



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

NOTICE IT-2025-1

**RE: Proposal to amend 560-7-8-.20 Rural Physician Credit;
560-7-8-.36 Job Tax Credit, Description and Definitions;
560-7-8-.37 Manufacturer's and Telecommunications Investment Tax Credit;
560-7-8-.40 Optional Investment Tax Credit;
560-7-8-.42 Tax Credit for Qualified Research Expenses;
560-7-8-.45 Film Tax Credit;
560-7-8-.47 Qualified Education Expense Credit;
560-7-8-.48 Clean Energy Property and Wood Residuals Credit;
560-7-8-.49 Seed-Capital Fund Tax Credits;
560-7-8-.50 Conservation Tax Credit;
560-7-8-.51 Quality Jobs Tax Credit;
560-7-8-.52 Qualified Investor Tax Credit;
560-7-8-.56 Historic Rehabilitation Tax Credit;
560-7-8-.57 Qualified Rural Hospital Organization Expense Tax Credit;
560-7-8-.59 Postproduction Film Tax Credit;
560-7-8-.60 Qualified Education Donation Tax Credit;
560-7-8-.61 Musical Tax Credit;
560-7-8-.62 Rural Zone Tax Credits;
560-7-8-.64 Railroad Track Maintenance Tax Credit;
560-7-8-.66 Personal Protective Equipment Manufacturer Jobs Tax Credit;
560-7-8-.67 Life Sciences Manufacturing Job Tax Credit;
560-7-8-.68 Qualified Foster Child Donation Credit;
560-7-8-.69 Qualified Law Enforcement Donation Credit;
and adopt 560-7-8-.70 Rural Health Care Professional 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 560-7-8-.20; 560-7-8-.36; 560-7-8-.37; 560-7-8-.40; 560-7-8-.42; 560-7-8-.45; 560-7-8-.47; 560-7-8-.48; 560-7-8-.49; 560-7-8-.50; 560-7-8-.51; 560-7-8-.52; 560-7-8-.56; 560-7-8-.57; 560-7-8-.59; 560-7-8-.60; 560-7-8-.61; 560-7-8-.62; 560-7-8-.64; 560-7-8-.66; 560-7-8-.67; 560-7-8-.68; 560-7-8-.69; and adopt 560-7-8-.70.

Attached to this notice are an exact copies and synopses of the proposed Rules. The proposed Rules are being amended and adopted under the authority of O.C.G.A. §§ 48-2-12; 48-7-29; 48-7-29.8; 48-7-29.12; 48-7-29.14; 48-7-29.16; 48-7-29.20; 48-7-29.21; 48-7-29.24; 48-7-29.25; 48-7-29.26; 48-7-40; 48-7-40.1; 36-62-5.1; 48-7-40.1A; 48-7-40.1B; 48-7-40.2; 48-7-40.3; 48-7-40.4; 48-7-40.7; 48-7-40.8; 48-7-40.9; 48-7-40.12; 48-7-40.17; 48-7-40.26; 48-7-40.26A; 48-7-40.28; 48-7-40.30; 48-7-40.32; 48-7-40.33(reserved); and 48-7-40.34.

Frank M. O'Connell
State Revenue Commissioner



Chester Cook
Deputy State Revenue Commissioner

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

The Department of Revenue will consider the Amendment of the above Rule at a regulation hearing held at 2595 Century Parkway, NE, Atlanta, GA 30345, 1st Floor, Room 115, on May 5, 2025, 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 5, 2025. Electronic comments must be sent to regcomments@dor.ga.gov. Please reference "Notice IT-2025-1" on all comments.

Dated: April 2, 2025


Frank M. O'Connell
State Revenue Commissioner

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.20 Rural Physician Credit

The purpose of proposed Rule 560-7-8-.20 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 82 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (2) provides the definitions.
- Paragraph (3) provides the amount of the credit.
- Paragraph (4) provides the sunset date of the credit.
- Paragraph (5) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.20 Rural Physician Credit

560-7-8-.20 Rural Physician Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the rural physician credit under O.C.G.A. § 48-7-29.

(2) **Definitions.** As used in this regulation:

(a) **Rural county.** For taxable years beginning before January 1, 2024, the term “rural county” means a county in this state that has 65 persons per square mile or fewer according to the United States decennial census of 1990 or any future such census. For taxable years beginning before January 1, 2002, the United States decennial census of 1990 shall be used. For taxable years beginning on or after January 1, 2002, and before January 1, 2012, the United States decennial census of 2000 shall be used. For taxable years beginning on or after January 1, 2012, and before January 1, 2022, the United States decennial census of 2010 shall be used. For taxable years

beginning on or after January 1, 2022, the United States decennial census of 2020 shall be used; provided, however, a taxpayer that began practicing in a rural county in the taxable year beginning on or after January 1, 2022, and before January 1, 2023, shall also be eligible for the credit using the United States decennial census of 2010 provided they would have qualified for the credit using such census. For taxable years beginning on or after January 1, 2024, the term “rural county” means a county in this state that has a population of less than 50,000 according to the United States decennial census of 2020 or any future such census; provided, however, that for counties which contain a military base or installation, the military personnel and their dependents living in such county shall be excluded from the total population of such county for purposes of this definition.

(b) **Rural Physician.** The term “rural physician” means a physician licensed to practice medicine in this state, who practices in a rural county and resides in a rural county or a county contiguous to the rural county in which such physician practices and primarily admits patients to a rural hospital and practices in the fields of family practice, obstetrics and gynecology, pediatrics, internal medicine, or general surgery. A physician may practice and reside in different rural counties.

(c) **Rural Hospital.** The term “rural hospital” means an acute-care hospital located in a rural county that contains fewer than 100 beds.

(d) **Resides.** The term “resides” means the taxpayer’s principal domicile and not a secondary residence of the taxpayer.

(e) **Practices.** The term “practices” means work performed in a field listed in subparagraph (2)(b) of this regulation in a rural county

67 for an average of at least 40 hours per week for the period the
68 physician resides in a rural county or a county contiguous to the rural
69 county in which such physician practices.

70
71 **(3) Amount of the Credit.**

72
73 (a) A person qualifying as a rural physician on or before May 15,
74 2024, shall be allowed a credit against the tax imposed by Code
75 Section 48-7-20 in an amount not to exceed \$5,000.00. The tax
76 credit may be claimed for not more than five years, provided that the
77 physician continues to qualify as a rural physician. The five-year
78 period is a continuous period, which starts in the first year the rural
79 physician qualifies for the credit.

80
81 (b) For taxable years beginning on or after January 1, 2024, a
82 physician who was practicing in a rural county and residing in a rural
83 county or a county contiguous to the rural county in which such
84 physician practices, as determined under the decennial census of
85 2010 or under the decennial census of 2020, in a taxable year
86 beginning before January 1, 2024, will be considered to continue to
87 qualify even if the rural county, or either rural county if they were
88 practicing and residing in different rural counties, is not included in
89 the definition of a rural county as specified in subparagraph (2)(a)
90 of this regulation, provided they otherwise qualify.

91
92 ~~(b)~~(c) For taxable years beginning on or after January 1, 2022, a
93 physician who was practicing in a rural county and residing in a rural
94 county or a county contiguous to the rural county in which such
95 physician practices, as determined under the decennial census of
96 2010, in a taxable year beginning before January 1, 2022, will be
97 considered to continue to qualify even if the rural county, or either
98 rural county if they were practicing and residing in different rural
99 counties, is not included in the decennial census of 2020, provided

100 they otherwise qualify.

101

102 ~~(e)~~(d) For taxable years beginning on or after January 1, 2012 and
103 before January 1, 2022, a physician who was practicing in a rural
104 county and residing in a rural county or a county contiguous to the
105 rural county in which such physician practices, as determined under
106 the decennial census of 2000, in a taxable year beginning before
107 January 1, 2012, will be considered to continue to qualify even if the
108 rural county, or either rural county if they were practicing and
109 residing in different rural counties, is not included in the decennial
110 census of 2010, provided they otherwise qualify.

111

112 ~~(d)~~(e) A physician who, on December 31, 2021, is currently
113 practicing and/or residing in a county which was not considered a
114 rural county according to the decennial census of 2010 but is now
115 considered a rural county according to the decennial census of 2020,
116 shall not be considered to be practicing and/or residing in a rural
117 county.

118

119 ~~(e)~~(f) A physician who, on December 31, 2011, is currently
120 practicing and/or residing in a county which was not considered a
121 rural county according to the decennial census of 2000 but is now
122 considered a rural county according to the decennial census of 2010,
123 shall not be considered to be practicing and/or residing in a rural
124 county.

125

126 ~~(f)~~(g) A physician who would have first qualified, based on the
127 decennial census of 2000, from January 1, 2012, until the effective
128 date of this regulation will be considered to continue to qualify
129 provided such physician meets the requirements based on the
130 decennial census of 2000.

131

132 ~~(g)~~(h) In the case where a physician qualifies for the rural

133 physician credit but later the rural hospital increases its number of
134 beds so that the hospital is not considered a rural hospital as
135 provided by subparagraph (2)(c) of this regulation, the physician
136 will be considered to continue to qualify provided they otherwise
137 qualify.

138
139 ~~(h)~~(i) No physician who, on July 1, 1995, is currently practicing
140 in a rural county shall be eligible to receive the credit provided for
141 in paragraph (3) of this regulation. No credit shall be allowed for a
142 physician who has previously practiced in a rural county unless,
143 after July 1, 1995, that physician returns to practice in a rural county
144 after having practiced in a nonrural county for at least three years.

145
146 ~~(i)~~(j) A physician who qualifies for the credit for part of the year
147 is not required to prorate the credit computed under paragraph (3) of
148 this regulation.

149
150 ~~(j)~~(k) In no event shall the amount of the tax credit exceed the
151 taxpayer's income tax liability, and any unused tax credit shall not
152 be allowed to be carried forward to apply to the taxpayer's
153 succeeding years' tax liability. No such tax credit shall be allowed
154 the taxpayer against prior years' tax liability.

155
156 **(4) Sunset Date.** O.C.G.A. § 48-7-29, the rural physician credit,
157 shall be repealed on December 31, 2029.

158
159 **(5) Effective Date.** This regulation shall be applicable to years
160 beginning on or after January 1, 2024. Years beginning before
161 January 1, 2024 will be governed by the regulations of Chapter 560-
162 7 as they existed before January 1, 2024 in the same manner as if
163 the amendments thereto set forth in this regulation had not been
164 promulgated.

Chapter 560-7-8

Returns and Collections

166 Authority: O.C.G.A. §§ 48-2-12, 48-7-29.

PROPOSED

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.36 Job Tax Credit, Description and Definitions

The purpose of proposed Rule 560-7-8-.36 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (3) provides the definitions.
- Paragraph (5) provides the amount of the credit.
- Paragraph (6) provides the maximum amount of the credit.
- Paragraph (8) provides the eligibility requirements of the credit.
- Paragraph (9) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (10) provides the carryforward period of the credit.
- Paragraph (13) provides the effective date of the regulation and the application of the rule when boundaries overlap.

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

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560-7-8-.36 Job Tax Credit, Description and Definitions

560-7-8-.36 Job Tax Credit, Description and Definitions

(1) **Program Description.** The Job Tax Credit program provides tax credits under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated for certain business enterprises that create and retain new full-time employee jobs in Georgia. The Georgia Department of Community Affairs (“DCA”) and the Georgia Department of Revenue have been designated as the responsible agencies within Georgia to administer the program.

(2) **Coordination of Regulations.** Any reference to Community Affairs regulations in this regulation refers to the most recent regulations relating to the Job Tax Credit program which have been adopted by the Georgia Department of Community Affairs.

(3) **Definitions.**

(a) **Terms Defined in Community Affairs Regulation.** The terms “business enterprise,” “less developed area,” “less developed

35 census tract area,” “new job,” “average wage,” “wages,”
36 “transferred job,” and “replacement job,” as used in this regulation
37 are defined in Community Affairs Regulation 110-9-1-.01.
38

39 (b) **Taxes Imposed Under Article 2 and Article 5.** The term
40 “taxes imposed under Article 2 and Article 5” means the corporate
41 income tax, withholding tax, and the individual income tax
42 described at Article 2 and Article 5 of Chapter 7 of Title 48 of the
43 Official Code of Georgia Annotated.
44

45 (c) **Project.** The meaning of the term “project” as used in this
46 regulation is identical to the meaning of “project” in Department of
47 Revenue Regulation 560-7-8-.37.
48

49 (d) **Year One.** The term “year one” means the tax year or
50 calendar year in which sufficient new jobs are created that, meeting
51 the requirements in O.C.G.A. Sections 48-7-40 or 48-7-40.1 and
52 Community Affairs Regulations 110-9-1-.01, 110-9-1-.02, and 110-
53 9-1-.03 and this regulation, entitle a business enterprise to job tax
54 credits.
55

56 (e) **Years Two through Five.** For business enterprises that create
57 a new year one under DCA regulations for any taxable year
58 beginning on or after January 1, 2009, the term “years two through
59 five” means the consecutive four-year period following year one in
60 which job tax credits may be allowed for new jobs created in year
61 one and in which additional new jobs may be created that may also
62 qualify for job tax credits.
63

64 ~~(f) **Years Two through Six.** For business enterprises that~~
65 ~~initially claimed the credit for any taxable year beginning before~~
66 ~~January 1, 2009, the term “years two through six” means the~~
67 ~~consecutive five-year period following year one in which job tax~~

68 ~~credits may be allowed for new jobs created in year one and in which~~
69 ~~additional new jobs may be created that may also qualify for job tax~~
70 ~~credits.~~

71
72 ~~(g)~~(f) **Competitive Project.** The term “competitive project” as
73 used in this regulation is defined in O.C.G.A. Section 48-7-40.

74
75 **(4) Designation/Redesignation of Less Developed Counties**
76 **and Less Developed Census Tract Areas.** Counties will be
77 designated tier 1, tier 2, tier 3 or tier 4 less developed counties
78 subject to the factors set out in Community Affairs Regulation 110-
79 9-1-.02. Census tracts will be designated less developed census tract
80 areas subject to the factors set out in Community Affairs Regulation
81 110-9-1-.02. Less developed counties and less developed census
82 tract areas may be redesignated according to the factors set out in
83 Community Affairs Regulation 110-9-1-.02.

84
85 **(5) Amount of Credit.**

86
87 **(a) Business Enterprises that Create a New Year One Under**
88 **DCA Regulations for Any Taxable Year Beginning On or After**
89 **January 1, 2009.** Business enterprises in counties designated as tier
90 1, tier 2, tier 3 or tier 4 less developed areas, or in a less developed
91 census tract area will receive an annual credit for taxes imposed
92 under Article 2 for each new full-time employee job created.
93 Replacement jobs and transferred jobs will not generate a credit. The
94 amount of the credit will be \$3,500 for business enterprises located
95 in less developed census tract areas or tier 1 counties, \$2,500 for
96 business enterprises located in tier 2 counties, \$1,250 for business
97 enterprises located in tier 3 counties and \$750 for business
98 enterprises located in tier 4 counties. A business enterprise located
99 within the jurisdiction of a joint development authority as described
100 in O.C.G.A. Section 36-62-5.1(e) will qualify for an additional \$500

101 credit for each new full-time job created, subject to the conditions
102 and limitations set forth in these regulations. An existing business
103 enterprise as defined in O.C.G.A. Section 48-7-40(a)(4) will qualify
104 for an additional \$500 credit for each new full-time job for the first
105 year in which the new full-time job is created, subject to the
106 conditions and limitations set forth in O.C.G.A. Section 48-7-40 and
107 this regulation.

108
109 **(b) ~~Business Enterprises that Initially Claimed the Credit for~~**
110 **~~Any Taxable Year Beginning Before January 1, 2009.~~** Business
111 enterprises in counties designated as tier 1, tier 2, tier 3 or tier 4 less
112 developed areas, or in a less developed census tract area will receive
113 an annual credit for taxes imposed under Article 2 for each new full-
114 time employee job created for five years, beginning with years two
115 through six after the creation of the jobs. Replacement jobs and
116 transferred jobs will not generate a credit. The amount of the credit
117 will be \$3,500 for business enterprises located in less developed
118 census tract areas or tier 1 counties, \$2,500 for business enterprises
119 located in tier 2 counties, \$1,250 for business enterprises located in
120 tier 3 counties and \$750 for business enterprises located in tier 4
121 counties. A business enterprise located within the jurisdiction of a
122 joint development authority as described in O.C.G.A. Section 36-
123 62-5.1(e) will qualify for an additional \$500 credit for each new full-
124 time job created, subject to the conditions and limitations set forth
125 in these regulations. An existing business enterprise as defined in
126 O.C.G.A. Section 48-7-40(a)(4) will qualify for an additional \$500
127 credit for each new full-time job for one year after the creation of
128 such job, subject to the conditions and limitations set forth in
129 O.C.G.A. Section 48-7-40 and this regulation.

130
131 **(6) Maximum Amount of Credit.**

132
133 **(a) Business Enterprises that Create a New Year One Under**

DCA Regulations for Any Taxable Year Beginning On or After January 1, 2009. In tier 3 counties and tier 4 counties the job tax credit may be used, in any taxable year, to offset 50 percent of the taxpayer's Georgia income tax liability derived from operations within this state. Further, where a business enterprise is engaged in a competitive project located in a tier 3 county or a tier 4 county and where the amount of the credit exceeds 50 percent of the business enterprise's income tax liability for the taxable year, such business enterprise may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103. In tier 1 counties, tier 2 counties and in less developed census tract areas the job tax credit may be used to offset 100 percent of the taxpayer's Georgia income tax liability derived from operations within this state. Further, in tier 1 counties and less developed census tract areas, the taxpayer may elect, in cases where the amount of such credit exceeds the business enterprise's liability for income taxes in a taxable year, to take the excess as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103. Where a business enterprise is engaged in a competitive project located in a tier 2 county, such business enterprise may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103.

~~(b) **Business Enterprises that Initially Claimed the Credit for Any Taxable Year Beginning Before January 1, 2009.** In tier 3 counties and tier 4 counties the job tax credit may be used, in any taxable year, to offset 50 percent of the taxpayer's Georgia income tax liability derived from operations within this state. In tier 1 counties, tier 2 counties, and in less developed census tract areas, the job tax credit may be used to offset 100 percent of the taxpayer's Georgia income tax liability derived from operations within this~~

167 state. Further, in tier 1 counties and less developed census tract
168 areas, the taxpayer may elect, in cases where the amount of such
169 credit exceeds the business enterprise's liability for income taxes in
170 a taxable year, to take the excess as a credit against such business
171 enterprise's quarterly or monthly withholding payments under
172 O.C.G.A. Section 48-7-103.

173
174 (7) **Certification of Competitive Project.** Prior to making the
175 election to use the withholding benefit, a business enterprise
176 engaged in a competitive project located in a tier 2, tier 3 or tier 4
177 county must be certified by the Commissioner of the Department of
178 Economic Development. The certification must state that but for
179 some or all of the tax incentive provided under O.C.G.A. Section
180 48-7-40, the business enterprise would have located or expanded
181 outside of Georgia.

182
183 (8) **Eligibility for Credit.**

184
185 (a) **Net Employment Increase.** Except as otherwise provided in
186 this paragraph, in less developed census tract areas, only those
187 business enterprises that increase employment by 5 or more new
188 full-time jobs for the taxable year will be eligible for the credit. For
189 a business enterprise that initially claimed the credit for any taxable
190 year beginning before January 1, 2012, in tier 1 counties, the
191 business enterprise must increase employment by 5 or more new
192 full-time jobs for the taxable year in order to be eligible for the
193 credit. Within areas of pervasive poverty as designated under
194 O.C.G.A. Section 48-7-40.1, business enterprises shall only have to
195 increase employment by two or more jobs in order to be eligible for
196 the credit, subject to the conditions and limitations set forth in
197 O.C.G.A. Section 48-7-40.1. For a business enterprise that creates a
198 new year one under DCA regulations for any taxable year beginning
199 on or after January 1, 2012, in tier 1 counties, the business enterprise

200 must increase employment by two or more new full-time jobs for
201 the taxable year in order to be eligible for the credit. In tier 2
202 counties, only those business enterprises that increase employment
203 by 10 or more new full-time jobs for the taxable year will be eligible
204 for the credit. In tier 3 counties, only those business enterprises that
205 increase employment by 15 or more new full-time jobs for the
206 taxable year will be eligible for the credit. In tier 4 counties, only
207 those business enterprises that increase employment by 25 or more
208 new full-time jobs for the taxable year will be eligible for the credit.
209 A credit is not generated during a year if the net employment
210 increase in that year falls below the number of new full-time jobs
211 required in that tier or census tract area.

212
213 **(b) Business Enterprises that Create a New Year One Under**
214 **DCA Regulations for Any Taxable Year Beginning On or After**
215 **January 1, 2009.**

216
217 **1. Jobs Created in Year One.** A business enterprise located in a
218 less developed county or census tract area will receive job tax credits
219 in year one. Such business enterprise will also receive job tax credits
220 in years two through five for each new full-time job created in year
221 one, so long as the net employment increase required for jobs
222 created in that particular county tier or census tract area is
223 maintained during years two through five.

