxpayer's recipient foster child support organi-
391 zation becomes listed, the taxpayer will have to submit a new Form
392 IT-QFCD-TP1 to the Department.

393
394 (c) The electronic Form IT-QFCD-TP1 shall include the fol-
395 lowing information:

Returns and Collections

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- 397 1. The name of the qualified foster child support organization
398 listed on the Department's website to which the contribution will
399 be made;
400
- 401 2. The taxpayer identification number of the qualified foster
402 child support organization to which the contribution will be made;
403
- 404 3. The name, address, and taxpayer identification number of
405 the taxpayer;
406
- 407 4. The type of taxpayer;
408
- 409 5. If the taxpayer is an individual, the filing status;
410
- 411 6. If the taxpayer is an individual filing a joint return, the name
412 and taxpayer identification number of the joint filer;
413
- 414 7. The intended contribution amount;
415
- 416 8. If the taxpayer is a corporation, fiduciary, electing S corpora-
417 tion, or electing partnership, 10% of the estimated income tax lia-
418 bility the corporation, fiduciary, electing S corporation, or electing
419 partnership expects for the tax year of the corporation, fiduciary, S
420 corporation, or partnership in which the contribution will be made;
421
- 422 9. Tax year end of the taxpayer;
423
- 424 10. Calendar year in which the contribution will be made;
425
- 426 11. Any other information the Commissioner may require; and
427
- 428 12. Certification that all information contained on the Form IT-
429 QFCD-TP1 is true to his/her best knowledge and belief and is

430 submitted for the purpose of obtaining preapproval from the
431 Commissioner.

432

433 (d) The qualified foster child donation credit shall be allowed
434 on a first-come, first-served basis. The date the Form IT-QFCD-
435 TP1 is electronically submitted shall be used to determine such
436 first-come, first-served basis.

437

438 (e) The Department will notify each taxpayer and the taxpayer's
439 selected qualified foster child support organization of the tax cred-
440 its preapproved, denied, or prorated to such taxpayer within 30
441 days from the date the Form IT-QFCD-TP1 was received.

442

443 (f) On the day any Form IT-QFCD-TP1 is received for a calen-
444 dar year that causes the calendar-year limit in paragraph (5) of this
445 regulation to be reached, the remaining tax credits shall be allocat-
446 ed among the applicants who submitted the Form IT-QFCD-TP1
447 on the day the calendar-year limit was exceeded on a pro rata basis
448 based upon the amounts otherwise allowed by O.C.G.A. § 48-7-
449 29.24 and this regulation. Only credit amounts on Form IT-QFCD-
450 TP1(s) received on the day the calendar-year limit was exceeded
451 shall be allocated on a pro rata basis.

452

453 (g) The contribution must be made by the taxpayer within 60
454 days of the date of the preapproval notice received from the De-
455 partment and within the calendar year in which it was preapproved.

456

457 (h) In the event it is determined that the taxpayer has not met
458 all the requirements of O.C.G.A. § 48-7-29.24, then the amount of
459 the qualified foster child donation credit shall not be preapproved
460 or the preapproved qualified foster child donation credit shall be
461 retroactively denied. With respect to such denied credit, tax, inter-
462 est, and penalties shall be due if the qualified foster child donation

463 credit has already been claimed.

464

465 (i) If the Commissioner preapproved a donation for a tax credit
466 prior to the date the qualified foster child support organization is
467 removed from the Department's list pursuant to O.C.G.A. § 48-7-
468 29.24(j) and paragraph (21) of this regulation, notwithstanding any
469 laws to the contrary, the Department shall not take any adverse ac-
470 tion against preapproved donors, and all such donations shall re-
471 main as preapproved tax credits subject only to the donor's compli-
472 ance with O.C.G.A. § 48-7-29.24(e) and this paragraph.

473

474 (j) Once the calendar-year limit is reached for a calendar year,
475 taxpayers shall no longer be eligible for a credit pursuant to
476 O.C.G.A. § 48-7-29.24 for such calendar year. If any Form IT-
477 QFCD-TP1 is received after the calendar-year limit has been
478 reached, then it shall be denied and not be reconsidered for preap-
479 proval at any later date.

480

481 (12) **Letter of Confirmation.** Form IT-QFCD-FUND1 shall
482 be provided by the foster child support organization to the taxpayer
483 to confirm the contribution within 15 days of the contribution.

484

485 (13) **Claiming the Credit.** A taxpayer claiming the qualified
486 foster child donation credit, unless indicated otherwise by the
487 Commissioner, must submit Form IT-QFCD-TP2 with the taxpay-
488 er's Georgia tax return when the qualified foster child donation
489 credit is claimed. An electronically filed Georgia income tax return
490 that includes the software's electronic Form IT-QFCD-TP2 satis-
491 fies this requirement.