224
225 **2. Additional New Jobs Created in Years Two Through Five.**
226 For each additional new job created in years two through five, a
227 business enterprise will receive a job tax credit, so long as the
228 additional new jobs are maintained. Additional new jobs means
229 those new jobs created in years two through five that increase the
230 monthly full-time employment average for that year above the
231 monthly full-time employment average for year one. The average
232 full-time monthly employment for a year will be determined by the

procedure set out in Community Affairs Regulation 110-9-1-.03.

(i) The credits for additional new jobs may only be taken if the business enterprise already qualifies for the job tax credit in year one.

(ii) Job tax credits for additional new jobs will be based on the tier status of the county or less developed census tract area during the year in which the additional new jobs are created.

~~(c) Business Enterprises that Initially Claimed the Credit for Any Taxable Year Beginning Before January 1, 2009.~~

~~1. Jobs Created in Year One. A business enterprise located in a less developed county or census tract area will receive job tax credits in years two through six for each new full-time job created in year one, so long as the net employment increase required for jobs created in that particular county tier or census tract area is maintained during years two through six.~~

~~2. Additional New Jobs Created in Years Two Through Six. For each additional new job created in years two through six, a business enterprise will receive a job tax credit for a five-year period, so long as the additional new jobs are maintained. Additional new jobs means those new jobs created in years two through six that increase the monthly full-time employment average for that year above the monthly full-time employment average for year one. The average full-time monthly employment for a year will be determined by the procedure set out in Community Affairs Regulation 110-9-1-.03.~~

~~(i) The credits for additional new jobs may only be taken if the business enterprise already qualifies for the job tax credit in year one.~~

~~(ii) Job tax credits for additional new jobs will be based on the tier status of the county or less developed census tract area during the year in which the additional new jobs are created.~~

~~(d)(c)~~ **Sale, Merger, Acquisition, Reorganization, or Bankruptcy of a Business Enterprise.** The sale, merger, acquisition, or transfer or liquidation or bankruptcy of a business enterprise will not create new eligibility in any succeeding taxpayer, but any unused credits may be transferred and continued by any transferee of the business enterprise. When a business enterprise merely changes its name, recapitalizes, or liquidates unrelated subsidiaries; however, no new eligibility need be established.

(9) Claiming the Credit. For a business enterprise to claim the job tax credit, the business enterprise must submit Form IT-CA with its Georgia income tax return for each year in which the credit is claimed. For any business enterprise that creates a new year one under DCA regulations for any taxable year beginning on or after January 1, 2009, the job tax credit must be claimed within one year of the earlier of the date the original return was filed or the date such return was due, including extensions.

(a) Withholding Tax. A business enterprise creating new jobs sufficient to qualify for the job tax credit authorized for jobs created in counties designated as tier 1 counties or in less developed census tract areas must notify the Commissioner ~~each year of their, in the manner specified in subparagraph (9)(b), below, for any tax year for which they are making an~~ irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such business enterprise. A business enterprise, which creates a new year one under DCA regulations for any taxable year beginning on or after January 1, 2009, engaged in a competitive project located

299 in a tier 2 county, must notify the Commissioner ~~each year of their,~~
300 in the manner specified in subparagraph (9)(b), below, for any tax
301 year for which they are making an irrevocable election to take all or
302 a part of the credit against the quarterly or monthly withholding tax
303 payment for such business enterprise. A business enterprise, which
304 creates a new year one under DCA regulations for any taxable year
305 beginning on or after January 1, 2009, engaged in a competitive pro-
306 ject located in a tier 3 county or a tier 4 county whose credit amount
307 exceeds 50 percent of the business enterprise's income tax liability
308 for the taxable year, must notify the Commissioner ~~each year of~~
309 their, in the manner specified in subparagraph (9)(b) of this regula-
310 tion, for any tax year for which they are making an irrevocable elec-
311 tion to take all or a part of the credit against the quarterly or monthly
312 withholding tax payment for such business enterprise. The with-
313 holding tax benefit may only be applied against the withholding tax
314 account used by the business enterprise for payroll purposes. In the
315 event the business enterprise is a single member limited liability
316 company that is disregarded for income tax purposes, the withhold-
317 ing tax benefit may only be applied against the withholding tax lia-
318 bility that is attributable to wages paid by the single member limited
319 liability company. When this election is made, the excess tax credit
320 will not pass through to the shareholders, partners, or members of
321 the business enterprise if the business enterprise is a pass-through
322 entity. The amount per job that is eligible to be taken against the
323 quarterly or monthly withholding tax payment for such business en-
324 terprise shall not exceed the following amounts:

325
326 1. \$3,500 for a business enterprise located in a tier 1 county or in
327 a less developed census tract area;

328
329 2. \$2,500 for a business enterprise engaged in competitive pro-
330 ject located in a tier 2 county;

331

332 3. \$1,250 for a business enterprise engaged in a competitive pro-
333 ject located in a tier 3 county; or

334
335 4. \$750 for a business enterprise engaged in competitive project
336 located in a tier 4 county.

337
338 (b) **Notice of Intent.** To claim any excess tax credit not used on
339 the income tax return against the business enterprise's withholding
340 tax liability, the business enterprise must file Revenue Form IT-
341 WH *Notice of Intent* through the Georgia Tax Center within the
342 three-year statute of limitations period ~~thirty (30) days~~ after the due
343 date of the Georgia income tax return (including extensions) ~~or~~
344 ~~within thirty (30) days after the filing of a timely filed Georgia in-~~
345 ~~come tax return, whichever occurs first. A business enterprise en-~~
346 ~~gaged in a competitive project in a tier 2, tier 3 or tier 4 county must~~
347 ~~attach certification from the Department of Economic Development~~
348 ~~to Revenue Form IT-WH. Failure to file this form and certification~~
349 ~~from the Department of Economic Development (if engaged in a~~
350 ~~competitive project) as provided in this subparagraph will result in~~
351 ~~disallowance of the withholding tax benefit. Such irrevocable elec-~~
352 ~~tion may only be made one time with respect to each tax year for~~
353 ~~which the credit is earned for such tax year, for all or part of the~~
354 ~~excess tax credit remaining at the time of the election. However, in~~
355 ~~the case of a credit which is earned in more than one taxable year,~~
356 ~~the election to claim the withholding credit will be available for the~~
357 ~~credit earned in such subsequent year.~~

358
359 1. A business enterprise engaged in a competitive project in a tier
360 2, tier 3 or tier 4 county must attach certification from the Depart-
361 ment of Economic Development to Revenue Form IT-WH. Failure
362 to file Revenue Form IT-WH with the certification from the Depart-
363 ment of Economic Development (if engaged in a competitive pro-
364 ject) will result in disallowance of the withholding tax benefit.

(c) **Review Period.** The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (9)(b) of this regulation is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

(d) **Letter of Eligibility.** Once the review is completed, a letter will be sent to the business enterprise stating the tax credit amount which may be applied against withholding and when the taxpayer may begin to claim the tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.

(10) ~~Carry forward~~ **Carryforward.** Any job tax credit which is claimed but not used in a taxable year may be carried forward for ~~10~~ the number of years authorized under O.C.G.A. §§ 48-7-40 and 48-7-40.1 from the close of the taxable year in which the qualifying new jobs were created. ~~For example, job tax credits created by an employment increase in year one, but not used in year one, may be carried forward to years two through eleven.~~

(11) **Coordination with Investment Tax Credit, Optional Investment Tax Credit, the Headquarters Jobs Tax Credit, and the Quality Jobs Tax Credit.**

(a) Taxpayers may not claim or carry forward the job tax credit for any given project for which either an investment tax credit is claimed under O.C.G.A. Sections 48-7-40.2, 48-7-40.3, or 48-7-40.4, or an optional investment tax credit is claimed under O.C.G.A. Sections 48-7-40.7, 48-7-40.8, or 48-7-40.9. Neither may taxpayers alternately elect to claim the investment tax credit or optional

investment tax credit in one year and the job tax credit in the next year for a given project. These credits are not interchangeable. Taxpayers may elect to take only one of the investment, optional investment, or quality jobs tax credit for a given project.

(b) Taxpayers may not claim or carry forward the job tax credit for any jobs for which the headquarters job tax credit or the quality jobs tax credit is claimed under O.C.G.A. Section 48-7-40.17. Neither may taxpayers alternatively claim the jobs credit provided by O.C.G.A. Sections 48-7-40 and 48-7-40.1 and the headquarters job tax credit or the quality jobs tax credit with respect to such jobs. These credits are not interchangeable.

(12) Pass-Through Entities. When the business enterprise is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage and the limitations of this regulation. The credit forms will initially be filed with the tax return of the business enterprise to establish the amount of the credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess tax credits against their withholding tax liabilities. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2018. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2018 tax year.

(13) Special Provisions.

Chapter 560-7-8

Returns and Collections

431 (a) **Effective Date.** The provisions set forth in this regulation will
432 apply to taxable years beginning on or after January 1, ~~2017~~2025.
433 Taxable years beginning before January 1, ~~2017~~2025 will be gov-
434 erned by the regulations of Chapter 560-7 as they exist before Janu-
435 ary 1, ~~2017~~2025 in the same manner as if the amendments set forth
436 in this regulation had not been promulgated.

437
438 (b) **Overlap.** Where the boundaries of a less developed census
439 tract area and a less developed county overlap, Community Af-
440 fairs Regulations 110-9-1-.02 and 110-9-1-.03 shall apply.

441
442 Authority: O.C.G.A. §§ 48-2-12, 48-7-40, 48-7-40.1, 36-62-5.1.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.37 Manufacturer's and Telecommunications Investment Tax Credit

The purpose of proposed Rule 560-7-8-.37 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (3) provides the requirements for establishing eligibility of the credit.
- Paragraph (8) provides the preapproval process for withholding tax for taxpayers in rural counties located in tier 1 counties and tier 2 counties.
- Paragraph (9) provides the eligibility requirements for the credit carryforward to be used against withholding tax.
- Paragraph (10) provides the preapproval process for the credit carryforward to be used against withholding tax.
- Paragraph (11) provides the carryforward period of the credit.
- Paragraph (18) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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**560-7-8-.37 Manufacturer's and Telecommunications Investment Tax
Credit**

**560-7-8-.37 Manufacturer's and Telecommunications Invest-
ment Tax Credit**

(1) **Definitions.** As used in this regulation:

(a) **Manufacturing.** The term "manufacturing" means those establishments classified by the North American Industry Classification System (NAICS) Codes, published by the United States Office of Management and Budget, 2017 edition, that belong to Sectors 31-33.

(b) **Manufacturing Facility.** The term "manufacturing facility" means a single facility, including contiguous parcels of land, improvements to such land, buildings, building improvements, and any machinery or equipment used in manufacturing described by NAICS Sectors 31-33.

(c) **Telecommunications.** The term “telecommunications” means those establishments primarily engaged in providing telecommunications services described by NAICS Codes, 2017 edition, as:

1. NAICS Code 517312 for establishments primarily engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services;

2. NAICS Code 517311 for establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry;

3. NAICS Code 517911 for establishments primarily engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are

67 included in this industry; and
68

69 4. NAICS Code 517410 for establishments primarily engaged in
70 providing telecommunications services to other establishments in
71 the telecommunications and broadcasting industries by forwarding
72 and receiving communications signals via a system of satellites or
73 reselling satellite telecommunications.
74

75 5. NAICS Code 517919 for establishments primarily engaged in
76 providing specialized telecommunications services, such as satellite
77 tracking, communications telemetry, and radar station operation.
78 This industry also includes establishments primarily engaged in
79 providing satellite terminal stations and associated facilities
80 connected with one or more terrestrial systems and capable of
81 transmitting telecommunications to, and receiving
82 telecommunications from, satellite systems. Establishments
83 providing Internet services or voice over Internet protocol (VoIP)
84 services via client-supplied telecommunications connections are
85 also included in this industry.
86

87 (d) **Telecommunications Facility.** The term
88 “telecommunications facility” means a single facility, including
89 contiguous parcels of land, improvements to such land, buildings,
90 building improvements, and any machinery or equipment used in
91 providing the telecommunications services described by NAICS
92 Codes 517312, 517311, 517911, 517410, and 517919.
93

94 (e) **Support Facility.** The term “support facility” refers to any
95 establishment involved in the performance of activities designed
96 primarily to support a manufacturing facility or a
97 telecommunications facility, such as corporate offices, sales offices,
98 computer operations facilities, warehouses, distribution centers,
99 storage facilities, research and development facilities, laboratories,

100 repair and maintenance facilities, telecommunications centers,
101 regional or district administrative offices, and other related
102 manufacturing or telecommunications support activities.
103

104 (f) **Qualified Investment Property.** The term “qualified
105 investment property” means all property described in O.C.G.A.
106 Sections 48-7-40.2(a)(2), 48-7-40.3(a)(2), and 48-7-40.4(a)(2)
107 which is reasonably related or necessary to the manufacturing
108 process or to providing telecommunications services. Qualified
109 investment property also includes recycling machinery or
110 equipment, recycling manufacturing facility, pollution control or
111 prevention machinery or equipment, pollution control or prevention
112 facility, and conversion from defense to domestic production. The
113 Commissioner reserves the right to review each purchase or
114 acquisition of property by a taxpayer for which the taxpayer intends
115 to claim a credit.
116

117 (g) **Expansion of an Existing Manufacturing or**
118 **Telecommunications Facility.** The term “expansion of an existing
119 manufacturing or telecommunications facility” means the
120 capitalized purchase or acquisition of qualified investment property
121 by a taxpayer for use in a manufacturing or telecommunications
122 facility already existing in this state when the purchase or
123 acquisition of such qualified investment property expands the
124 taxpayer’s asset base and is directly related to the taxpayer’s
125 manufacturing process or to providing telecommunications services.
126 It does not mean the purchase or acquisition of qualified investment
127 property for the purpose of repairing existing property.
128

129 (h) **Project.** The term “project” means a planned undertaking
130 involving the capitalized purchase or acquisition of qualified
131 investment property for the construction of an additional
132 manufacturing or telecommunications facility or the expansion of

an existing manufacturing or telecommunications facility. A project which is a planned expansion of an existing manufacturing or telecommunications facility must result in an expansion of the taxpayer's asset base and be directly related to the taxpayer's manufacturing process or to providing telecommunications services. For purposes of qualifying for this credit in conjunction with either the job tax credit, the headquarters job tax credit, the quality jobs tax credit, or the optional investment tax credit, a taxpayer may not undertake more than one project at the same time within a single facility, and each project must be confined to a single facility. Generally it is the same project if it is in the same building, provided that there can be separate projects in the same building if the employees that will be using the equipment that is the subject of the investment tax credit will not be or have not been claimed or included in any calculations for the jobs tax credit; the headquarters jobs tax credit, or the quality jobs tax credit.

(i) Pollution Control or Prevention Machinery or Equipment.

The term "pollution control or prevention machinery or equipment" means all tangible personal property, used in whole or in part, to reduce or eliminate air and water pollution by removing, altering, disposing, or storing pollutants, contaminants, waste or heat.

(j) Pollution Control or Prevention Facility. The term "pollution control or prevention facility" means any facility, including land, improvements to land, buildings, building improvements, and any pollution control or prevention machinery or equipment whose primary purpose is to reduce air and water pollution, provided that such facility is in furtherance of applicable federal, state, or local standards for the abatement and control of air and water pollution and contamination.

(k) Conversion from Defense to Domestic Production. The

term “conversion from defense to domestic production” means the conversion of a manufacturing or telecommunications facility’s production capabilities from those which are substantially dependent upon Department of Defense expenditures to those which have a commercial application in the private sector.

(l) **Cost of Qualified Investment Property.** The term “cost of qualified investment property” means the taxpayer’s basis in the property in the taxable year in which the credit is created.

(m) **Rural county.** The term “rural county” means a county that has a population of less than 50,000 with 10 percent or more of such population living in poverty based upon the most recent, reliable, and applicable data published by the United States Bureau of the Census. On or before December 31 of each year, the Commissioner of the Department of Community Affairs shall publish a list of such counties.

(2) **Calculation of Credit.**

(a) **Basic Rate of Credit.** The basic rate of credit allowed against the taxes imposed under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia varies according to whether the facility for which the qualified investment property is purchased or acquired is located in a county designated as a tier 1, tier 2, or tier 3 or 4 less developed area under O.C.G.A. Section 48-7-40:

1. **Tier 1 County.** If the manufacturing or telecommunications facility is located in a county designated as tier 1, then the amount of the credit is equal to 5 percent of the cost of all qualified investment property purchased or acquired by the taxpayer for that facility in that taxable year.

199 2. **Tier 2 County.** If the manufacturing or telecommunications
200 facility is located in a county designated as tier 2, then the amount
201 of the credit is equal to 3 percent of the cost of all qualified
202 investment property purchased or acquired by the taxpayer for that
203 facility in that taxable year.

204
205 3. **Tier 3 or 4 County.** If the manufacturing or
206 telecommunications facility is located in a county designated as tier
207 3 or 4, then the amount of the credit is equal to 1 percent of the cost
208 of all qualified investment property purchased or acquired by the
209 taxpayer for that facility in that taxable year.

210
211 (b) **Higher Rate of Credit.** In the event that the qualified
212 investment property purchased or acquired by taxpayers consists of
213 recycling machinery or equipment, a recycling manufacturing
214 facility, pollution control or prevention machinery and equipment, a
215 pollution control or prevention facility, or is used in the conversion
216 from defense to domestic production, then the qualified investment
217 property will be subject to a higher rate of credit. The amount of the
218 higher rate of credit varies according to whether the qualified
219 investment property is purchased or acquired for a facility located
220 in a county designated as a tier 1, tier 2, or tier 3 or 4 less developed
221 area under O.C.G.A. Section 48-7-40:

222
223 1. **Tier 1 County.** If the qualified investment property subject to
224 the higher rate of credit is purchased or acquired for a facility located
225 in a county designated as tier 1, then the amount of the credit is equal
226 to 8 percent of the cost of such property purchased or acquired by
227 the taxpayer in that taxable year.

228
229 2. **Tier 2 County.** If the qualified investment property subject to
230 the higher rate of credit is purchased or acquired for a facility located
231 in a county designated as tier 2, then the amount of the credit is equal

to 5 percent of the cost of such property purchased or acquired by the taxpayer in that taxable year.

3. Tier 3 or 4 County. If the qualified investment property subject to the higher rate of credit is purchased or acquired for a facility located in a county designated as tier 3 or 4, then the amount of the credit is equal to 3 percent of the cost of such property purchased or acquired by the taxpayer in that taxable year.

(c) Office Space Cap in Recycling Manufacturing Facility. Where the office space used to house support staff in a building that is part of a recycling manufacturing facility exceeds 10 percent of the building's total space, then the building will not be considered a component of the recycling manufacturing facility. The building and any improvements to the building will be subject to the basic rate of credit for qualified investment property. Only recycling machinery or equipment located in the building will be subject to the higher rate of credit for qualified investment property.

(3) Establishing Eligibility for the Credit.

(a) Three-Year Threshold. Taxpayers must have operated an existing manufacturing or telecommunications facility or related support facility in this state for three years (thirty-six months) and must have previously filed any required state tax returns in order to become eligible for the tax credit. Only qualified investment property which is purchased or acquired by taxpayers after the ~~thirty-six month~~thirty-six-month eligibility requirement is met may be used to compute the tax credit. Qualified investment property purchased or acquired by taxpayers in taxable years prior to establishing the ~~thirty-six month~~thirty-six-month eligibility may not be claimed for those years by filing an amended tax return.

(b) **Eligible Taxpayer.** For the purpose of establishing eligibility, the “taxpayer” referenced is the entity that is required by law to file a return or pay tax. A partnership or business joint venture must have operated within the state for the immediately preceding thirty-six months to qualify for the credit. For example, the previous activity in Georgia of a parent, in the case of a corporation, a partner, in the case of a partnership or a business joint venture will not create eligibility for a new entity for the purposes of the ~~thirty-six month~~thirty-six-month threshold.

(c) **Approval of Project Plan.**

1. **Eligibility and Application Procedure; General Rule.** To be eligible for the credit provided for in O.C.G.A. Sections 48-7-40.2, 48-7-40.3, and 48-7-40.4, a taxpayer must purchase or acquire qualified investment property pursuant to a project plan. The taxpayer must submit Form IT-APP, which is a written application requesting approval of the project plan within thirty (30) days of the completion of the project. Form IT-APP must include a written narrative describing the project and a listing of the type, quantity, and cost of all qualified investment property purchased or acquired pursuant to the project plan and for which tax credits will be claimed.

2. **Procedure for Claiming Credit Before Completion of Project.** In the event a taxpayer elects to claim the credit before the completion of the project, but after the purchase or acquisition of qualified investment property in excess of the minimum threshold amount, the taxpayer may submit Form IT-APP for approval of the project plan along with the tax return on which the credit will be claimed. This preliminary Form IT-APP must be amended within thirty (30) days of the completion of the project.

298 **3. Amendment of Application for Approval of Project Plan.**
299 If necessary, a taxpayer may amend any Form IT-APP for approval
300 of the project plan by submitting additional project information.

301

302 **4. Permission to File Late Application.** In the event a taxpayer
303 is unable to submit Form IT-APP for approval of the project plan
304 within thirty (30) days of the completion of a project, the taxpayer
305 shall submit the Form IT-APP as soon as practical thereafter.