492

493 (14) **E-filing Attachment Requirements.** If a taxpayer claim-
494 ing the credit electronically files their tax return, the Form IT-
495 QFCD-FUND1 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 files an electronic return and such information is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such information shall be maintained by the taxpayer and made available upon request by the Commissioner.

(15) Carry Forward. Any credit that is claimed but not used in a taxable year shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability. However, any amount in excess of the credit amount limits in paragraph (6) of this regulation shall not be eligible for carry forward to the taxpayer's succeeding years' tax liability, nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(16) Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit. O.C.G.A. § 48-7-29.24(k) provides that no qualified foster child donation credit shall be allowed under O.C.G.A. § 48-7-29.24 with respect to any amount deducted from taxable net income by the taxpayer. If the taxpayer is allowed the state income tax deduction as allowed by the Internal Revenue Service, for purposes of this paragraph, such deduction shall be considered a charitable contribution to the extent such deduction is allowed federally. Accordingly, the taxpayer must add back to Georgia taxable income that part of any federal deduction taken on a federal return for which a Georgia qualified foster child donation credit is allowed under O.C.G.A. § 48-7-29.24.

(a) If a taxpayer's itemized deductions are limited federally (and therefore limited for Georgia purposes) because their Federal 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 foster child donation 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 charitable contribution of \$2,500 relating to the qualified foster child donation credit of \$2,500 and has property taxes of \$1,500, both of which are subject to limitation. The taxpayer also has 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 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 $((\$2,500) \times (\$3,000 / \$4,000))$.

(17) Website Posting by Qualified Foster Child Support Organization. By April 1 of each year, each qualified foster child support organization shall post on its website in a prominent place a copy of its prior year's annual budget.

(a) The annual budget shall include the following:

1. The total number and dollar value of funds received from all

562 sources;

563

564 2. The total number and dollar value of qualified contributions
565 received; and

566

567 3. The total number and dollar value of qualified expenditures
568 made, with a description of each qualified expenditure.

569

570 (18) **Designation of Contributions.** The tax credit shall not be
571 allowed if the taxpayer directly or indirectly designates the taxpay-
572 er's qualified contributions to any particular purpose or for the di-
573 rect benefit of any particular individual, whether or not such indi-
574 vidual is a dependent of the taxpayer.

575

576 (19) **Direct Contracts.** The tax credit shall not be allowed for
577 contributions made to a qualified foster child support organization
578 if the taxpayer directly or indirectly operates, owns, or is a subsidi-
579 ary of an association, organization, or other entity that contracts
580 directly with such qualified foster child support organization.

581

582 (20) **Soliciting Contributions.** In soliciting contributions, a
583 foster child support organization shall not represent that in ex-
584 change for contributing to the foster child support organization, a
585 taxpayer shall receive a direct or particular benefit.

586

587 (21) **Failure to Comply and Revocation of Qualified Status.**

588

589 (a) Any qualified foster child support organization that fails to
590 comply with the requirements under O.C.G.A. §§ 48-7-29.24 shall
591 be given written notice of their failure and have 90 days from re-
592 ceipt of such notice to correct all deficiencies.

593

594 (b) If the qualified foster child support organization fails to cor-

595 rect all deficiencies within 90 days of receipt of notice from the
596 Department, such qualified foster child support organization shall:

597

598 1. Have its status as a qualified foster child support organiza-
599 tion revoked and be immediately removed from the Department's
600 list of approved qualified foster child support organizations;

601

602 2. Have all applications for preapproval of tax credits under
603 O.C.G.A. § 48-7-29.24 rejected by the Department on or after the
604 date that the Department removes the qualified foster child support
605 organization from its list of approved qualified foster child support
606 organizations; and

607

608 3. Be required to cease all operations as a qualified foster child
609 support organization and transfer all contribution funds that are not
610 yet expended to a properly operating qualified foster child support
611 organization within 30 calendar days of receipt of notice from the
612 Department of removal from the approved list.

613

614 (c) Notwithstanding subparagraphs (a) and (b), any qualified
615 foster child support organization that fails to comply with the re-
616 quirements under O.C.G.A. §§ 48-7-29.24(i)(3) and paragraph (20)
617 of this regulation shall have its status as a qualified foster child
618 support organization revoked and shall not be renewed as a quali-
619 fied foster child support organization for at least two years from
620 the date of the revocation.

621

622 1. The foster child support organization shall be removed from
623 the Department's list of approved qualified foster child support or-
624 ganizations, and the Department shall not preapprove any contribu-
625 tions to such foster child support organization.

626

627 (22) Effective Date. This regulation shall be applicable to

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Returns and Collections

628 years beginning on or after January 1, 2023.

629

630 Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.24.

PROPOSED