306

307 **5. Duration of Project.** The duration of a project shall not exceed
308 three years unless expressly approved in writing by the
309 Commissioner.

310

311 **6. Electronic Submission Required for Form IT-APP.** Form
312 IT-APP must be submitted electronically through the Georgia Tax
313 Center. The Department will not approve any Form IT-APP that is
314 submitted or filed in any other manner.

315

316 ~~6-7.~~ **Minimum Threshold Amount.**

317

318 **(i) For Projects Beginning On or After January 1, 1995 and**
319 **Beginning in a Taxable Year Beginning Before January 1, 2020.**
320 Before the credit may be claimed, the cost of all qualified investment
321 property purchased or acquired by the taxpayer pursuant to the
322 project plan must exceed a minimum threshold amount of \$50,000.

323

324 **(ii) For Projects Beginning in Taxable Years Beginning On**
325 **or After January 1, 2020.** Before the credit may be claimed, the
326 cost of all qualified investment property purchased or acquired by
327 the taxpayer pursuant to the project plan must exceed a minimum
328 threshold amount of \$100,000.

329

330 ~~7-8.~~ **Certificate of Approval.** If the project plan satisfies the

requirements of this paragraph, the Commissioner shall issue to the taxpayer a certificate of approval.

8.9. Timing. The taxpayer shall claim the credit for qualified investment property purchased or acquired pursuant to the project plan in the year immediately following the taxable year in which the requisite minimum threshold amount is purchased or acquired by the taxpayer.

9.10. Documentation. At the time the credit is claimed, the taxpayer must submit to the Commissioner certification of the total cost of all qualified investment property purchased or acquired pursuant to the project plan. Such certification shall be done by attaching Form IT-IC and an approved Form IT-APP and any other information the Commissioner may request to the taxpayer's state tax return. A software program's Form IT-IC that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(d) Earliest Date of Eligibility. In order to count towards establishing the minimum threshold amount or to qualify as a basis for claiming the credit, the purchase or acquisition of qualified investment property must have occurred no sooner than January 1, 1994. Qualified investment property purchased or acquired by taxpayers on or after January 1, 1994, will only be eligible as a basis for the credit if all of the other requirements of these regulations are met.

(e) Establishing New Eligibility. The sale, merger, acquisition, reorganization or transfer in liquidation or bankruptcy of a taxpayer does not create new eligibility for any succeeding taxpayer, but any unused credits may be transferred and continued by any transferee of the taxpayer as long as the transferee meets other applicable

requirements in law and regulation. If the taxpayer which earned the credits elects to transfer unused credits, such taxpayer must provide the transferee with a copy of the original approval of the credits it received from the Department, and a written statement indicating the assets transferred and the unused credit available at the time of transfer. When a taxpayer merely changes its name, recapitalizes, or liquidates subsidiaries not related to the manufacturing or telecommunications facility, however, no new eligibility need be established.

(4) **Maximum Amount of Credit.** The investment tax credit taken by a taxpayer in any taxable year shall not exceed 50 percent of the taxpayer's Georgia state income tax liability derived from operations within this state.

(5) **Withholding Tax for Taxpayers in Rural Counties located in Tier 1 Counties or Tier 2 Counties.** For a taxpayer with a manufacturing or telecommunications facility in a rural county located in a tier 1 county or tier 2 county that has purchased or acquired qualified investment property in a taxable year beginning on or after January 1, 2020 (which is then claimed on an income tax return in the taxable year after the purchased or acquired taxable year), the investment tax credit shall first be applied to such taxpayer's state income tax liability which is attributable to income derived from operations within this state for that taxable year, limited to 50 percent of such liability before the application of such credit. If the amount of the credit exceeds 50 percent of the taxpayer's liability or estimated tax liability before the application of the credit, the excess may be taken as provided in this regulation as a credit against such taxpayer's quarterly or monthly withholding payments under O.C.G.A. § 48-7-103. The taxpayer shall not be subject to any adverse consequences including penalties from the failure to estimate their tax liability correctly.

397
398 **(6) Per Taxpayer Credit Limitation for Withholding Tax.** The
399 amount preapproved for a taxable year for a taxpayer to be used
400 against withholding under paragraphs (5) and (9) together shall not
401 exceed \$1 million. This per taxpayer per taxable year \$1 million
402 credit limitation applies to all facilities that a taxpayer has in rural
403 counties located in both tier 1 and tier 2 counties.
404

405 **(7) Credit Cap.** The total amount of tax credits preapproved to
406 be used against withholding tax for taxpayers in rural counties
407 located in tier 1 and tier 2 counties under paragraphs (5) and (9)
408 together shall not exceed \$10 million for all taxpayers per calendar
409 year.
410

411 **(8) Preapproval for Withholding Tax for Taxpayers in Rural**
412 **Counties located in Tier 1 Counties or Tier 2 Counties.** A
413 taxpayer with a manufacturing or telecommunications facility in a
414 rural county located in a tier 1 county or tier 2 county that has
415 received an approved Form IT-APP from the Department for
416 qualified investment property purchased or acquired in a taxable
417 year beginning on or after January 1, 2020 (which is then claimed
418 on an income tax return in the taxable year after the purchased or
419 acquired taxable year), may request preapproval to use their excess
420 credit against withholding tax by submitting the appropriate forms
421 to the Department as provided in this paragraph.
422

423 **(a) Mandatory Electronic Preapproval Application for**
424 **Withholding Tax For Taxpayers in Rural Counties located in**
425 **Tier 1 Counties or Tier 2 Counties.** To claim any excess
426 investment tax credit not used on the income tax return against the
427 taxpayer's withholding tax liability, a taxpayer that has received an
428 approved Form IT-APP from the Department shall electronically
429 submit Form IT-WHRZ-APP through the Georgia Tax Center

between April 1 and May 31 of the calendar year in which the taxable year for which they will claim the investment tax credit ends. Provided preapproval is granted as provided in paragraph (8)(b) of this regulation, the credit is then eligible to be claimed against withholding in the second month after the month the tax return claiming the investment tax credit is filed and the taxpayer reports using Form IT-WHRZ-RPT through the Georgia Tax Center that they have filed their return.

(i) Example. Taxpayer purchases qualified investment property in a year that begins on January 1, 2020 and ends on December 31, 2020; and taxpayer submits Form IT-APP and receives an approved Form IT-APP. Taxpayer applies for preapproval to use their excess credit against withholding by submitting Form IT-WHRZ-APP through the Georgia Tax Center between April 1, 2021 and May 31, 2021. Taxpayer files their 2021 Georgia income tax return and claims the investment tax credit as provided in paragraph (3)(c)9. of this regulation on October 15, 2022 and Taxpayer submits Form IT-WHRZ-RPT through the Georgia Tax Center to report that the return has been filed on such date. The investment tax credit is eligible to be claimed against withholding beginning on December 1, 2022. Alternatively, if the Taxpayer files their 2021 Georgia income tax return and claims the investment tax credit as provided in paragraph (3)(c)9. of this regulation on September 30, 2022 and Taxpayer submits Form IT-WHRZ-RPT through the Georgia Tax Center to report that the return has been filed on such date, the investment tax credit is eligible to be claimed against withholding beginning on November 1, 2022.

(ii) Example. Taxpayer purchases qualified investment property in a year that begins on December 1, 2020 and ends on November 30, 2021; and taxpayer submits Form IT-APP and receives an approved Form IT-APP. Taxpayer applies for preapproval to use

their excess credit against withholding by submitting Form IT-WHRZ-APP through the Georgia Tax Center between April 1, 2022 and May 31, 2022. Taxpayer files their 2022 Georgia income tax return and claims the investment tax credit as provided in paragraph (3)(c)9. of this regulation on September 15, 2023 and Taxpayer submits Form IT-WHRZ-RPT through the Georgia Tax Center to report that the return has been filed on such date. The investment tax credit is eligible to be claimed against withholding beginning on November 1, 2023.

(iii) If the taxpayer is a disregarded entity, then Form IT-WHRZ-APP should be electronically submitted in the name of the owner of the disregarded entity.

(iv) The Department will not preapprove any use of the investment tax credit against withholding where the Form IT-WHRZ-APP is submitted or filed in any other manner. The filing of Form IT-WHRZ-APP is an irrevocable election and as such the amount approved by the Department for use against withholding tax can only be used against withholding tax it can never be used against income tax liability. The amount approved by the Department for use against withholding tax will not pass through to the shareholders, partners, or members of the taxpayer if the taxpayer is a pass-through entity. The Department shall treat the amount approved for use against withholding tax as a credit against future withholding tax payments and will not refund any previous withholding payments.

(b) **Notification.** The Department will notify each taxpayer of the tax credits preapproved and allocated to such taxpayer by June 30 of the calendar year in which the application was submitted.

(c) **Allocation of Withholding Tax Credit.** In the event the with

~~holding~~ withholding tax credit amounts on applications filed with the Commissioner under paragraphs (8) and (10) of this regulation exceed the maximum aggregate withholding tax credits under paragraph (7) of this regulation, then the withholding tax credits shall be allocated among the taxpayers who filed a timely Form IT-WHRZ-APP through the Georgia Tax Center on a pro rata basis based upon the amounts otherwise allowed under O.C.G.A. §§ 48-7-40.2 and 48-7-40.3 and this regulation.

(d) **The withholding tax benefit may only be applied against the withholding tax account used by the taxpayer for payroll.** In the event the taxpayer is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company.

(e) In the event it is determined that the taxpayer has not met all the requirements of O.C.G.A. §§ 48-7-40.2 or 48-7-40.3 and this regulation, then the amount of credits shall not be tentatively approved or the tentatively approved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed, except as provided in paragraph (5) of this regulation.

(9) **Eligibility for Investment Tax Credit ~~Carry Forward~~ Carryforward to be used against Withholding Tax.**

(a) A taxpayer that has investment tax credit ~~carry forward~~ carryforward for qualified investment property that was purchased or acquired in a taxable year beginning before January 1, 2020, may request preapproval to use such investment tax credit ~~carry forward~~ carryforward against withholding tax, if within a

529 single taxable year beginning on or after January 1, 2020 and before
530 January 1, 2025 such taxpayer:

531

532 (i) Maintains in rural counties located in Tier 1 Counties at least
533 100 full-time employee jobs as such term is defined in O.C.G.A. §
534 48-7-40.24 and purchases or acquires at least \$5 million of qualified
535 investment property for manufacturing or telecommunications
536 facilities in rural counties located in Tier 1 Counties. The number of
537 full-time employee jobs shall be the monthly average number of
538 eligible full-time employees subject to Georgia income tax
539 withholding for the taxable year; or

540

541 (ii) Maintains in rural counties located in Tier 2 Counties at least
542 100 full-time employee jobs as such term is defined in O.C.G.A. §
543 48-7-40.24 and purchases or acquires at least \$10 million of
544 qualified investment property for manufacturing or
545 telecommunications facilities in rural counties located in Tier 2
546 Counties. The number of full-time employee jobs shall be the
547 monthly average number of eligible full-time employees subject to
548 Georgia income tax withholding for the taxable year.

549

550 (b) If when the qualified investment property was purchased or
551 acquired the taxpayer was located in a Tier 1 County but that county
552 is now designated as a Tier 2 County, the taxpayer shall be eligible
553 to meet the requirements of subparagraph (9)(a)(i), provided in the
554 year they meet the requirements of subparagraph (9)(a)(i), such
555 county is a rural county located in a Tier 2 County.

556

557 (10) **Preapproval for Investment Tax Credit ~~Carry~~**
558 **~~Forward~~Carryforward to be used against Withholding Tax.** A
559 taxpayer that expects to meet the requirements in paragraph (9) of
560 this regulation may request preapproval to use such investment tax
561 credit ~~carry forward~~ carryforward against withholding tax as

562 provided in this paragraph.

563

564 (a) **Mandatory Electronic Preapproval Application for**
565 **Investment Tax Credit ~~Carry Forward~~Carryforward to be used**
566 **against Withholding Tax.** To claim investment tax credit ~~carry~~
567 ~~forward~~~~carryforward~~, that was properly claimed and not used or
568 expected to be used, against the taxpayer's withholding tax liability
569 for taxable years beginning on or after January 1, 2020 and before
570 January 1, 2025, a taxpayer shall electronically submit Form IT-
571 WHRZ-APP through the Georgia Tax Center between April 1 and
572 May 31 of the applicable calendar year that begins on or after
573 January 1, 2020 and before January 1, 2025. The applicable calendar
574 year is the calendar year in which the taxable year that the taxpayer
575 expects to meet the requirements specified in paragraph (9) of this
576 regulation ends. Provided preapproval is granted, the investment tax
577 credit ~~carry forward~~~~carryforward~~ is then eligible to be claimed
578 against withholding when the taxpayer reports that the requirements
579 of paragraph (9) have been met by submitting Form IT-WHRZ-RPT
580 through the Georgia Tax Center.

581

582 (i) Example. Taxpayer claimed and does not use or expects not
583 to use the investment tax credit in a taxable year which begins on
584 January 1, 2019 and ends on December 31, 2019. Taxpayer expects
585 to meet the requirements in paragraph (9)(a) or (9)(b) of this
586 regulation in the taxable year which begins on January 1, 2020 and
587 ends on December 31, 2020. Taxpayer applies for preapproval to
588 use their investment tax credit ~~carry forward~~~~carryforward~~ against
589 withholding by submitting Form IT-WHRZ-APP through the
590 Georgia Tax Center between April 1, 2020 and May 31, 2020.

591

592 (ii) Example. Taxpayer claimed and does not use or expects not
593 to use investment tax credit in a taxable year which begins on
594 December 1, 2019 and ends on November 30, 2020. Taxpayer

595 expects to meet the requirements in paragraph (9)(a) or ((9)(b) of
596 this regulation in the taxable year which begins December 1, 2020
597 and ends on November 30, 2021. Taxpayer applies for preapproval
598 to use their investment tax credit ~~carry forward~~carryforward against
599 withholding by submitting Form IT-WHRZ-APP through the
600 Georgia Tax Center between April 1, 2021 and May 31, 2021.

601
602 (iii) Example. Taxpayer claimed and does not use or expects not
603 to use investment tax credit in a taxable year which begins on
604 December 1, 2019 and ends on November 30, 2020. Taxpayer
605 expects to meet the requirements in paragraph (9)(a) or (9)(b) in the
606 taxable year which begins December 1, 2024 and ends on November
607 30, 2025. Taxpayer applies for preapproval to use their investment
608 tax credit ~~carry forward~~carryforward against withholding by
609 submitting Form IT-WHRZ-APP through the Georgia Tax Center
610 between April 1, 2025 and May 31, 2025.

611
612 (iv) If the taxpayer is a disregarded entity, then Form IT-WHRZ-
613 APP should be electronically submitted in the name of the owner of
614 the disregarded entity.

615
616 (v) The Department will not preapprove any use of the
617 investment tax credit ~~carry forward~~carryforward against
618 withholding tax where Form IT-WHRZ-APP is submitted or filed in
619 any other manner. The amount approved by the Department for use
620 against withholding tax will not pass through to the shareholders,
621 partners, or members of the taxpayer if the taxpayer is a pass-
622 through entity. The filing of Form IT-WHRZ-APP is an irrevocable
623 election and as such the amount approved by the Department for use
624 against withholding tax can only be used against withholding tax it
625 can never be used against income tax liability. The Department shall
626 treat the amount approved for use against withholding tax as a credit
627 against future withholding tax payments and will not refund any

628 previous withholding payments.

629

630 (b) **Notification.** The Department will notify each taxpayer of the
631 tax credits approved and allocated to such taxpayer by June 30 of
632 the calendar year in which the application was submitted.

633

634 (c) **Allocation of Withholding Tax Credit.** In the event the
635 withholding tax credit amounts on applications filed with the
636 Commissioner under paragraphs (8) and (10) of this regulation
637 exceed the maximum aggregate withholding tax credits under
638 paragraph (7) of this regulation, then the withholding tax credits
639 shall be allocated among the taxpayers who filed a timely Form IT-
640 WHRZ-APP through the Georgia Tax Center on a pro rata basis
641 based upon the amounts otherwise allowed under O.C.G.A. §§ 48-
642 7-40.2 and 48-7-40.3 and this regulation.

643

644 (d) The withholding tax benefit may only be applied against the
645 withholding tax account used by the taxpayer for payroll. In the
646 event the taxpayer is a single member limited liability company that
647 is disregarded for income tax purposes, the withholding tax benefit
648 may only be applied against the withholding tax liability that is
649 attributable to wages paid by the single member limited liability
650 company.

651

652 (e) In the event it is determined that the taxpayer has not met all
653 the requirements of O.C.G.A. §§ 48-7-40.2 or 48-7-40.3 and this
654 regulation, then the amount of credits shall not be tentatively
655 approved or the tentatively approved credits shall be retroactively
656 denied. With respect to such denied credits, tax, interest, and
657 penalties shall be due if the credits have already been claimed.

658

659 (f) Qualified investment property purchased or acquired under
660 paragraph (9) of this regulation may be eligible for the investment

tax credit under O.C.G.A. § 48-7-40.2(b) or O.C.G.A. § 48-7-40.3(b), provided that the conditions for such credit are met independently of paragraphs (9) and (10) of this regulation.

(g) For the taxable years in which the jobs that are required to be maintained under subparagraph (9)(a) of this regulation are maintained, such jobs shall not be eligible to be used or claimed as the basis for any other tax credit or benefit allowed by state law.

(h) Paragraphs (9) and (10) of this regulation shall not extend the ~~carry forward~~carryforward period for any credit.

(i) A taxpayer is only required to meet the requirements of paragraph (9) of this regulation one time. However, the taxpayer must apply for preapproval and report each year they qualify and may only reapply for amounts where the ~~carry forward~~carryforward period has not yet expired. A taxpayer is only eligible to claim the credit for the year they meet the requirements and any eligible future years, not years before the year they meet the requirements.

1. Example. Taxpayer meets the requirements in 2020. They are eligible for years 2020 through 2024 but only need to meet the requirements one time in 2020.

2. Example. Taxpayer meets the requirements in 2022. They are eligible for years 2022 through 2024 but only need to meet the requirements one time in 2022.

(j) Required Reporting by Taxpayer.

1. Each taxpayer that receives preapproval for use of the credit under paragraph (10) of this regulation, must certify to the Department using Form IT-WHRZ-RPT that the Taxpayer:

694
695 (i) Maintained in rural counties located in Tier 1 Counties
696 at least 100 full-time employee jobs and actually purchased or
697 acquired at least \$5 million of qualified investment property for
698 manufacturing or telecommunications facilities in rural counties
699 located in Tier 1 Counties. For purposes of the full-time employee
700 job requirement, the taxpayer may certify such requirement at the
701 time it is certain the requirement will be fulfilled for the taxable year
702 even though the taxable year has not yet been completed. For
703 example, a taxpayer has 600 full-time employee jobs in January and
704 600 full-time employee jobs in February. Since the average number
705 of jobs for the year at that time would be at least 100 (1,200/12)
706 regardless of the number of jobs in the remaining months, the
707 taxpayer will have met the requirement; or

708
709 (ii) Maintained in rural counties located in Tier 2 Counties at least
710 100 full-time employee jobs and actually purchased or acquired at
711 least \$10 million of qualified investment property for manufacturing
712 or telecommunications facilities in rural counties located in Tier 2
713 Counties. For purposes of the full-time employee job requirement,
714 the taxpayer may certify such requirement at the time it is certain
715 the requirement will be fulfilled for the taxable year even though the
716 taxable year has not yet been completed. For example, a taxpayer
717 has 600 full-time employee jobs in January and 600 full-time
718 employee jobs in February. Since the average number of jobs for the
719 year at that time would be at least 100 (1,200/12) regardless of the
720 number of jobs in the remaining months, the taxpayer will have met
721 the requirement.

722
723 2. Such information shall be submitted electronically through the
724 Georgia Tax Center using Form IT-WHRZ-RPT when the taxpayer
725 completes such requirements. Until the taxpayer submit Form IT-
726 WHRZ-RPT through the Georgia Tax Center, the credit cannot be

utilized against withholding as provided in this regulation.

(11) ~~Carry Forward~~Carryforward.

(a) ~~Income Tax Carry Forward~~Carryforward. A credit which is claimed but not used in a taxable year may be carried forward for ~~ten~~the number of years authorized under O.C.G.A. §§ 48-7-40.2, 48-7-40.3 and 48-7-40.4 from the close of the taxable year in which qualified investment property with an aggregate cost exceeding the minimum threshold amount is purchased or acquired, provided that such qualified investment property continues to be used in the manufacturing, recycling, or pollution control processes or in providing telecommunications services. As such the first year of the ~~carry forward~~carryforward period is the year the credit is claimed since the credit is claimed in the year after the year the qualified investment property is purchased or acquired.

(b) ~~Withholding Tax Carry Forward~~Carryforward.

1. With respect to the use of the credit against withholding tax as allowed by paragraph (5) of this regulation, the remainder of the ~~carry forward~~carryforward period begins at the beginning of the second month after the month the tax return claiming the credit is due (including extensions) and ends ~~nine~~at the final carryforward years authorized under O.C.G.A. §§ 48-7-40.2, 48-7-40.3 and 48-7-40.4 from such date, provided that such qualified investment property continues to be used in the manufacturing, recycling, or pollution control processes or in providing telecommunications services.

(i) Example. Taxpayer purchases qualified investment property in a year that begins on January 1, ~~2020~~2025 and ends on December 31, ~~2020~~2025; taxpayer submits Form IT-APP and receives an

approved Form IT-APP. The taxpayer applies for preapproval to use their excess credit against withholding by submitting Form IT-WHRZ-APP through the Georgia Tax Center between April 1, ~~2021~~2026 and May 31, ~~2021~~2026 and is granted preapproval on June 30, ~~2021~~2026. Taxpayer files their Georgia income tax return and claims the investment tax credit on the October 15, ~~2022~~2027 due date of the return and Taxpayer submits Form IT-WHRZ-RPT through the Georgia Tax Center to report that the return has been filed on such date. Taxpayer begins claiming the credit against withholding on December 1, ~~2022~~2027. The taxpayer's ~~carry forward~~carryforward period expires on November 30, 2031.

2. With respect to the use of the credit against withholding tax as allowed by paragraph (9) of this regulation, the remainder of the ~~carry forward~~carryforward period begins at the date the taxpayer meets the requirements of paragraph (9) of this regulation and ends based on the number of years that remain in the ~~carry forward~~carryforward period, provided that such qualified investment property continues to be used in the manufacturing, recycling, or pollution control processes or in providing telecommunications services.

(i) Example. Taxpayer purchased qualified investment property in the taxable year that began on January 1, 2010 and ended on December 31, 2010. The credit was claimed on the taxable year that began on January 1, 2011 and ended on December 31, 2011. As such the taxable year that begins on January 1, 2020 and ends on December 31, 2020 is the last taxable year the credit can be claimed. For such taxable year, the taxpayer applies for preapproval to use their investment tax credit ~~carry forward~~carryforward against withholding by submitting Form IT-WHRZ-APP through the Georgia Tax Center between April 1, 2020 and May 31, 2020 and is granted preapproval on June 30, 2020. Taxpayer meets the

793 requirements of paragraph (9) of this regulation on July 1, 2020. The
794 taxpayer's ~~carry forward~~carryforward period expires on June 30,
795 2021.

796

797 (ii) Example. Taxpayer purchased qualified investment property
798 in the taxable year that began on January 1, 2014 and ended on
799 December 31, 2014. The credit was claimed on the taxable year that
800 began on January 1, 2015 and ended on December 31, 2015. As such
801 the taxable year that begins on January 1, 2024 and ends on
802 December 31, 2024 is the last taxable year the credit can be claimed.
803 For such taxable year, the taxpayer applies for preapproval to use
804 their investment tax credit ~~carry forward~~carryforward against
805 withholding by submitting Form IT-WHRZ-APP through the
806 Georgia Tax Center between April 1, 2024 and May 31, 2024 and is
807 granted preapproval on June 30, 2024. Taxpayer meets the
808 requirements of paragraph (9) of this regulation on July 1, 2024. The
809 taxpayer's ~~carry forward~~carryforward period expires on June 30,
810 2025.

811

812 (iii) If the taxpayer's ~~carry forward~~carryforward amount includes
813 multiple years, each year shall be given a separate ~~carry~~
814 ~~forward~~carryforward period.

815

816 **(12) Sunset for Paragraphs (9) and (10) of this regulation.**
817 Paragraphs (9) and (10) of this regulation shall be repealed on
818 December 31, 2024; provided, however, such automatic repeal shall
819 not impair or affect a taxpayer's ability or right to apply an unused
820 credit for a taxable year after December 31, 2024, that such taxpayer
821 accrued under such paragraphs under the conditions of such
822 paragraphs prior to its automatic repeal.

823

824 **(13) Coordination with Job, Quality Jobs, Headquarters Job**
825 **and Optional Investment Tax Credits.** A taxpayer may not claim

826 or carry forward the investment tax credit for a given project in any
827 year in which either a job tax credit is claimed or carried forward
828 under O.C.G.A. Sections 48-7-40 or 48-7-40.1, a quality jobs tax
829 credit or headquarters job tax credit is claimed under O.C.G.A.
830 Section 48-7-40.17, or an optional investment tax credit is claimed
831 under O.C.G.A. Sections 48-7-40.7, 48-7-40.8, or 48-7-40.9.
832 Neither may a taxpayer alternately claim the investment tax credit
833 in one year and either the job, quality jobs, headquarters job, or
834 optional investment tax credit in the next year for a given project.
835 The job, investment, and optional investment tax credits are not
836 interchangeable. Taxpayers may elect to claim only one of the job,
837 investment, or optional investment credits for a given project.

838
839 **(14) Leases of Qualified Investment Property.** Any lease for a
840 period of five years or more of any real or personal property used in
841 the construction or expansion of a manufacturing or
842 telecommunications facility which would otherwise constitute
843 qualified investment property will be treated as the purchase or
844 acquisition of qualified investment property by the lessee. Such
845 property will be treated as having been purchased or acquired by the
846 taxpayer in the taxable year in which the lease becomes binding on
847 the taxpayer and the lessor. In establishing eligibility and calculating
848 the investment credit based on such property, the taxpayer will use
849 the fair market value of the leased property as the cost of qualified
850 investment property.

851
852 **(15) Schedule of Additional Information.** In addition to the
853 information required under paragraph (c)(1) of O.C.G.A. Sections
854 48-7-40.2, 48-7-40.3, and 48-7-40.4, taxpayers must include for
855 every year in which they claim the credit the following information:

856
857 (a) The taxpayer's basis in all qualified investment property
858 purchased or acquired by the taxpayer in the taxable year;

859

860 (b) The fair market value of all leased property which may be
861 treated as qualified investment property for the taxable year;

862

863 (c) A list of which recoverable materials are being recycled, and
864 to what extent they are components of manufactured products;

865

866 (d) A certification from the Department of Natural Resources that
867 all pollution control or prevention machinery or equipment that is a
868 basis for a credit is necessary and adequate for the purposes
869 intended; and

870

871 (e) Any other information that the Commissioner may reasonably
872 require.

873

874 (16) **Pass-Through Entities.** When the taxpayer is a pass-
875 through entity, and has no income tax liability of its own, the tax
876 credits will pass to its members, shareholders, or partners based on
877 the year ending profit/loss percentage. The credit forms will initially
878 be filed with the tax return of the taxpayer to establish the amount
879 of the credit available for pass through. The credit will then pass
880 through to its shareholders, members, or partners to be applied
881 against the tax liability on their income tax returns. The credits are
882 available for use as a credit by the shareholders, members, or
883 partners for their tax year in which the income tax year of the pass-
884 through entity ends. For example: A partnership earns the credit for
885 its tax year ending January 31, 2020. The partnership passes the
886 credit to a calendar year partner. The credit is available for use by
887 the partner beginning with the calendar 2020 tax year.

888

889 (17) **Specific Applications.**

890

891 (a) Examples of some common items that do not qualify as an

expansion for the investment tax credit include, but are not limited to, items used for safety, items and materials used in the repair, refurbishing, or reconditioning of machinery, hand tools, research and development expenditures, materials used in the repair of existing buildings, legal fees, consulting fees, expenditures for office, or office furniture, computer hardware or software which does not control manufacturing machinery or equipment, and automobiles.

(18) **Effective Date.** Except as specifically provided in this regulation, this regulation as amended shall be applicable to qualified investment property purchased or acquired in taxable years beginning on or after January 1, ~~2020~~2025. Qualified investment property purchased or acquired in taxable years beginning before January 1, ~~2020~~2025 will be governed by the regulations of Chapter 560-7 as they exist before January 1, ~~2020~~2025 in the same manner as if the amendments set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40.2, 48-7-40.3, 48-7-40.4.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.40 Optional Investment Tax Credit

The purpose of proposed Rule 560-7-8-.40 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (1) provides the definitions.
- Paragraph (2) provides the calculation of the credit.
- Paragraph (3) provides the requirements for establishing the eligibility for the credit.
- Paragraph (6) provides the pass-through of the credit.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.40 Optional Investment Tax Credit

560-7-8-.40 Optional Investment Tax Credit

(1) Definitions.

(a) **Qualified Investment Property.** The meaning of the term “qualified investment property” as used in this ~~Section~~ regulation is identical to the meaning of “qualified investment property” provided in O.C.G.A. Sections 48-7-40.2, 48-7-40.3, and 48-7-40.4, as well as Department of Revenue Regulations ~~Section 560-7-8-.37(1)(a).~~

(b) ~~**Manufacturing Facility and Manufacturing Support Facility.**~~ As used in this regulation, the meaning of the terms “manufacturing facility” and “manufacturing support facility”, “expansion of an existing manufacturing facility”, “cost of qualified investment property”, and “project” as used in this Section are identical to the meaning of “manufacturing facility” and “manufacturing support facility”, “expansion of an existing manufacturing facility”, “cost of qualified investment property”,

34 and “project” provided in Department of Revenue Regulations
35 Sections 560-7-8-.37(1)(e) and 560-7-8-.37(1)(d).

36
37 ~~(c) **Expansion of an Existing Manufacturing Facility.** The~~
38 ~~meaning of the term “expansion of an existing manufacturing~~
39 ~~facility” as used in this Section is identical to the meaning of~~
40 ~~“expansion of an existing manufacturing facility” in the Department~~
41 ~~of Revenue Regulations Section 560-7-8-.37(1)(b).~~

42
43 ~~(d) **Cost of Qualified Investment Property.** The meaning of the~~
44 ~~term “cost of qualified investment property” as used in this Section~~
45 ~~is identical to the meaning of the “cost of qualified investment~~
46 ~~property” in the Department of Revenue Regulations Section 560-~~
47 ~~7-8-.37(1)(h).~~

48
49 ~~(e) **First Places in Service.** The term “first places in service” as~~
50 ~~used in this Section~~regulation ~~means the first regular placement of~~
51 ~~qualified investment property in the manufacturing process of a~~
52 ~~manufacturing facility located in a county designated as a tier 1, tier~~
53 ~~2, or tier 3 less developed area under O.C.G.A. Section 48-7-40. It~~
54 ~~does not mean merely physically placing regularly inactive or~~
55 ~~surplus property on the manufacturing facility site.~~

56
57 ~~(f) **Remains in Service.** The term “remains in service” as used in~~
58 ~~this Section~~regulation ~~means the continued and regular use of~~
59 ~~qualified investment property in the manufacturing process in a~~
60 ~~manufacturing facility.~~

61
62 ~~(g) **Base Year.** The term “base year” as used in this~~
63 ~~Section~~regulation ~~means the taxable year in which qualified~~
64 ~~investment property is first placed in service by the taxpayer.~~

65
66 ~~(h) **Base Year Average.** The term “base year average” as used in~~

67 this ~~Section~~regulation means the amount of state income tax owed
68 by the taxpayer for the base year and each of the two immediately
69 preceding taxable years (determined without regard to any credits)
70 added together and divided by three.

71
72 (i) **Aggregate Credit Amount Allowed.** The term “aggregate
73 credit amount allowed” as used in this ~~Section~~regulation means 10
74 percent, 8 percent, or 6 percent of the cost of all qualified investment
75 property purchased or acquired by the taxpayer and first placed in
76 service during a taxable year, depending on whether the taxpayer
77 first places such property in service in a tier 1, tier 2, or tier 3 county.
78 If the taxpayer first places such property in service in a tier 1, tier 2,
79 or tier 3 county, then the taxpayer’s aggregate amount of credit
80 allowed will be 10 percent, 8 percent, and 6 percent, respectively.

81
82 ~~(j) **Project.** The meaning of the term “project” as used in this~~
83 ~~Section is identical to the meaning of “project” in the Department of~~
84 ~~Revenue Regulations Section 560-7-8-.37(1)(b).~~

85
86 (2) **Calculation of Credit.**

87
88 (a) **Timing.** The taxpayer may begin to take the credit in the year
89 following the year in which qualified investment property is first
90 placed in service.

91
92 (b) **Life of Credit.** The taxpayer may claim a credit for qualified
93 investment property placed in service in any one of the ~~ten~~ensuing
94 years authorized under O.C.G.A. §§ 48-7-40.7, 48-7-40.8, or 48-7-
95 40.9, following the taxable year in which the qualified investment
96 property is first placed in service, so long as such property remains
97 in service.

98
99 (c) **Annual Amount of Credit.** Against state income tax liability

100 for a taxable year, the taxpayer will apply the lesser of the following
101 amounts:

102

103 1. Ninety percent of the excess of the taxpayer's state income tax
104 liability for the applicable year (determined without regard to any
105 credits) over the taxpayer's base year average tax liability, or

106

107 2. The excess of the taxpayer's aggregate credit amount allowed
108 for the applicable year over the sum of the credits under this
109 Section regulation already used by the taxpayer in the years
110 following the base year.

111

112 **(3) Establishing Eligibility for the Credit.**

113

114 (a) **Three-Year Threshold.** Taxpayers must have operated an
115 existing manufacturing facility or related manufacturing support
116 facility in this state for three years and must have previously filed
117 any required state tax returns in order to become eligible for the tax
118 credit. Only qualified investment property which is purchased or
119 acquired by taxpayers and first placed in service after the three-year
120 eligibility requirement is met may be used to compute the tax credit.
121 Qualified investment property purchased or acquired or first placed
122 in service by taxpayers in taxable years prior to establishing the ~~three~~
123 year three-year eligibility requirement may not be claimed for those
124 years by filing an amended tax return.

125

126 **(b) Approval of Project Plan.**

127

128 1. **Eligibility and Application Procedure; General Rule.** To be
129 eligible for the credit provided for in O.C.G.A. Sections 48-7-40.7,
130 48-7-40.8, and 48-7-40.9, a taxpayer must purchase and acquire
131 qualified investment property and place it in service pursuant to a
132 project plan. The taxpayer must submit a written application

requesting approval of the project plan within thirty (30) days of the completion of the project. Such application must include a written narrative describing the project and a listing of the type, quantity, and cost of all qualified investment property purchased or acquired and placed in service pursuant to the project plan and for which tax credits will be claimed.

2. Procedure for Claiming Credit Before Completion of Project. In the event the taxpayer elects to claim the credit before the completion of the project, but after the purchase or acquisition and placing in service of qualified investment property in excess of the minimum threshold amount, the taxpayer may submit an application for approval of the project plan along with the tax return on which the credit will be claimed. This preliminary application must be amended within thirty (30) days of the completion of the project.

3. Amendment of Application for Approval of Project Plan. If necessary, a taxpayer may amend any application for approval of project plan by submitting additional project information.

4. Permission to File Late Application. In the event a taxpayer is unable to submit an application for approval of project plan within thirty (30) days of the completion of a project, the taxpayer may petition the Commissioner for express written approval to file its application after the thirty (30) day period has passed.

5. Certificate of Approval. If the project plan satisfies the requirements of this subparagraph, the Commissioner shall issue to the taxpayer a certificate of approval.

6. Minimum Threshold Amount. Before the credit may be claimed, the cost of all qualified investment property purchased or

166 acquired by the taxpayer and placed in service pursuant to a project
167 plan must exceed a minimum threshold amount which varies
168 according to whether the taxpayer's manufacturing facility is
169 located in a county designated as a tier 1, tier 2, or tier 3 county
170 under O.C.G.A. Section 48-7-40. Depending on whether the
171 manufacturing facility is located in a tier 1, tier 2, or tier 3 county,
172 the aggregate cost of the qualified investment property purchased or
173 acquired by the taxpayer pursuant to the project plan must exceed
174 \$5 million, \$10 million, and \$20 million, respectively.

175
176 **7. Timing of Eligibility.** The taxpayer shall be eligible to claim
177 the credit for qualified investment property purchased or acquired
178 and first placed in service pursuant to the project plan in the year
179 immediately following the taxable year in which the requisite
180 minimum threshold amount is reached by the taxpayer.

181
182 **8. Duration of Project.** The duration of a project shall not exceed
183 3 years unless expressly approved in writing by the Commissioner.

184
185 **9. Documentation.** At the time the credit is claimed, the taxpayer
186 must submit to the Commissioner certification of the total cost of all
187 qualified investment property purchased or acquired and placed in
188 service pursuant to the project plan. Such certification shall be on
189 forms provided by the Commissioner and shall be attached to the
190 taxpayer's state income tax return.

191
192 **(c) Earliest Date of Eligibility.** In order to qualify as a basis for
193 the credit or contribute towards establishing the requisite minimum
194 threshold amount, the qualified investment property must be
195 purchased or acquired by the taxpayer and first placed in service no
196 sooner than January 1, 1996.

197
198 **(4) Coordination with the Investment Tax Credit and the Job**

199 **Tax Credit.** The credit allowed under this Section is an optional
200 investment tax credit in lieu of the regular investment tax credit
201 allowed under O.C.G.A. Sections 48-7-40.2, 48-7-40.3, and 48-7-
202 40.4. Taxpayers who elect to claim this credit for a given project
203 make an irrevocable election and may not thereafter claim either the
204 job tax credit or the regular investment tax credit for a given project.
205 Taxpayers who have previously claimed credits under O.C.G.A.
206 Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, or 48-7-40.4 for
207 a given project in any taxable year are not eligible for the optional
208 investment tax credit for the same project in any subsequent year.

209

210 (5) **Leases of Qualified Investment Property.** Any lease for a
211 period of five years or more of any real or personal property used in
212 the construction or expansion of a manufacturing facility which
213 would otherwise constitute qualified investment property will be
214 treated as the purchase or acquisition of qualified investment
215 property by the lessee. Such property will be treated as having been
216 purchased or acquired by the taxpayer in the taxable year in which
217 the lease becomes binding on the taxpayer and the lessor. In
218 establishing eligibility and calculating the credit based on such
219 property, the taxpayer will use the fair market value of the leased
220 property as the cost of qualified investment property.

221

222 (6) **Pass-Through of Credit.**

223

224 (a) **“S” Corporations.** Business enterprises that are “S”
225 corporations will apply the optional investment tax credit to
226 corporate income tax liability at the entity level if one exists. Any
227 remaining credit will then be apportioned to shareholders based on
228 their percentage share of ownership of the corporation in the same
229 manner as other pass-through items.

230

231 (b) **Partnerships.** Where the business enterprise is a partnership,

the optional investment tax credit will be apportioned to partners in the same manner as partnership income based on each partner's distributive share. If the partnership makes the election to pay tax at the entity level under O.C.G.A. § 48-7-23, the optional investment tax credit will be applied to the tax liability at the entity level if one exists. The electing partnership may elect to apportion any remaining credit to partners based on their percentage ownership of the partnership.

(c) **Limited Liability Companies.** Business enterprises that are limited liability companies will apportion the optional investment tax credit to ~~shareholders~~members based on their percentage ownership of the limited liability company.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40.7, 48-7-40.8, 48-7-40.9.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.42 Tax Credit for Qualified Research Expenses

The purpose of proposed Rule 560-7-8-.42 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (2) provides the definitions.
- Paragraph (5) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (6) provides the carryforward period of the credit.
- Paragraph (8) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.42 Tax Credit for Qualified Research Expenses

560-7-8-.42 Tax Credit for Qualified Research Expenses

(1) **Purpose.** This rule provides guidance concerning the implementation and administration of the income tax credit under O.C.G.A. § 48-7-40.12.

(2) **Definitions.** As used in this regulation:

(a) **Base Amount.** The term “base amount” means the product of a business enterprise’s Georgia gross receipts in the current taxable year and the average of the ratios of its aggregate qualified research expenses to Georgia gross receipts for the preceding three taxable years or 0.300, whichever is less; provided, however, that a business enterprise need not have had a positive taxable net income for the preceding three taxable years in order to claim the credit. “Georgia gross receipts” shall be the numerator of the gross receipts factor provided in subsection (d) of O.C.G.A. § 48-7-31. If a business enterprise had no Georgia gross receipts during any one or more of the three preceding tax years, the base amount shall be the product of

the current year Georgia gross receipts and 0.300.

(b) **Business enterprise.** The term “business enterprise” shall have the same meaning as in Department of Revenue Regulation 560-7-8-.46.

(c) **Qualified Research Expenses.** The term “qualified research expenses” means qualified research expenses for any business enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as amended, except that all wages paid and all purchases of services and supplies must be for research conducted within the State of Georgia.

(3) **Establishing Eligibility for the Credit.** A business enterprise that has qualified research expenses in Georgia in a taxable year exceeding a base amount, and for the same taxable year claims and is allowed a research credit under Section 41 of the Internal Revenue Code of 1986, as amended shall be eligible for the credit.

(4) **Credit Amount.** A business enterprise that has established eligibility for the research tax credit shall be allowed a tax credit equal to 10 percent of the excess of the qualified research expenses over the base amount. The credit taken in any one taxable year shall not exceed 50 percent of the business enterprise’s remaining Georgia net income tax liability after all other credits have been applied.

(5) **Claiming the Credit.** For a business enterprise to claim the research tax credit, the business enterprise must submit Form IT-RD and Federal Form 6765, from the entity generating the credit, with its Georgia income tax return for each tax year in which the qualified research expenses were incurred.

(a) **Withholding tax.** A business enterprise whose credit amount

68 exceeds 50 percent of the business enterprise's remaining Georgia
69 net income tax liability after all other credits have been applied may
70 elect to take the excess credit as a credit against such business en-
71 terprise's quarterly or monthly withholding payments under Code
72 Section 48-7-103. The withholding tax benefit may only be applied
73 against the withholding tax account used by the business enterprise
74 for payroll. In the event the business enterprise is a single member
75 limited liability company that is disregarded for income tax pur-
76 poses, the withholding tax benefit may only be applied against the
77 withholding tax liability that is attributable to wages paid by the sin-
78 gle member limited liability company. A business enterprise must
79 notify the commissioner ~~each year of their, in the manner specified~~
80 in subparagraph (5)(a)1., below, for any tax year for which they are
81 making an irrevocable election to take all or a part of the credit
82 against the quarterly or monthly withholding tax payment for such
83 business enterprise. When this election is made, the excess research
84 tax credit will not pass through to the shareholders, partners, or
85 members of the business enterprise if the business enterprise is a
86 pass-through entity.

87
88 1. Notice of Intent. To claim any excess tax credit not used on the
89 income tax return against the business enterprise's withholding tax
90 liability, the business enterprise must file Revenue Form IT-
91 WH *Notice of Intent* through the Georgia Tax Center within the
92 three-year statute of limitations period ~~thirty (30) days~~ after the due
93 date of the Georgia income tax return (including extensions) ~~or~~
94 ~~within thirty (30) days after the filing of a timely filed Georgia in-~~
95 ~~come tax return, whichever occurs first.~~ Failure to file this form as
96 provided in this subparagraph will result in disallowance of the with-
97 holding tax benefit. Such irrevocable election may only be made one
98 time with respect to each tax year for which the credit is earned for
99 such tax year, for all or part of the excess tax credit remaining at the
100 time of the election. However, in the case of a credit which is earned

101 in more than one taxable year, the election to claim the withholding
102 credit will be available for the credit earned in such subsequent year.
103

104 2. Review Period. The Department of Revenue has one hundred
105 and twenty (120) days from the date the applicable Form IT-WH
106 under subparagraph (5)(a)1. of this regulation is received to review
107 the credit and make a determination of the amount eligible to be used
108 against withholding tax.
109

110 3. Letter of Eligibility. Once the review is completed, a letter will
111 be sent to the business enterprise stating the tax credit amount which
112 may be applied against withholding and when the business enter-
113 prise may begin to claim the tax credit against withholding tax. The
114 Department of Revenue shall treat this amount as a credit against
115 future withholding tax payments and will not refund any previous
116 withholding payments.
117

118 (6) ~~Carry Forward~~**Carryforward**. Any credit which is claimed
119 but not used in a taxable year shall be allowed to be carried forward
120 for ten the number of years authorized under O.C.G.A. § 48-7-40.12
121 from the close of the taxable year in which the qualified research
122 expenses were made.
123

124 (7) **Pass-through Entities**. When the business enterprise is a
125 pass-through entity, and has no income tax liability of its own, the
126 tax credits will pass to its members, shareholders, or partners based
127 on the year ending profit/loss percentage and the limitations of this
128 regulation. The credit forms will initially be filed with the tax return
129 of the business enterprise to establish the amount of the credit avail-
130 able for pass through. The credit will then pass through to its share-
131 holders, members, or partners to be applied against the tax liability
132 on their income tax returns. The shareholders, members, or partners
133 may not claim any excess research tax credit against their

134 withholding tax liabilities. The credits are available for use as a
135 credit by the shareholders, members, or partners for their tax year in
136 which the income tax year of the pass-through entity ends. For ex-
137 ample: A partnership earns the credit for its tax year ending January
138 31, 2018. The partnership passes the credit to a calendar year part-
139 ner. The credit is available for use by the partner beginning with the
140 calendar 2018 tax year.

141
142 (8) **Effective Date.** This regulation as amended shall be applica-
143 ble to taxable years beginning on or after January 1, ~~2017~~2025. Tax-
144 able years beginning before January 1, ~~2017~~2025 will be governed
145 by the regulations of Chapter 560-7 as they exist before January 1,
146 ~~2017~~2025 in the same manner as if the amendments set forth in this
147 regulation had not been promulgated.

148
149 Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.12.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.45 Film Tax Credit

The purpose of proposed Rule 560-7-8-.45 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (5) explains the certification process of the credit.
- Paragraph (6) provides the production expenditures.
- Paragraph (8) provides the credit amount limitation for a qualified interactive entertainment production company.
- Paragraph (10) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (11) provides conditions and limitations of the credit.
- Paragraph (13) provides the rules for selling or transferring the credit.
- Paragraph (14) provides the procedures for selling or transferring the credit.
- Paragraph (22) provides the carryforward period of the credit for projects that received a final certification.
- Paragraph (26) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.45 Film Tax Credit

560-7-8-.45 Film Tax Credit

(1) **Purpose.** This rule provides guidance concerning the implementation and administration of the income tax credits contained within the Georgia Entertainment Industry Investment Act (hereinafter "Act") under O.C.G.A. § 48-7-40.26.

(2) **Coordination of Agencies.** The Department of Economic Development is the state agency responsible for determining which projects qualify for the tax credits authorized under the Act and specifying which projects were approved as interactive entertainment projects.

(3) **Definitions.**

(a) "Completion of the Base Investment or Excess Base Investment in this State" means the date the production company has finished qualified production activities and incurs no additional

34 qualified production expenditures.

35

36 (b) “Film Tax Credit” means the credit allowed pursuant to the
37 Georgia Entertainment Industry Investment Act, O.C.G.A. § 48-7-
38 40.26.

39

40 (c) As used in this regulation, the terms “affiliates”, “base invest-
41 ment”, “game platform”, “game sequel”, “multimarket commercial
42 distribution”, “prereleased interactive game”, “production com-
43 pany”, “qualified Georgia promotion”, “qualified production activ-
44 ities”, “state certified production”, and “total aggregate payroll”
45 have the same meaning as in O.C.G.A. § 48-7-40.26.

46

47 (d) “Loan-out Company” means any personal service company
48 contracted with and retained by the production company or qualified
49 interactive entertainment production company to provide individual
50 personnel (which are not employees of the production company or
51 qualified interactive entertainment production company), such as
52 artists, actors, directors, producers, writers, production designers,
53 production managers, costume designers, directors of photography,
54 editors, casting directors, first assistant directors, second unit direc-
55 tors, stunt coordinators, or similar personnel for the performance of
56 services used directly in a qualified production activity, but not in-
57 cluding persons retained by the production company or qualified in-
58 teractive entertainment production company to provide tangible
59 property or outside independent contractor service, such as catering,
60 construction, trailers, equipment and transportation.

61

62 (e) “Personal Service Company” means any personal service cor-
63 poration as defined in Internal Revenue Code Section 269A(b) or
64 any other entity, which also includes a sole proprietorship or an in-
65 dividual being paid as an independent contractor, meeting the prin-
66 cipal activity and the ownership requirements of Internal Revenue

Code Section 269A(b).

(f) “Qualified Interactive Entertainment Production Company” means a company that:

1. Maintains a business location physically located in Georgia;

2. In the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company, had a total aggregate payroll of \$500,000 or more for employees working within the state; or in a taxable year beginning on or after January 1, 2018, had a total aggregate payroll of \$250,000 or more for employees working within the state in the taxable year the qualified interactive entertainment production company claims the film tax credit;

3. Has gross income less than \$100 million for the taxable year; and

4. Is primarily engaged in qualified production activities related to interactive entertainment which have been approved by the Department of Economic Development.

Any company that has gross income less than \$100 million for the taxable year and is primarily engaged in qualified production activities related to interactive entertainment must meet the requirements in subparagraphs (3)(f)1. and (3)(f)2. of this regulation and be certified as meeting such as provided in subparagraph (5)(c) of this regulation in order to be eligible for the film tax credit.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan

made by the state or a loan guaranteed by the state. For this definition, “primarily engaged” means a company whose gross income from qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development exceeds 50% of their total gross income for their taxable year or whose expenses from qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development exceeds 50% of their total expenses for their taxable year.

(4) Affiliates.

(a) Threshold Determination. O.C.G.A. § 48-7-40.26(c) and (d) discuss the investment of a production company or qualified interactive entertainment production company and its affiliates. The affiliates are included solely to determine whether or not the \$30 million expenditure threshold has been exceeded for the purpose of determining under which of these subsections the film tax credit will be calculated. Once that determination is made, the \$500,000 base investment threshold or excess base investment threshold is calculated for each separate production company or qualified interactive entertainment production company and the film tax credit is earned solely by the production company or qualified interactive entertainment production company which has qualified investment expenditures in a state certified production. If more than one affiliated production company or qualified interactive entertainment production company has qualifying productions in Georgia, then each production company or qualified interactive entertainment production company will calculate its film tax credit independently of its affiliates.

(b) Assignment of Credit to Affiliates. Once the production company or qualified interactive entertainment production company

133 establishes the amount of the film tax credit by filing the tax return
134 for the taxable year in which the credit was earned, the credit may
135 then be assigned to the production company's or qualified interac-
136 tive entertainment production company's affiliates under the provi-
137 sions of O.C.G.A. § 48-7-42. When a film tax credit is assigned to
138 an affiliated entity, the affiliated entity may apply the credit solely
139 against its own income tax liability. The affiliated entity may not
140 sell or transfer the credit pursuant to paragraph (13) of this regula-
141 tion and may not claim any excess film tax credit against its with-
142 holding tax. Any unused credit may be carried forward by such af-
143 filiated entity until the credit is used or it expires, whichever occurs
144 first.

145
146 **(5) Certification of Qualified Production Activities.** Prior to
147 claiming the film tax credit (which includes the additional tax credit
148 for including the qualified Georgia promotion), each new film,
149 video, or digital project must be certified by the Department of Eco-
150 nomic Development. Production companies that are required to re-
151 duce their investment basis by the amount of expenditures in prior
152 years, must receive certification from the Department of Economic
153 Development for current year projects prior to claiming the film tax
154 credit. The Department of Economic Development will provide a
155 Credit Certificate Number to the production company or qualified
156 interactive entertainment production company for each qualifying
157 project which is approved. The credit certificate number(s) will be
158 used to report any transfer or sale of film tax credit by the production
159 company or qualified interactive entertainment production company
160 for the qualifying project(s).

161
162 (a) The Department of Economic Development shall electroni-
163 cally certify to the Department when the requirements for the addi-
164 tional tax credit for a qualified Georgia promotion have been met.
165

(b) The additional 10% tax credit for including a qualified Georgia promotion shall not be issued final certification by the Department under paragraph (19) of this regulation unless and until the state certificated production has been commercially distributed in multiple markets within five years of the date that the project was first certified by the Department of Economic Development. As such the additional 10% tax credit for including a qualified Georgia promotion will likely be issued final certification separately and later than the 20% base credit and therefore may be earned later and have a different ~~three-year~~ carryover period.

(c) Certification for a Qualified Interactive Entertainment Production Company. Before the Department of Economic Development issues its certification under paragraph (5) of this regulation to a qualified interactive entertainment production company, the qualified interactive entertainment production company must electronically certify to the Department of Revenue through the Georgia Tax Center on Form IT-QIEPC that:

1. The qualified interactive entertainment production company maintains a business location physically located in this state; and

2. For taxable years beginning before January 1, 2018, the qualified interactive entertainment production company had expended a total aggregate payroll of \$500,000 or more for employees working within this state during the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company. For taxable years beginning on or after January 1, 2018, the qualified interactive entertainment production company had expended or intends to expend a total aggregate payroll of \$250,000 or more for employees working within this state during the taxable year the qualified interactive entertainment production company claims the tax credit.

(d) The qualified interactive entertainment production company must attach the approved Form IT-QIEPC to their Department of Economic Development certification application. The Department of Economic Development shall not issue its certification until it receives an approved Form IT-QIEPC from the qualified interactive entertainment production company. The Department of Revenue shall not issue any Form IT-QIEPCs before July 1, 2014.

(e) If the qualified interactive entertainment project spans more than 1 year, then the qualified interactive entertainment production company must submit a separate Form IT-QIEPC for each year. Also, any qualified expenditures, including reshoots after the principal photography or additional photography, any of which occur outside of the taxable year on the Department of Economic Development's certificate for the project, require a separate certification from the Department of Economic Development.

(f) If the qualified interactive entertainment production company is a disregarded entity then Form IT-QIEPC should be submitted in the name of the owner of the disregarded entity.

(6) Production Expenditures.

(a) Base Investment. For taxable years beginning before January 1, 2018, a production company or qualified interactive entertainment production company can aggregate projects over a single tax year to meet the \$500,000 investment threshold or excess base investment threshold. For taxable years beginning on or after January 1, 2018, a production company can aggregate projects over a single tax year to meet the \$500,000 investment threshold or excess base investment threshold and a qualified interactive entertainment production company can aggregate projects over a single tax year to

232 meet the \$250,000 investment or excess base investment threshold.
233 A television series (which can occur over two or more years), series
234 pilot, or television movie shall each be considered a single television
235 project. In the case of an episodic television series, an entire season
236 of episodes is one project.

237
238 1. Example 1: A production company produces 20 commercials
239 in one calendar year, and each commercial has \$25,000 in produc-
240 tion expenditures. The production company can aggregate their pro-
241 duction expenditures for multiple commercials in one calendar year
242 (20 x \$25,000 = \$500,000) to meet the \$500,000 base investment
243 threshold.

244
245 2. Example 2: A production company has \$900,000 in production
246 expenditures during two years (they spend \$300,000 in year 1 and
247 \$600,000 in year 2) producing one television movie. The production
248 company may aggregate their production expenditures over the two
249 years for this single project (one television movie) to achieve the
250 \$500,000 base investment threshold. The production company can
251 claim the credit in the year the \$500,000 base investment has been
252 achieved.

253
254 3. Example 3: For taxable years beginning on or after January 1,
255 2018, a qualified interactive entertainment production company
256 completes two certified projects in one tax year, and each has
257 \$125,000 in production expenditures. The qualified interactive en-
258 tertainment production company can aggregate their production ex-
259 penditures for multiple projects completed in one tax year to meet
260 the \$250,000 base investment threshold for a qualified interactive
261 entertainment production company.

262
263 4. Example 4: In a taxable year beginning on or after January 1,
264 2018, a qualified interactive entertainment production company has

265 \$400,000 in production expenditures during two years (they spend
266 \$100,000 in year 1 and \$300,000 in year 2) completing one certified
267 project. The qualified interactive entertainment production company
268 may aggregate their production expenditures over the two years for
269 this single project to achieve the \$250,000 base investment thresh-
270 old. The qualified interactive entertainment production company
271 can claim the credit in the year the \$250,000 base investment has
272 been achieved.

273

274 (b) Direct use. A production company or qualified interactive en-
275 tertainment production company may only claim production ex-
276 penditures that are directly used in a qualified production activity.
277 In determining whether an expenditure is directly used in a qualified
278 production activity, the Department of Revenue will consider the
279 proximity of the expenditure to the activity as well as the causal re-
280 lationship between the expenditure and the activity.

281

282 (c) Production expenditures include preproduction, production,
283 and postproduction expenditures incurred in this state that are di-
284 rectly used in a qualified production activity, including, but not lim-
285 ited to, the following: set construction and operation; wardrobes,
286 make-up, accessories, and related services; costs associated with
287 photography and sound synchronization; expenditures (excluding li-
288 cense fees) incurred with Georgia companies for sound recordings
289 and musical compositions; sound recording projects used in feature
290 films, series, pilots, or movies; lighting and related services and ma-
291 terials; editing and related services; rental of facilities and equip-
292 ment; leasing of vehicles; costs of food and lodging; digital or tape
293 editing; film processing; transfers of film to tape or digital format;
294 sound mixing; computer graphics services; special effects services;
295 animation services; total aggregate payroll; airfare, if purchased
296 through a Georgia travel agency or travel company, airfare is gener-
297 ally limited to one roundtrip per production cycle and for this

purpose a production cycle is defined as a single episode for television and as a run of show for all other productions; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term also includes payments to a loan-out company by a production company or its payroll service provider or by a qualified interactive entertainment production company or its payroll service provider that has met its withholding tax obligations in subparagraph (6)(d) of this regulation. The production company's tax basis (accrual or cash) shall be used to determine when the payment is made; provided however, prepayments for goods and services qualify in the tax year the payment applies to (the year the goods are delivered or the year the services are rendered), not the year it is prepaid. Also, any qualified expenditures, including reshoots after the principal photography or additional photography, any of which occur outside of the taxable year on the Department of Economic Development's certificate for the project, require a separate certification from the Department of Economic Development. With the exception of assets subject to depreciation under paragraph (6)(e) of this regulation, receipts for asset sales, rebates, insurance proceeds, federal government reimbursements or credits, or any other reimbursements, reduce the amount of qualified expenditures and are required to be reflected in the production cost journal.

1. This term shall not include:

(i) Postproduction expenditures for footage shot outside of Georgia, marketing, publicity, story rights, or distribution;

(ii) Any expenditure for work or services not conducted or rendered in Georgia. Expenditures for services not performed at the filming site shall only qualify if the vendor is a Georgia vendor.

331 Expenditures for services conducted or rendered both in Georgia
332 and outside Georgia shall only qualify to the extent the service is
333 conducted or rendered in Georgia;

334

335 (iii) Expenditures for goods that were not purchased or rented or
336 leased in this state from a Georgia vendor. Goods are not considered
337 purchased or rented in Georgia if the goods are shipped or delivered
338 from the Georgia vendor's location outside of Georgia unless more
339 than a de minimis amount of the type of goods held and shipped or
340 delivered from outside Georgia are normally held in inventory in the
341 ordinary course of business in Georgia by the Georgia vendor. Ex-
342 penditures for goods shall only qualify to the extent such goods are
343 used in Georgia. A vendor that acts as a conduit to enable purchases
344 or rentals to qualify that would not otherwise qualify shall not be
345 considered a Georgia vendor with respect to such purchases, rentals,
346 or leases;

347

348 (iv) Freight or shipping charges incurred relating to a ~~non-Geor-~~
349 ~~gian~~non-Georgia vendor; or

350

351 (v) Any transaction subject to taxation under Chapter 8 or Chap-
352 ter 13 of Title 48 of the Official Code of Georgia for which taxes
353 have not been demonstrably paid. For purposes of Chapter 8, use tax
354 paid by the production company itself will be considered to have
355 been demonstrably paid for purposes of this subparagraph provided
356 the other requirements of O.G.C.A § 48-7-40.26 and this regulation
357 are met.

358

359 (d) The production company or its payroll service provider or
360 qualified interactive entertainment production company or its pay-
361 roll service provider shall withhold Georgia income tax at the rate
362 imposed by subsection (a) of O.G.C.A § 48-7-21 on all payments to
363 loan-out companies for services performed in Georgia. Any

amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of Title 48 notwithstanding the exclusion in Code Section 48-7-100(10)(K). The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of Chapter 7 of Title 48, the loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in Chapter 7 of Title 48.

1. Registration. A production company or its payroll service provider or a qualified interactive entertainment production company or its payroll service provider that makes payments to a loan-out company must electronically register with the Department using the Georgia Tax Center to obtain a film withholding account for the production company or qualified interactive entertainment production company. The loan-out company must register for a payroll withholding account using the Georgia Tax Center if they are not already registered. The loan-out company must provide the production company or its payroll service provider or the qualified interactive entertainment production company or its payroll service provider the loan-out company's federal identification number and Georgia withholding identification number.

2. Withholding Remittance and Filing. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll service provider on behalf of the qualified interactive entertainment production company shall for each calendar quarter use the

Georgia Tax Center to: electronically file the Form G-7 Film; provide information regarding the loan-out company (name, identification numbers, and amount of withholding); and provide any other information required by the Commissioner. Additionally, the withholding payment required by this subparagraph (6)(d) must be electronically remitted using ACH debit or ACH credit in the same manner provided in Rule 560-3-2-.26. The due date for such filing and remittance shall be the last day of the month following the calendar quarter in which the withholding payments were required to be made.

3. Reporting Requirements. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll service provider on behalf of the qualified interactive entertainment production company shall complete Form G2-FP, which requires: the production company's or qualified interactive entertainment production company's name, address, and tax identification numbers; the loan-out company's name, address and tax identification numbers; the amount of tax paid and withheld by the production company or its payroll service provider or by the qualified interactive entertainment production company or its payroll service provider; the total amount paid by the production company or its payroll service provider or by the qualified interactive entertainment production company or its payroll service provider to the loan-out company for services performed in Georgia (before considering the withholding); and any other information required by the Commissioner. Listing the date(s) of the withholding payments remitted to the Department on the Form G2-FP shall be optional. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll service provider on behalf of the qualified interactive entertainment production company must provide Form

430 G2-FP to the loan-out company by January 31st of the year follow-
431 ing the calendar year in which the withholding payments were made.
432 Such G2-FP shall not be submitted to the Commissioner, except
433 upon request.
434

435 (i) The loan-out company shall complete Form G2-FL, which re-
436 quires: the loan out company's name, address, and identification
437 numbers; the allocated amount withheld (see subparagraph
438 (6)(d)5.); the employee's name, address, and tax identification num-
439 ber; the name and identification numbers of the production company
440 or qualified interactive entertainment production company that paid
441 the withholding; and any other information required by the Com-
442 missioner. The loan-out company must provide Form G2-FL to the
443 employee allocated the withholding amount by February 28th of the
444 year following the calendar year in which the withholding payments
445 were made. The loan-out company must also electronically file a
446 copy of Form G-1003 and Form G2-FL by February 28th of the year
447 following the calendar year in which the withholding payments were
448 made.
449

450 4. Loan-out Filing Requirements. Upon completion of its tax
451 year during which the loan-out company's employees performed
452 services in Georgia, the loan-out company must file a Georgia in-
453 come tax return (and net worth tax return if applicable) and report
454 its income. The loan-out company must also pay its tax liability as
455 would normally be required.
456

457 5. Allocation of Personal Income Credit Against Taxes. The
458 amount deducted and withheld as tax under this subparagraph (6)(d)
459 shall be allowed as a credit to the employee whose services were
460 provided in the certified project against the employee's income tax.
461 If the services of multiple employees are provided by the loan-out
462 company, the amount deducted and withheld under this

463 subparagraph (6)(d) shall be allocated to each employee based on
464 the payments made to the loan-out company's employees perform-
465 ing services in Georgia.

466

467 (i) Employee Filing Responsibility. The employee providing ser-
468 vices must file a Georgia income tax return attaching Form G2-FL,
469 provided by the loan-out company, and apply the credit for the with-
470 holding tax allocated to the employee against the calculated individ-
471 ual income tax liability for that employee.

472

473 6. Penalties and interest shall be imposed in the same manner as
474 provided by Rule 560-7-8-.33. If the production company does not
475 timely remit the loan out withholding for the calendar withholding
476 quarters included in the taxable year specified on the Department of
477 Economic Development certification, then the expenditure(s) does
478 not qualify for the film tax credit, unless the Department determines
479 there was reasonable cause for such delay; provided, however, the
480 mere failure to withhold and remit the required loan out withholding
481 would not by itself be considered reasonable cause. For example,
482 the production period is October and November of 2020. The calen-
483 dar withholding quarter runs from October through December of
484 2020. All amounts must be remitted no later than the January 31,
485 2021 due date for such quarter in order for the payment(s) to the loan
486 out to qualify.

487

488 7. Amounts paid to a loan-out company where the loan-out com-
489 pany is not providing services used in a qualified production activity
490 are not subject to the withholding required by O.C.G.A. § 48-7-
491 40.26.

492

493 8. The failure of the loan-out company or the loan-out company's
494 employees to comply with any registration, filing, and reporting ob-
495 ligations imposed by Georgia law, including those imposed

496 by O.C.G.A. § 48-7-40.26 and this rule, shall not affect the film tax
497 credit claimed by the production company or qualified interactive
498 entertainment production company.
499

500 (e) Depreciation, amortization, or other expense on production
501 expenditures with a useful life of more than one year. The costs of
502 production expenditures with a useful life of more than one year are
503 considered “other direct costs of producing the project in accordance
504 with generally accepted entertainment industry practices.” Such
505 costs shall be included in the computation of the film tax credit for
506 the taxable year based upon the depreciation, amortization, or other
507 expense included in the computation of Georgia taxable income of
508 the production company or qualified interactive entertainment pro-
509 duction company for the applicable taxable year. Such depreciation,
510 amortization, or other expense shall be prorated based upon the time
511 the asset is used in qualified production activities in this state. De-
512 preciation, amortization, or other expense on expenditures incurred
513 before the pre-production period shall not be included in the com-
514 putation of the Film Tax Credit in this state. In order to claim depre-
515 ciation, amortization, or other expense, the expenditure for the asset
516 that generated the depreciation, amortization, or other expense, must
517 have been incurred in this State as provided in subparagraph (6)(f)
518 of this regulation.
519

520 (f) Production expenditures incurred in this state. In order to be
521 considered to have been incurred in this state, the following rules
522 shall apply:
523

524 1. Production expenditures, which are attributable to the perfor-
525 mance of services by individuals and companies directly at the film-
526 ing site in Georgia who were not employees of the production com-
527 pany or qualified interactive entertainment production company,
528 shall be attributed to Georgia in the same manner as salaries as

529 provided in subparagraph (6)(g) of this regulation.
530

531 2. Except as otherwise provided in this regulation, expenditures
532 for services which are not performed at the filming site (such as in-
533 surance, service fees paid to a payroll company including workers
534 compensation if the service fees include such, editing and related
535 services, digital or tape editing, film processing, transfers of film to
536 tape or digital format, sound mixing, computer graphics services,
537 special effects services, animation services, etc.) will be allowed if
538 the vendor is a Georgia vendor and will be attributed to Georgia if
539 and only to the extent the service is rendered in Georgia. If the pro-
540 duction company or qualified interactive entertainment production
541 company is unable to track the cost of the services rendered in Geor-
542 gia, then some other reasonable method which approximates the cost
543 of the services rendered in Georgia may be used to determine the
544 amount attributable to Georgia but such approximation will be sub-
545 ject to adjustment by the Department. In the event the services are
546 subcontracted to a company that would not otherwise qualify and/or
547 such subcontracted company renders the services outside Georgia,
548 the expenditure for such services shall not be considered to have
549 been incurred in this state.
550

551 3. Purchases and rentals of property. In order to include produc-
552 tion expenditures for purchases and rentals of property, the property
553 must have been used in Georgia and purchased or rented from a
554 Georgia vendor. Goods are not considered purchased or rented in
555 Georgia if the goods are shipped or delivered from the Georgia ven-
556 dor's location outside of Georgia unless more than a de minimis
557 amount of the type of goods held and shipped or delivered from out-
558 side of Georgia are normally held in inventory in the ordinary course
559 of business in Georgia by the Georgia vendor. Purchase receipts,
560 invoices, contracts, packing slips, or other documentation shall be
561 used to determine this.

4. Georgia Vendor. For purposes of this rule, a Georgia vendor is a vendor that:

(i) Sells or rents a type of property of which more than a de minimis amount is regularly held in their inventory in the ordinary course of business in Georgia, or provides a service not performed at the filming site, which is the subject of the production expenditure, in their ordinary course of business;

(ii) Has a physical location in Georgia with at least one individual working at such location on a regular basis, including home-based businesses that otherwise meet the requirements of a Georgia vendor. Registering with the Georgia Secretary of State or appointing a registered agent in Georgia does not establish a physical location in Georgia.

However, a vendor that acts as a conduit to enable purchases and rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases and rentals;

(iii) Is registered with the Department for collection of sales and use tax when required by Chapter 8 of Title 48;

(iv) Has a local Georgia business license. The production company is required to obtain a copy of the license from any Georgia vendor where the total amount of purchases exceed \$10,000 for such vendor during the taxable year on the Department of Economic Development's certificate for the project; and

(v) For services rendered on set, such persons or vendors providing such services, are identified on the daily production reports or other reasonable evidence that such services were rendered on set is

595 provided;

596

597 Failure to provide documentation in this subparagraph when re-
598 quested will result in the purchases from the vendor being disquali-
599 fied.

600

601 (g) Salaries. Total aggregate payroll, as such term is used in the
602 Act, includes bonuses, incentive pay, and other compensation paid
603 to an employee which is included in the employees Form W-2
604 "Wage and Tax Statement". Reimbursed expenses, per diems, or
605 employer paid benefits and taxes are not included in aggregate pay-
606 roll unless such amounts are included as wages, tips, or other com-
607 pensation in the employee's Form W-2 "Wage and Tax Statement".
608 For purposes of this rule, the term "employee" means any officer of
609 a corporation or any individual who, under the Internal Revenue
610 Service rules applicable in determining the employer-employee re-
611 lationship, has the status of an employee. Only amounts included in
612 total aggregate payroll shall be subject to the \$500,000 limit pro-
613 vided in O.C.G.A. § 48-7-40.26(b)(14). Guaranteed payments to
614 partners do not qualify for the film tax credit and are not included in
615 total aggregate payroll. Except as otherwise provided in this para-
616 graph, if the production company or qualified interactive entertain-
617 ment production company is unable to track the actual time spent by
618 an employee in Georgia, the production company or qualified inter-
619 active entertainment production company may calculate the total ag-
620 gregate payroll in Georgia by some other reasonable method which
621 approximates the actual time spent in Georgia but such approxima-
622 tion will be subject to adjustment by the Department. For all indi-
623 viduals who are paid a separate amount for preproduction, for actual
624 production, and for ~~post-production~~ postproduction excluding pub-
625 licity, the amount that is incurred in Georgia shall be based on the
626 amount paid for each such period and prorated based on the actual
627 time spent in Georgia by the employee in each such period. For

628 purposes of determining the time spent in Georgia for this subpara-
629 graph the following shall apply. Travel days are considered a half
630 day. Hold days and other service days that do not begin and end in
631 Georgia are not included in the numerator for purposes of the calcu-
632 lation but are included in the denominator. Prescreening, wardrobe,
633 and free days are included in the numerator if performed in Georgia
634 but in all cases are included in the denominator. Publicity and pro-
635 motion days do not qualify and must be included in the denominator
636 to the extent the services are contractually specified in the employ-
637 ment agreement. If the production company or qualified interactive
638 entertainment production company is unable to track the actual time
639 spent by the individual in Georgia, the production company or qual-
640 ified interactive entertainment production company may calculate
641 the total aggregate payroll in Georgia by some other reasonable
642 method which approximates the actual time spent in Georgia for
643 each such period but such approximation will be subject to adjust-
644 ment by the Department.

645
646 (h) Fringe Benefits. The following benefits are attributed to
647 Georgia in the same manner as salaries as provided in subparagraph
648 (6)(g) of this regulation:
649

- 650 1. SUI (state unemployment insurance);
651
- 652 2. FUI (federal unemployment insurance);
653
- 654 3. FICA (employer portion);
655
- 656 4. Pension and welfare if the amounts are paid as part of pension,
657 health, and welfare plans (these would not be required to be paid to
658 a Georgia vendor);
659
- 660 5. Health insurance premiums if these amounts are paid as part

661 of pension, health, and welfare plans (these would not be required
662 to be paid to a Georgia vendor);

663

664 (i) Other Fringe Benefits. The following fringe benefits are at-
665 tributed to Georgia as follows:

666

667 1. Meal and incidental allowance per diems, including those not
668 taken on set, as set forth by United States General Services Admin-
669 istration, if incurred in Georgia;

670

671 2. Hotel and other overnight living accommodations per diems,
672 as set forth by United States General Services Administration, if in-
673 curred in Georgia;

674

675 3. Any amounts that exceed the limits in subparagraph (6)(i) only
676 qualify if either included in taxable compensation and if subject to
677 the withholding imposed by subparagraph (6)(d) of this regulation,
678 remitted as required by this regulation or if subject to wage with-
679 holding, remitted as required by Title 48.

680

681 (j) For services rendered on set, such persons or vendors provid-
682 ing such services, must be identified on the daily production reports
683 or the production company must provide other reasonable evidence
684 that such services were rendered on set.

685

686 (k) Production expenditures by a production company shall be
687 subject to any limitations or reductions under paragraphs (17)
688 through (24) of this regulation.

689

690 **(7) Credit Amount.**

691

692 (a) Except as provided in paragraph (7)(a)1 of this regulation, a
693 production company or qualified interactive entertainment

694 production company, that meets or exceeds the \$500,000 base in-
695 vestment threshold provided in O.C.G.A. § 48-7-40.26(c) and this
696 regulation, shall be allowed a tax credit of 20 percent of the base
697 investment in this state; and an additional tax credit of 10 percent of
698 the base investment shall be allowed if the qualified production ac-
699 tivity includes a qualified Georgia promotion approved by the Geor-
700 gia Department of Economic Development or an alternative market-
701 ing opportunity approved by the Georgia Department of Economic
702 Development.

703
704 1. For taxable years beginning on or after January 1, 2018, a qual-
705 ified interactive entertainment production company, that meets or
706 exceeds the \$250,000 base investment threshold provided
707 in O.C.G.A. § 48-7-40.26(c) and this regulation, shall be allowed a
708 tax credit of 20 percent of the base investment in this state; and an
709 additional tax credit of 10 percent of the base investment shall be
710 allowed if the qualified production activity includes a qualified
711 Georgia promotion approved by the Georgia Department of Eco-
712 nomic Development or an alternative marketing opportunity ap-
713 proved by the Georgia Department of Economic Development.

714
715 (b) Except as provided in paragraph (7)(b)1 of this regulation, a
716 production company or qualified interactive entertainment produc-
717 tion company, that meets or exceeds the \$500,000 excess base in-
718 vestment threshold provided in O.C.G.A. § 48-7-40.26(d) and this
719 regulation, shall be allowed a tax credit of 20 percent of the excess
720 base investment; and an additional tax credit of 10 percent of the
721 excess base investment shall be allowed if the qualified production
722 activities includes a qualified Georgia promotion approved by the
723 Georgia Department of Economic Development or an alternative
724 marketing opportunity approved by the Georgia Department of Eco-
725 nomic Development.

726

1. For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company, that meets or exceeds the \$250,000 excess base investment threshold provided in O.C.G.A. § 48-7-40.26(d) and this regulation, shall be allowed a tax credit of 20 percent of the excess base investment in this state; and an additional tax credit of 10 percent of the excess base investment shall be allowed if the qualified production activity includes a qualified Georgia promotion approved by the Georgia Department of Economic Development or an alternative marketing opportunity approved by the Georgia Department of Economic Development.

(c) The base investment and the credit amount allowed under paragraph (7)(a) of this regulation for a production company and the excess base investment and the credit amount allowed under paragraph (7)(b) of this regulation for a production company shall be subject to the limitations of and reductions required by paragraphs (17) through (24) of this regulation.

(8) Credit Amount Limitation for a Qualified Interactive Entertainment Production Company. Except as provided in paragraph (8)(a) of this regulation, a qualified interactive entertainment production company's credit amount shall not exceed the amounts in paragraph (9) of this regulation and for any single tax year shall not exceed the qualified interactive entertainment production company's total aggregate payroll expended to employees working within this state for the calendar year directly preceding the start of the taxable year the qualified interactive entertainment production company claims the film tax credit. Any amount in excess of this credit limit shall not be eligible for ~~carry forward~~carryforward to succeeding years' tax liability, nor shall such excess amount be eligible for use against the qualified interactive entertainment production company's quarterly or monthly payment under O.C.G.A. § 48-7-103, nor shall such excess amount be assigned, sold, or transferred

760 to any other taxpayer.

761

762 (a) For taxable years beginning on or after January 1, 2018, a
763 qualified interactive entertainment production company's credit
764 amount shall not exceed the amounts in paragraph (9) of this regu-
765 lation and for any single tax year shall not exceed the qualified in-
766 teractive entertainment production company's total aggregate pay-
767 roll expended to employees working within this state for the taxable
768 year in which the qualified interactive entertainment production
769 company claims the tax credits. Any amount in excess of this credit
770 limit shall not be eligible for ~~carry forward~~carryforward to succeed-
771 ing years' tax liability, nor shall such excess amount be eligible for
772 use against the qualified interactive entertainment production com-
773 pany's quarterly or monthly payment under O.C.G.A. § 48-7-103,
774 nor shall such excess amount be assigned, sold, or transferred to any
775 other taxpayer.

776

777 (b) For taxable years beginning on or after January 1, 2018, qual-
778 ified interactive entertainment production companies are eligible for
779 film tax credits for prereleased interactive game production; pro-
780 vided such credits shall not be available for a period that exceeds
781 three years for each such qualified interactive entertainment produc-
782 tion company.

783

784 (9) **Credit Cap for Film Tax Credit for Qualified Interactive**
785 **Entertainment Production Companies and Affiliates.** In no event
786 shall the aggregate amount of tax credits allowed under O.C.G.A. §
787 48-7-40.26 for qualified interactive entertainment production com-
788 panies and their affiliates which are qualified interactive entertain-
789 ment production companies exceed the following amounts:

790

791 (a) For taxable years beginning on or after January 1, 2013, and
792 before January 1, 2014, the aggregate amount of tax credits allowed

793 under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment
794 production companies and their affiliates which are qualified inter-
795 active entertainment production companies shall not exceed \$25
796 million. The maximum credit amount allowed for any qualified in-
797 teractive entertainment production company and its affiliates which
798 are qualified interactive entertainment production companies shall
799 not exceed \$5 million for taxable years beginning on or after January
800 1, 2013 and before January 1, 2014;

801

802 (b) For taxable years beginning on or after January 1, 2014, and
803 before January 1, 2015, the aggregate amount of tax credits allowed
804 under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment
805 production companies and their affiliates which are qualified inter-
806 active entertainment production companies shall not exceed \$12.5
807 million. The maximum credit amount allowed for any qualified in-
808 teractive entertainment production company and its affiliates which
809 are qualified interactive entertainment production companies shall
810 not exceed \$1.5 million for taxable years beginning on or after Jan-
811 uary 1, 2014 and before January 1, 2015;

812

813 (c) For taxable years beginning on or after January 1, 2015, and
814 before January 1, 2016, the aggregate amount of tax credits allowed
815 under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment
816 production companies and their affiliates which are qualified inter-
817 active entertainment production companies shall not exceed \$12.5
818 million. The maximum credit amount allowed for any qualified in-
819 teractive entertainment production company and its affiliates which
820 are qualified interactive entertainment production companies shall
821 not exceed \$1.5 million for taxable years beginning on or after Jan-
822 uary 1, 2015 and before January 1, 2016;

823

824 (d) For taxable years beginning on or after January 1, 2016, and
825 before January 1, 2018, the aggregate amount of tax credits allowed

826 under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment
827 production companies and their affiliates which are qualified inter-
828 active entertainment production companies shall not exceed \$12.5
829 million for each taxable year. The maximum credit amount allowed
830 for any qualified interactive entertainment production company and
831 its affiliates which are qualified interactive entertainment produc-
832 tion companies shall not exceed \$1.5 million for each taxable year
833 beginning on or after January 1, 2016 and before January 1, 2018;
834 and

835
836 (e) For taxable years beginning on or after January 1, 2018, the
837 aggregate amount of tax credits allowed under O.C.G.A. § 48-7-
838 40.26 for qualified interactive entertainment production companies
839 shall not exceed \$12.5 million for each taxable year. The maximum
840 credit amount allowed for any qualified interactive entertainment
841 production company and its affiliates which are qualified interactive
842 entertainment production companies shall not exceed \$1.5 million
843 for each taxable year beginning on or after January 1, 2018.

844
845 (f) Allocation of Film Tax Credit for Qualified Interactive Enter-
846 tainment Production Company and Affiliates. For taxable years be-
847 ginning on or after January 1, 2013 and before January 1, 2016, the
848 Commissioner shall allow the film tax credit for any qualified inter-
849 active entertainment production company and affiliates on a first-
850 come, first served basis. The paper filing date or electronic filing
851 date of the qualified interactive entertainment production com-
852 pany's income tax return that claims the film tax credit as provided
853 in paragraph (10) of this regulation shall be used to determine such
854 first-come, first-served basis. At the time the credit is claimed, all
855 qualified interactive entertainment production companies must also
856 send a paper copy of the Form IT-FC "Film Tax Credit" to the ad-
857 dress listed on such form. Failure to send such paper copy may cause
858 the qualified interactive entertainment production company to not

859 be allowed the film tax credit.

860

861 (g) Income Tax Returns Claiming the Credit on the Day the Ag-
862 gregate Credit Amount is Reached. For taxable years beginning on
863 or after January 1, 2013 and before January 1, 2016, on the day
864 credit amounts on qualified interactive entertainment production
865 companies' income tax returns, which claim the film tax credit as
866 provided in paragraph (10) of this regulation, are received that ex-
867 ceed the aggregate limits in paragraph (9) of this regulation, then the
868 tax credits shall be allocated among such qualified interactive enter-
869 tainment production companies on a pro rata basis based upon
870 amounts otherwise allowed by O.C.G.A. § 48-7-40.26 and this reg-
871 ulation. Only credit amounts on income tax returns filed on the day
872 the aggregate limits were exceeded will be allocated on a pro rata
873 basis.

874

875 (h) Preapproval for Taxable Years Beginning on or after January
876 1, 2016. For taxable years beginning on or after January 1, 2016, all
877 qualified interactive entertainment production companies must be
878 preapproved to claim the film tax credit and must submit the appro-
879 priate forms to the Department through the Georgia Tax Center as
880 provided in this subparagraph.

881

882 1. Application. A qualified interactive entertainment production
883 company seeking preapproval to claim the film tax credit must elec-
884 tronically submit Form IT-QIEPC-AP through the Georgia Tax
885 Center. A qualified interactive entertainment production company
886 that has submitted its Form IT-QIEPC for certification by the De-
887 partment or that submits Form IT-QIEPC on the same day as Form
888 IT-QIEPC-AP is submitted may request preapproval from the De-
889 partment before meeting the requirements of the film tax credit.
890 Such qualified interactive entertainment production company must
891 estimate their credit amounts on Form IT-QIEPC-AP. The amount

892 of tax credit claimed by the qualified interactive entertainment pro-
893 duction company on the qualified interactive entertainment produc-
894 tion company's applicable Georgia income tax return must be based
895 on the actual film tax credit earned pursuant O.C.G.A. § 48-7-
896 40.26 and this regulation and cannot exceed the amount preap-
897 proved. If the qualified interactive entertainment production com-
898 pany is preapproved for an amount that exceeds the amount that is
899 calculated using the actual numbers when the return is filed, the ex-
900 cess preapproved amount cannot be claimed by the qualified inter-
901 active entertainment production company nor shall such excess pre-
902 approved amount be assigned, sold, or transferred to any other tax-
903 payer.

904
905 2. Notification. The Department will notify each qualified inter-
906 active entertainment production company of the tax credits preap-
907 proved or denied to such qualified interactive entertainment produc-
908 tion company.

909
910 3. Allocation of Tax Credit. The Commissioner shall allow the
911 film tax credits for qualified interactive entertainment production
912 companies on a first-come, first-served basis. The date the Form IT-
913 QIEPC-AP is electronically submitted shall be used to determine
914 such first-come, first-served basis.

915
916 4. Applications received on the day the maximum credit amount
917 is reached. In the event that the credit amounts on applications re-
918 ceived by the Commissioner exceed the maximum aggregate limit
919 in subparagraph (9)(d) of this regulation, then the tax credits shall
920 be allocated among the qualified interactive entertainment produc-
921 tion companies who submitted Form IT-QIEPC-AP on the day the
922 maximum aggregate limit was exceeded on a pro rata basis based
923 upon amounts otherwise allowed under O.C.G.A. § 48-7-40.26, and
924 this regulation. Only credit amounts on applications received on the

925 day the maximum aggregate limit was exceeded will be allocated on
926 a pro rata basis.

927

928 5. Once the credit cap is reached for a calendar year, qualified
929 interactive entertainment production companies who meet the re-
930 quirements of the film tax credit during such calendar year shall no
931 longer be eligible for a credit under O.C.G.A. § 48-7-40.26. If any
932 Form IT-QIEPC-AP is received after the calendar year preapproval
933 limit has been reached, then it shall be denied and not be reconsid-
934 ered for preapproval at any later date.

935

936 6. In the event it is determined that the qualified interactive en-
937 tertainment production company has not met all the requirements
938 of O.C.G.A. § 48-7-40.26 and this regulation, then the amount of
939 credits shall not be preapproved or the preapproved credits shall be
940 retroactively denied. With respect to such denied credits, tax, inter-
941 est, and penalties shall be due if the credits have already been
942 claimed.

943

944 **(10) Production Company or Qualified Interactive Enter-**
945 **tainment Production Company Claiming Credit.**

946

947 (a) Income Tax. Except as provided in paragraphs (17) through
948 (24) of this regulation, for a production company or qualified inter-
949 active entertainment production company to claim the film tax
950 credit, it must attach Form IT-FC "Film Tax Credit", the Department
951 of Economic Development credit certification(s), and an approved
952 Form IT-QIEPC-AP, if applicable to its Georgia income tax return
953 for each tax year in which the qualified expenditures were incurred.

954

955 (b) Withholding Tax. The production company or qualified inter-
956 active entertainment production company may claim any excess
957 film tax credit, which has been claimed as provided in subparagraph

958 (10)(a) or paragraph (21), against its withholding tax liability or the
959 withholding tax liability of its payroll service providers provided
960 such withholding tax liability is with respect to the employees of the
961 production company and is attributable to withholding for such em-
962 ployees for withholding periods approved in subparagraph (10)(b)3.
963 The withholding tax benefit may only be applied against the with-
964 holding tax account used by the production company or its payroll
965 service provider or qualified interactive entertainment production
966 company or its payroll service provider for payroll purposes. In the
967 event the production company or qualified interactive entertainment
968 production company is a single member limited liability company
969 that is disregarded for income tax purposes, the withholding tax ben-
970 efit may only be applied against the withholding tax liability that is
971 attributable to wages paid by the single member limited liability
972 company or against the withholding tax liability of its payroll ser-
973 vice providers provided such withholding tax liability is attributable
974 to wages paid by its payroll service provider with respect to the in-
975 dividuals providing services to the single member limited liability
976 company and is attributable to withholding for such employees for
977 withholding periods approved in subparagraph (10)(b)3. Any pro-
978 duction company or qualified interactive entertainment production
979 company that qualifies to take all or a part of the film tax credit
980 against withholding tax otherwise due the Department of Revenue,
981 must notify the Commissioner, in the manner specified in subpara-
982 graph (10)(b)1., below, for any tax year for which they are making
983 make an irrevocable election to take all or a part of the credit against
984 the quarterly or monthly withholding tax payment for such compa-
985 ny do so as a part of its notification to the Commissioner required
986 under this subparagraph. When this election is made, the excess film
987 tax credit will not pass through to the shareholders, partners, or
988 members of the production company or qualified interactive enter-
989 tainment production company if the production company or quali-
990 fied interactive entertainment production company is a pass-through

991 entity.

992
993 1. Notice of Intent. To claim any excess film tax credit not used
994 on the income tax return against the production company's or qual-
995 ified interactive entertainment production company's withholding
996 tax liability, the production company or qualified interactive enter-
997 tainment production company must file Revenue Form IT-
998 WH *Notice of Intent* through the Georgia Tax Center within the
999 three-year statute of limitations period ~~thirty (30) days~~ after the due
1000 date of the Georgia income tax return (including extensions) ~~or~~
1001 ~~within (30) days after the filing of a timely filed Georgia income tax~~
1002 ~~return, whichever occurs first~~. Failure to file this form as provided
1003 in this subparagraph will result in disallowance of the withholding
1004 tax benefit. Such irrevocable election may only be made one time
1005 with respect to each tax year for which the credit is earned for such
1006 tax year, for all or part of the excess tax credit remaining at the time
1007 of the election. However, in the case of a credit which is earned in
1008 more than one taxable year, the election to claim the withholding
1009 credit will be available for the credit earned in such subsequent year.

1010
1011 2. Review Period. The Department of Revenue has one hundred
1012 twenty (120) days from the date the applicable Form IT-WH under
1013 paragraph (10)(b)1. of this regulation is received to review the credit
1014 and make a determination of the amount eligible to be used against
1015 withholding tax.

1016
1017 3. Letter of Eligibility. Once the review is completed, a letter will
1018 be sent to the production company or qualified interactive entertain-
1019 ment production company stating the film tax credit amount which
1020 may be applied against withholding and when the production com-
1021 pany or its payroll service provider or qualified interactive entertain-
1022 ment production company or its payroll service provider may begin
1023 to claim the film tax credit against withholding tax. The Department

1024 of Revenue shall treat this amount as a credit against future with-
1025 holding tax payments and will not refund any previous withholding
1026 payments made by the production company or its payroll service
1027 provider or the qualified interactive entertainment production com-
1028 pany or its payroll service provider.

1029

1030 (c) Use of Other Tax Credits. Production companies or qualified
1031 interactive entertainment production companies claiming the film
1032 tax credit may not claim the job tax credit, headquarters tax credit,
1033 or quality jobs tax credit for employees whose wages are used to
1034 calculate the film tax credit.

1035

1036 **(11) Conditions and Limitations.**

1037

1038 (a) A production company or qualified interactive entertainment
1039 production company must provide the Department of Revenue with
1040 sufficient detail of all qualifying expenditures used to meet the base
1041 investment and calculate the film tax credit.

1042

1043 (b) Except as otherwise provided, a taxpayer may utilize the film
1044 tax credit only to the extent of the taxpayer's income tax liability in
1045 a given tax year.

1046

1047 (c) Except as provided in paragraph (22) of this regulation, ~~there~~
1048 ~~is a five-year carry forward period from the end of the tax year in~~
1049 ~~which the qualifying expenditures were made and the production~~
1050 ~~company or qualified interactive entertainment production company~~
1051 ~~established the amount of the film tax credit for such tax year. Any~~
1052 ~~film tax credits that cannot be used against a taxpayer's income tax~~
1053 ~~liability in the year established will be carried forward for the num-~~
1054 ~~bers of years authorized under O.C.G.A. § 48-7-40.26. For example,~~
1055 ~~the amount of a film tax credit established in the calendar 2014 tax~~
1056 ~~year may be carried forward until it expires on December 31, 2019.~~

1057
1058 (d) Film tax credits may not be carried back and applied against
1059 a prior year's income tax liability.

1060
1061 (e) Except as provided in paragraphs (17) through (24) of this
1062 regulation, any Department of Revenue audit triggered by a produc-
1063 tion company's or qualified interactive entertainment production
1064 company's use or transfer of a film tax credit will require the pro-
1065 duction company or qualified interactive entertainment production
1066 company to reimburse the Department of Revenue for all costs as-
1067 sociated with the audit. The Department of Revenue will inform the
1068 production company or qualified interactive entertainment produc-
1069 tion company that the audit is a film tax credit audit and thus subject
1070 to this clause prior to the commencement of the audit. Routine audits
1071 of the taxpayer's activity in Georgia are not subject to this provision.

1072
1073 (12) **Pass-Through Entities.** When a production company or
1074 qualified interactive entertainment production company generating
1075 a film tax credit is a pass-through entity, and has no income tax li-
1076 ability of its own, the film tax credit will pass to its members, share-
1077 holders, or partners based on the year ending profit/loss percentage.
1078 The credit forms will initially be filed with the tax return of the pro-
1079 duction company or qualified interactive entertainment production
1080 company that incurred the qualifying expenditures to establish the
1081 amount of the film tax credit available for pass through. The credit
1082 will then pass through to its shareholders, members, or partners to
1083 be applied against the tax liability on their income tax returns. The
1084 shareholders, members, or partners may not claim any excess film
1085 tax credit against their withholding tax liabilities or against the with-
1086 holding tax liabilities of their payroll service providers. The credits
1087 are available for use as a credit by the shareholders, members, or
1088 partners for their tax year in which the income tax year of the pass-
1089 through entity ends. For example: A partnership earns the credit for

1090 its tax year ending January 31, 2014. The partnership passes the
1091 credit to a calendar year partner. The credit is available for use by
1092 the partner beginning with the calendar 2014 tax year.
1093

1094 **(13) Selling or Transferring the Film Tax Credit.** The produc-
1095 tion company or qualified interactive entertainment production
1096 company may sell or transfer in whole or in part any film tax credit,
1097 previously claimed but not used by such production company or
1098 qualified interactive entertainment production company against its
1099 income tax, to another Georgia taxpayer subject to the following
1100 conditions:
1101

1102 (a) Each sale or transfer must be for a minimum of 60 percent of
1103 the credit amount being sold in each respective sale (i.e., the mini-
1104 mum price for each dollar of credit included in an installment must
1105 be at least 60 cents).
1106

1107 (b) The taxpayer may only make a one-time sale or transfer of
1108 film tax credits earned in each taxable year. However, the sale or
1109 transfer may involve more than one transferee and more than one
1110 sale date. The sale may occur in a year or years after the film tax
1111 credit is earned but must occur before the expiration of the ~~carry~~
1112 ~~forward~~carryforward period of such credit. For example, a produc-
1113 tion company or qualified interactive entertainment production
1114 company earns a \$500,000 credit in year 1. In year 2 the production
1115 company or qualified interactive entertainment production company
1116 sells \$200,000 of the credit to taxpayer 2 and \$50,000 to taxpayer 3.
1117 In year 3 the production company or qualified interactive entertain-
1118 ment production company sells the remaining \$250,000 of the credit
1119 to taxpayer 4. However, taxpayer 2, taxpayer 3, and taxpayer 4 are
1120 not allowed to resell the credit since the credit can only be sold one-
1121 time.
1122

1123 (c) Except as provided in paragraphs (17) through (24) of this
1124 regulation, the film tax credit may be transferred before the tax re-
1125 turn is filed by the production company or qualified interactive en-
1126 tertainment production company provided the film tax credit has
1127 been earned. Preapproval for a qualified interactive entertainment
1128 production company by itself does not qualify as earning the credit.
1129 For credits subject to paragraphs (17) through (24) of this regulation,
1130 the film tax credit may be transferred before the tax return is filed
1131 by the production company provided the film tax credit has been
1132 finally certified. However, the amount transferred cannot exceed the
1133 amount of the credit which will be claimed and not used on the in-
1134 come tax return of the transferor.

1135
1136 (d) The production company or qualified interactive entertain-
1137 ment production company must file Form IT-TRANS “Notice of
1138 Tax Credit Transfer” with both the Department of Economic Devel-
1139 opment and Department of Revenue within 30 days of each transfer
1140 or sale of the film tax credit. Form IT-TRANS must be submitted
1141 electronically to the Department of Revenue through the Georgia
1142 Tax Center or alternatively as provided in subparagraph (13)(d)1.
1143 With respect to such production companies and qualified interactive
1144 entertainment production companies, the Department of Revenue
1145 will not process any Form IT-TRANS submitted or filed in any other
1146 manner. Before submitting Form IT-TRANS, the production com-
1147 pany that earned the film tax credit must have reported to the De-
1148 partment of Revenue the information required by paragraph (16) of
1149 this regulation or for credits subject to paragraphs (17) through (24)
1150 of this regulation, the film tax credit must have been finally certified
1151 or the qualified interactive entertainment production company that
1152 earned the film tax credit must have received preapproval from the
1153 Department of Revenue if required by subparagraph (9)(h) of this
1154 regulation. If the production company or qualified interactive enter-
1155 tainment production company is a disregarded entity then Form IT-

TRANS should be filed in the name of the owner of the disregarded entity but the certification from the Department of Economic Development and Form IT-FC should be in the name of the disregarded entity. With respect to production companies, the requirements of this subparagraph and subparagraph (13)(d)1. are also applicable to taxable years beginning before January 1, 2016 if the credit is or will be claimed on or after June 1, 2016.

1. The web-based portal on the Georgia Tax Center. The production company or qualified interactive entertainment production company may provide selective information to a representative for the purpose of allowing the representative to submit Form IT-TRANS on their behalf on the Georgia Tax Center outside of a login. The provision of such information shall authorize the representative to submit such Form IT-TRANS. The representative must provide all information required by the web-based portal on the Georgia Tax Center to submit Form IT-TRANS.

(e) The production company or qualified interactive entertainment production company must provide all required film tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the film tax credit being disallowed until the production company or qualified interactive entertainment production company complies with such requirements.

(f) The ~~carry forward~~carryforward period of the film tax credit for the transferee will be the same as it was for the production company or qualified interactive entertainment production company. Except as provided in paragraph (22) of this regulation, this credit may be carried forward for ~~five~~the number of years authorized under O.C.G.A. § 48-7-40.26 from the end of the tax year in which the qualifying expenditures were incurred. For credits subject to paragraphs (17) through (24) of this regulation, the carryforward period

is as provided in paragraph (22). For example, for a credit that has a ~~five-year~~five-year carryforward: The production company or qualified interactive entertainment production company sells a film tax credit on September 15, 2015. This credit is based on qualifying expenditures from the calendar 2014 tax year. The credit may be claimed by the transferee on the 2014, 2015, 2016, 2017, 2018, or 2019 return and the ~~carry forward~~carryforward period for this credit will expire on December 31, 2019. This ~~carry forward~~carryforward treatment applies regardless of whether it is being claimed by the production company, the qualified interactive entertainment production company, or the transferee.

(g) A transferee shall have only such rights to claim and use the Film Tax Credit that were available to the production company or qualified interactive entertainment production company at the time of the transfer excluding the withholding tax benefit which is not available to the transferee. Thus, a transferee shall not have the right to subsequently transfer such credit since that right has been utilized by the transferor.

(14) How to Sell or Transfer the Tax Credit.

(a) Direct Sale. The production company or qualified interactive entertainment production company may sell or transfer the film tax credit directly to a Georgia taxpayer (or multiple Georgia taxpayers as provided in subparagraph (13)(b) of this rule). A pass-through entity may make an election to sell or transfer the unused film tax credit earned in a taxable year at the entity level. If the pass-through entity makes the election to sell the film tax credit at the entity level, the credit does not pass through to the shareholders, members, or partners. In all cases, the effect of the sale of the credit on the income of the seller and buyer of the credit will be the same as provided in the Internal Revenue Code.

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(b) Pass-Through Entity. The production company or qualified interactive entertainment production company may be structured as a pass-through entity. If a pass-through entity does not make an election to sell or transfer the tax credit at the entity level as provided in subparagraph (14)(a) of this rule, the tax credit will pass through to the shareholders, partners or members of the entity based on their year ending profit/loss percentage. The shareholders, members, or partners may then sell their respective film tax credit to a Georgia taxpayer.

(c) Transferee Pass-Through Entity. The production company or qualified interactive entertainment production company, or its shareholders, members or partners, may sell or transfer the tax credit to a pass-through entity. The pass-through entity shall elect on behalf of its shareholders, members or partners which year the credit shall be passed through to its shareholders, members or partners (either its tax year in which the income tax year of the production company or qualified interactive entertainment production company, which claims the film tax credit for the project or project(s) associated with the credit being sold, ends; or during any later tax year before the ~~three or five year carry forward~~ carryforward period associated with the tax credit ends as provided in subparagraph (14)(d) of this rule). If the pass-through entity has no income tax liability of its own, the pass-through entity may then pass the credit through to its shareholders, members, or partners based on the pass-through entity's year ending profit/loss percentage for such elected year. For example, if a calendar year partnership is buying the credit earned by a production company or qualified interactive entertainment production company in the calendar 2014 tax year and elects to use the credit for such year, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2014 tax year in which the credit was established. Only partners who

1255 have a profit/loss percentage as of the end of the applicable tax year
1256 may receive their respective amount of the film tax credit.

1257

1258 (d) The credits are available for use by the transferee, provided
1259 the time has not expired for filing a claim for refund of a tax or fee
1260 erroneously or illegally assessed and collected pursuant to O.C.G.A.
1261 § 48-2-35:

1262

1263 1. In the transferee's tax year in which the income tax year of the
1264 production company or qualified interactive entertainment produc-
1265 tion company, which claims the film tax credit for the project or
1266 project(s) associated with the credit being sold, ends; or

1267

1268 2. During any later tax year before the ~~five-year carry forward~~
1269 carryforward period associated with the tax credit ends or the ~~three~~
1270 year carryforward period under paragraph (22) of this regulation as-
1271 sociated with the tax credit ends.

1272

1273 (i) Example: A production company or qualified interactive en-
1274 tertainment production company reaches the \$500,000 base invest-
1275 ment threshold and claims the film tax credit in calendar 2014 tax
1276 year. There is a five-year carryforward period associated with the
1277 credit. The production company or qualified interactive entertain-
1278 ment production company sells the film tax credit to a calendar year
1279 Georgia taxpayer in calendar year 2015. The transferee Georgia tax-
1280 payer may claim the purchased film tax credit on either their 2014
1281 return (transferee's tax year in which the income tax year of the pro-
1282 duction company or qualified interactive entertainment production
1283 company ends) or their 2015, 2016, 2017, 2018, or 2019 return (dur-
1284 ing any later tax year before the ~~five-year~~five-year ~~carry forward~~
1285 carryforward period associated with the tax credit ends).

1286

1287 (ii) Example: A production company or qualified interactive

entertainment production company reaches the \$500,000 base investment threshold and claims the film tax credit in its fiscal year end June 30, 2014. There is a five-year carryforward period associated with the credit. The production company or qualified interactive entertainment production company sells the film tax credit to a calendar year Georgia taxpayer in calendar year 2015. The transferee Georgia taxpayer may claim the purchased film tax credit on either their 2014 return (transferee's tax year in which the income tax year of the production company or qualified interactive entertainment production company ends) or their 2015, 2016, 2017, 2018, or 2019 return (during any later tax year before the ~~five-year~~ five-year carry forward carryforward period associated with the tax credit ends).

(15) Reporting Required for Qualified Interactive Entertainment Production Companies. For taxable years beginning on or after January 1, 2016, the qualified interactive entertainment production company shall electronically report to the Department of Revenue through the Georgia Tax Center on Form IT-QIEPC-RPT the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year as provided in subparagraphs (a) and (b) of this paragraph. Such report shall be filed on the date the qualified interactive entertainment production company files its Georgia income tax return. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(a) For taxable years beginning on or after January 1, 2016, and before January 1, 2017, the qualified interactive entertainment

1321 production company shall report such number for such taxable year
1322 and separately for each of the prior two taxable years.

1323

1324 (b) For taxable years beginning on or after January 1, 2017, the
1325 qualified interactive entertainment production company shall report
1326 such number for each respective taxable year.

1327

1328 (c) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-
1329 61, for such taxable years, the commissioner shall report yearly to
1330 the House Committee on Ways and Means and the Senate Finance
1331 Committee. The report shall include the name, tax year beginning,
1332 and monthly average number of full-time employees for each qual-
1333 ified interactive entertainment production company. The first report
1334 shall be submitted by June 30, 2016, and each year thereafter by
1335 June 30.

1336

1337 **(16) Reporting Required for Production Companies (not ap-**
1338 **plicable to Qualified Interactive Entertainment Production**
1339 **Companies).**

1340

1341 (a) Except with respect to projects subject to paragraphs (17)
1342 through (24) of this regulation, with respect to any film tax credit
1343 that is or will be claimed on or after June 1, 2016 (as well as credits
1344 for taxable years beginning before January 1, 2016 if the credit is or
1345 will be claimed on or after June 1, 2016), within 90 days of the com-
1346 pletion of the base investment or excess base investment in this state,
1347 the production company that earned the film tax credit must elec-
1348 tronically report and submit to the Department of Revenue through
1349 the Georgia Tax Center the following information:

1350

1351 1. The estimated base investment or excess base investment in
1352 this state;

1353

1354 2. The film tax credit percentage amount, either 20 percent or 30
1355 percent;

1356
1357 3. The Department of Economic Development certification num-
1358 ber; and

1359
1360 4. A copy of the Department of Economic Development certifi-
1361 cation.

1362
1363 (b) If the production company is a disregarded entity then such
1364 information should be submitted in the name of the owner of the
1365 disregarded entity but the certification from the Department of Eco-
1366 nomic Development that is attached to such submission should be
1367 in the name of the disregarded entity.

1368
1369 (c) If a project spans more than one year and the \$500,000 base
1370 investment threshold or excess base investment threshold is not met
1371 in the first year, the production company shall only be required to
1372 report such information in the year in which the credit will be
1373 claimed which is the year the \$500,000 base investment threshold
1374 or excess base investment threshold is met. In such case the Depart-
1375 ment of Economic Development certifications for all years should
1376 be submitted through the Georgia Tax Center. The Department of
1377 Economic Development certifications should either be submitted to-
1378 gether as one file or the additional certification should be submitted
1379 using the additional document option.

1380
1381 (17) **Mandatory Film Tax Credit Audit.** For any project first
1382 certified by the Department of Economic Development on or after
1383 January 1, 2021 and on or before December 31, 2021, if the total
1384 amount of such film tax credit for the project exceeds \$2.5 million,
1385 the film tax credit shall not be claimed, assigned, sold, transferred,
1386 or utilized in any manner until the production company applies for

1387 a mandatory film tax credit audit under paragraph (18) of this regu-
1388 lation and the Department issues a final certification(s) of the film
1389 tax credit under paragraph (19) of this regulation.

1390

1391 (a) For any project first certified by the Department of Economic
1392 Development on or after January 1, 2022 and on or before December
1393 31, 2022, if the total amount of such film tax credit for the project
1394 exceeds \$1.25 million, the film tax credit shall not be claimed, as-
1395 signed, sold, transferred, or utilized in any manner until the produc-
1396 tion company applies for a mandatory film tax credit audit under
1397 paragraph (18) of this regulation and the Department issues a final
1398 certification(s) of the film tax credit under paragraph (19) of this
1399 regulation.

1400

1401 (b) For any project first certified by the Department of Economic
1402 Development on or after January 1, 2023, the film tax credit shall
1403 not be claimed, assigned, sold, transferred, or utilized in any manner
1404 until the production company applies for a mandatory film tax credit
1405 audit under paragraph (18) of this regulation and the Department
1406 issues a final certification(s) of the film tax credit under paragraph
1407 (19) of this regulation.

1408

1409 (c) Prior to issuing a final certification to projects covered under
1410 this paragraph, the Department shall conduct or cause to be con-
1411 ducted an audit of each project by either the Department or an inde-
1412 pendent third party certified by the Department as an eligible auditor
1413 under paragraph (19) of this regulation.

1414

1415 (d) Only projects that meet the requirements of paragraph (17)
1416 shall receive a mandatory film tax credit audit. If the production
1417 company intends to seek and is qualified for the 10% qualified Geor-
1418 gia promotion credit, such credit amount shall be considered in de-
1419 termining if the project meets the requirements of paragraph (17). If

1420 a production company applies for a mandatory film tax credit audit
1421 for a project and the Department or an eligible auditor performs an
1422 audit and the credit amount is less than the required amount under
1423 this paragraph, the project will not receive a final certification but
1424 the production company may request that a voluntary audit be com-
1425 pleted. If the production company does not apply for a mandatory
1426 film tax credit audit for a project that meets the requirements of this
1427 paragraph, then the credit will not be allowed to be claimed, as-
1428 signed, sold, transferred, or utilized in any manner without a man-
1429 datory film tax credit audit.

1430

1431 1. Example 1: On February 1, 2021 the Department of Economic
1432 Development first certifies a project for the 20% film tax credit and
1433 the 10% credit for a qualified Georgia promotion, the project has
1434 estimated expenditures of \$10 million. At the completion of the base
1435 investment the project has a credit amount of \$3 million (the esti-
1436 mated expenditures of \$10 million equal the expenditures at the
1437 completion of the base investment). Therefore, the production com-
1438 pany must apply for a mandatory audit for this project as provided
1439 in paragraph (18) of this regulation.

1440

1441 2. Example 2: On March 1, 2021 the Department of Economic
1442 Development first certifies a project for the 20% film tax credit, the
1443 project has \$10 million in estimated expenditures. At the completion
1444 of the base investment the project has a credit amount of \$2 million
1445 (the estimated expenditures of \$10 million equal the expenditures at
1446 the completion of the base investment). This project does not qualify
1447 for or require a mandatory film tax credit audit.

1448

1449 3. Example 3: On January 31, 2021, the Department of Economic
1450 Development first certifies a project for the 20% film tax credit, the
1451 project has \$10 million in estimated expenditures. At the completion
1452 of the base investment the project has a credit amount of \$3 million

1453 (the expenditures at the completion of the base investment were \$15
1454 million instead of \$10 million). Therefore, the production company
1455 must apply for a mandatory film tax credit audit for this project as
1456 provided in paragraph (18) of this regulation.

1457

1458 4. Example 4: On December 20, 2020, the Department of Eco-
1459 nomic Development first certifies a project for the 20% film tax
1460 credit, the project has \$15 million in estimated expenditures. On Jan-
1461 uary 3, 2022 the Department of Economic Development certifies the
1462 same project for reshoots. This project does not qualify for or require
1463 a mandatory film tax credit audit.

1464

1465 (e) For projects that do not qualify for or require a mandatory
1466 film tax credit audit, the production company may request a volun-
1467 tary film tax credit audit. Voluntary film tax credit audits for projects
1468 that do not qualify for or require a mandatory film tax credit audit
1469 are accepted based on availability and the procedures established by
1470 the Department. Voluntary film tax credit audits are not subject to
1471 paragraphs (17) through (24) of this regulation.

1472

1473 (f) If a production company is issued final certification of a tax
1474 credit pursuant to paragraphs (17) through (24) of this regulation,
1475 such tax credit shall be considered earned in the taxable year in
1476 which it is issued final certification.

1477

1478 (18) **Application for Mandatory Audit.** A production company
1479 seeking to claim the film tax credit for projects covered under para-
1480 graph (17) of this regulation, must apply for an audit of the film tax
1481 credit in the manner provided by the Department within one year
1482 from the date of the completion of the state certified production
1483 where such date is defined as the date of the completion of principal
1484 photography.

1485

1486 (a) The following information shall be submitted with the appli-
1487 cation or prior to the commencement of the audit required under
1488 paragraph (17) of this regulation:
1489

1490 1. A description of the state certified production, along with its
1491 certification as a state certified production from the Department of
1492 Economic Development;
1493

1494 2. A detailed accounting of all qualified production activities and
1495 the attendant production expenditures included in the base invest-
1496 ment for the state certified production;
1497

1498 3. A detailed listing of the employee names, social security num-
1499 bers, and Georgia wages when salaries are included in the base in-
1500 vestment;
1501

1502 4. Vendor invoices for goods or services included in the base in-
1503 vestment as requested by the Department or the eligible auditor
1504 hired to conduct the audit for the state certified production;
1505

1506 5. Contracts for goods or services included in the base investment
1507 as requested by the Department or the eligible auditor hired to con-
1508 duct the audit for the state certified production;
1509

1510 6. An Internal Revenue Service Form W-9 completed and issued
1511 by each vendor for which expenditures are included in the base in-
1512 vestment as requested by the Department or the eligible auditor
1513 hired to conduct the audit for the state certified production. The De-
1514 partment or the eligible auditor shall not request a Form W-9 from
1515 any Georgia vendor where the total amount of purchases does not
1516 exceed \$10,000 for such vendor during the taxable year on the De-
1517 partment of Economic Development's certificate for the project;
1518

- 1519 7. Notification of any intent to utilize an auditor other than the
1520 Department;
1521
- 1522 8. A description of the status of the distribution of the state certi-
1523 fied production and information related to any qualified Georgia
1524 promotion connected with such production;
1525
- 1526 9. The total amount of the tax credit sought for the state certified
1527 production;
1528
- 1529 10. A statement affirming that the contents of the application are
1530 true and correct;
1531
- 1532 11. Production payroll information (summary of payroll and loan
1533 out payments by person, W-2s, 1099s, etc.) issued by the payroll
1534 company must be submitted directly by the payroll company to the
1535 Department or the eligible auditor;
1536
- 1537 12. Disclosure of related persons or related members as such
1538 terms are defined in O.C.G.A. § 48-7-28.3. Disclosure of the total
1539 value of goods and services provided by related parties to the pro-
1540 duction company for the project as well as a breakdown of all such
1541 related party transactions. All transactions with related persons or
1542 related members must be in accordance with an “arm’s length”
1543 standard and a minimum of 3 comparison bids and/or studio rate
1544 cards will be requested;
1545
- 1546 13. Disclosure of contracts, agreements, purchase orders or other
1547 financially binding instruments with all related persons or related
1548 members as such terms are defined in O.C.G.A. § 48-7-28.3;
1549
- 1550 14. Fees for the audit or the portion of the audit that will be com-
1551 pleted by the Department; and

1552
1553 15. Any other information requested by the Department.
1554

1555 (19) **Certification and Decertification of Auditors and Issuing**
1556 **of the Final Certification.**
1557

1558 (a) The Department shall provide for certification and decertifi-
1559 cation of certified public accountants as eligible auditors. For pur-
1560 poses of this regulation, the Department will certify the accounting
1561 firm. One or more persons of such accounting firm must meet the
1562 requirements of this regulation in order for the accounting firm to be
1563 certified. When the audit is submitted to the Department, one of such
1564 persons must certify on behalf of the accounting firm that the re-
1565 quirements of O.C.G.A. § 48-7-40.26, this regulation, and proce-
1566 dures developed by the Department were completed or met. To ob-
1567 tain certification as an eligible auditor, an eligible certified public
1568 accounting firm shall:
1569

1570 1. Register with the Department and be accepted by the Depart-
1571 ment on an annual basis;
1572

1573 2. Maintain its registration with the Georgia State Board of Ac-
1574 countancy and provide documentation of such when it registers and
1575 when otherwise requested by the Department;
1576

1577 3. Agree to and be capable of completing audits related
1578 to O.C.G.A. § 48-7-40.26 in accordance with O.C.G.A. § 48-7-
1579 40.26 and this regulation and procedures developed by the Depart-
1580 ment;
1581

1582 4. Pay the Department a registration fee that the Department shall
1583 set in an amount that reflects the expenses incurred by the Depart-
1584 ment for registration, etc.;

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5. Post and maintain any bond that the Department establishes for each eligible auditor;

6. Successfully complete all training required by the Department and pay any applicable training fees;

7. In order to be an eligible auditor in 2021 and 2022, have at least two years experience in auditing ten productions certified by the Department of Economic Development with a minimum base investment of at least \$5 million for each production; and in order to be an eligible auditor for 2023 and later years, have completed all requirements in O.C.G.A. § 48-7-40.26 and this regulation; provided however, if for 2023 and later years, an auditor has not previously been certified by the Department or does not have at least two years experience in auditing ten productions certified by Department of Economic Development with a minimum base investment of at least \$5 million for each production, such auditor will only be eligible to work on film tax credit audits where the base investment is less than \$5 million until the auditor has completed ten audits; and

8. Have an office in Georgia and, based on hours worked, perform at least 90 percent of the work for the audit in Georgia.

(b) The Department shall decertify an eligible auditor, if such auditor fails to meet the conditions or comply with the provisions of subparagraph (a) of this paragraph.

(c) The Department may decertify an eligible auditor if such auditor fails to complete an audit in accordance with O.C.G.A. § 48-7-40.26 and this regulation.

(d) A certified eligible auditor shall at no cost to the Department:

1618

1619 1. Notify the Department of the commencement of the mandatory
1620 film tax credit audit for each audit assigned to it and complete the
1621 audit in a timely manner:

1622

1623 2. Submit audit workpapers and supporting documentation in the
1624 format required by the Department and provide copies of written
1625 correspondence and conversation memos with the production com-
1626 pany in the format required by the Department;

1627

1628 3. Submit an affidavit of independence with each audit in the for-
1629 mat required by the Department;

1630

1631 4. Maintain for a period of seven years after completion of each
1632 mandatory film tax credit audit copies of all records pertaining to
1633 the mandatory film tax credit audit; and shall make the records avail-
1634 able upon request from the Department;

1635

1636 5. Participate in periodic compliance discussion group meetings
1637 with eligible auditors and the Department;

1638

1639 6. Participate in administrative proceeding or legal proceedings
1640 or inquiries as required regarding the mandatory film tax credit au-
1641 dit;

1642

1643 7. Present and conduct themselves as a credible representative of
1644 the Department and the state to maintain the public's trust; and

1645

1646 8. Maintain taxpayer information and confidentiality as set forth
1647 in the American Institute of Certified Public Accountant's Code of
1648 Professional Conduct.

1649

1650 (e) Each audit shall:

- 1651
1652 1. Be completed in accordance with O.C.G.A. § 48-7-40.26 and
1653 this regulation and procedures developed by the Department;
1654
1655 2. Utilize sampling methods that the Department adopts;
1656
1657 3. Follow guidance published by the Department regarding ex-
1658 penditures incurred with related persons or related members as such
1659 terms are defined in O.C.G.A. § 48-7-28.3;
1660
1661 4. Verify each reported expenditure that is included in the audit
1662 and identify and exclude each such expenditure that does not fully
1663 meet the requirements of O.C.G.A. § 48-7-40.26 and this regula-
1664 tion;
1665
1666 5. Exclude any expenditure:
1667
1668 (i) Not submitted with the application required under paragraph
1669 (18) or with respect to any expenditure required to be submitted
1670 when requested by the Department or the eligible auditor, not sub-
1671 mitted within 60 days of such request; or
1672
1673 (ii) That was incurred after the application required under para-
1674 graph (18) of this regulation was submitted;
1675
1676 6. Not be performed by an eligible accounting entity that is not
1677 determined to be independent as provided in the American Institute
1678 of Certified Public Accountants Code of Professional Conduct with
1679 respect to the production company or any of its related persons or
1680 related members as such terms are defined in O.C.G.A. § 48-7-
1681 28.3 or as otherwise provided by the Department; and
1682
1683 7. Be submitted to the Department which shall review the audit,

1684 make adjustments as necessary, and issue a final certification to the
1685 production company.

1686

1687 (f) The Department shall:

1688

1689 1. Publish and regularly update a list of all eligible auditors that
1690 the Department will select to conduct the audit required under para-
1691 graph (17) of this regulation. The production company may not
1692 choose its own auditor;

1693

1694 2. Publish on its website the application to be certified as an eli-
1695 gible auditor as well as all requirements related to certification and
1696 conducting an audit under this paragraph. Publish on its website the
1697 auditor registration fee and any auditor bond requirements;

1698

1699 3. Prepare periodic training for approving eligible auditors and
1700 conduct annual review of certification of eligible auditors;

1701

1702 4. Review protests of disqualified or decertified auditors;

1703

1704 5. Develop standardized work papers for use by the production
1705 company and eligible auditors;

1706

1707 6. Develop secure data file transfer protocol for the Department
1708 and eligible auditors;

1709

1710 7. Determine whether and when sampling methods shall be used
1711 for the audits required under paragraph (17) of this regulation, the
1712 appropriate sample method and size, and if a sampling method is
1713 used, ensure that it accurately captures a truly representative sample
1714 of all ineligible expenditures across all submitted expenditures and
1715 projects the type, rate, and amount of ineligible expenditures across
1716 all submitted expenditures;

- 1717
1718 8. Notify the production company through the production com-
1719 pany's designee, that the audit was received from the eligible audi-
1720 tor;
1721
1722 9. Perform the audit of expenditures when, due to confidentiality
1723 of information, the eligible auditor is unable to access necessary in-
1724 formation that the Department is able to access;
1725
1726 10. Review each audit conducted by an eligible auditor, conduct
1727 the portions of the audit described in subparagraph (f)9. of this par-
1728 agraph, perform additional auditing as necessary, adjust the value of
1729 the tax credit as necessary, finalize the audit, and issue the final cer-
1730 tification of the tax credit to the production company;
1731
1732 11. For an audit it conducts without an eligible auditor, complete
1733 the audit, adjust the value of the tax credit as necessary, and issue
1734 the final certification of the tax credit to the production company.
1735
1736 12. Issue final list of exceptions to the eligible auditor, if appli-
1737 cable, and the production company's designee; and
1738
1739 13. Review, evaluate, and respond to a protest by the production
1740 company.
1741
1742 (20) **Reimbursement Costs for Audit.** The production company
1743 applying for a final certification of the tax credit shall agree and be
1744 required to reimburse the Department for all costs incurred by the
1745 Department for the performance of a related audit, or any portion
1746 thereof, including for review of an audit conducted by an eligible
1747 auditor, at the time of application.
1748
1749 (a) The cost of any such audit whether conducted in whole or in

1750 part by the Department, an eligible auditor, or a combination of the
1751 two shall be borne by the production company and shall not be in-
1752 cluded as an expenditure claimed under the film tax credit.

1753

1754 1. The cost of the audit depends on the production company's
1755 audit selection of either an audit performed by the Department or an
1756 audit performed in part by an eligible auditor selected by the Depart-
1757 ment. The cost for a mandatory film tax credit audit performed by
1758 the Department will be as published on the Department's website. If
1759 a portion of the film tax credit audit is performed by an eligible au-
1760 ditor selected by the Department, the Department fees will be re-
1761 duced. Once the eligible auditor is selected, such auditor shall con-
1762 tract directly with the production company and as such any fees that
1763 are paid for services rendered by an eligible auditor are paid directly
1764 to such eligible auditor. The Department may at its discretion estab-
1765 lish fees that an eligible auditor may charge.

1766

1767 **(21) Claiming the film tax credit for projects that receive a**
1768 **final certification.** If the production company is issued final certi-
1769 fication of the film tax credit under paragraph (19) of this regulation
1770 such film tax credit shall be considered earned in the taxable year in
1771 which it is issued final certification. For a production company to
1772 claim the film tax credit for a project that has received a final certi-
1773 fication, the production company must complete the appropriate in-
1774 come tax credit schedule on their Georgia income tax return even if
1775 the film tax credit is sold or transferred. No Form IT-FC "Film Tax
1776 Credit" is required. The production company may elect to use their
1777 excess film tax credit against withholding as provided in subpara-
1778 graph (10)(b) of this regulation.

1779

1780 **(22) ~~Carry forward~~Carryforward for projects that receive a**
1781 **final certification.** In no event shall the amount of film tax credit
1782 for a taxable year exceed the production company's income tax

liability. For a project that has been issued a final certification under paragraph (19) of this regulation any unused film tax credit, for the production company or any transferees, shall be allowed to be carried forward for ~~three~~ the number of years authorized under O.C.G.A. § 48-7-40.26 from the close of the taxable year in which the film tax credit was issued its final certification. Film tax credits may not be carried back and applied against prior year's income tax liability.

1791

(23) **No Recapture for Transferee.** The Department shall not recapture the film tax credit from the transferee if the film tax credit was issued a valid final certification under paragraph (19) of this regulation.

1796

(24) **Mandatory Film Tax Credit Audit Due Process.** The production company must protest under O.C.G.A. § 48-2-46 or file an appeal with the tribunal or superior court within 30 days of the issuance of the final certification. If protested under O.C.G.A. § 48-2-46, any final determination can be appealed with the tribunal or superior court.

1803

(25) **Not applicable to Qualified Interactive Entertainment Production Companies.** Paragraphs (17) through (24) of this regulation shall not apply to qualified interactive entertainment production companies.

1808

(26) **Effective Date.** This regulation as amended shall become effective on January 1, ~~2024~~2025. Years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

1814

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.26.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

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

The purpose of proposed Rule 560-7-8-.47 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (10) provides the credit limitations for individuals and corporate taxpayers.
- Paragraph (15) provides the letter of confirmation.
- Paragraph (18) provides the carryforward period of the credit.
- Paragraph (22) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 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.**

(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.

(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.

68
69 (c) The Office of Commissioner of Insurance and Safety Fire is
70 the state agency that administers the gross premium tax.
71

72 **(4) Audit Report.**
73

74 (a) O.C.G.A. § 20-2A-2 requires that an audit be conducted an-
75 nually by an independent certified public accountant in accordance
76 with generally accepted auditing standards. The audit shall be com-
77 pleted and the audit report issued within 120 days after the end of
78 the SSO's fiscal year.
79

80 (b) The audit report must verify that the SSO has complied with
81 all requirements of O.C.G.A. § 20-2A-2.
82

83 (c) As is required by O.C.G.A. § 20-2A-3, the audit report shall
84 be submitted to the Department of Revenue within sixty days fol-
85 lowing completion of the audit report.
86

87 (d) Each SSO shall submit with the audit report a signed decla-
88 ration certifying that it has complied with and is in compliance
89 with all legal and regulatory requirements imposed by state or fed-
90 eral law. The signed declaration shall be signed by the SSO's pres-
91 ident, chief executive officer, or authorized representative.
92

93 (5) **Form 990.** Each SSO must submit a copy of its most recent
94 Form 990 to the Department of Revenue through the Georgia Tax
95 Center.
96

97 **(6) Calendar Year Report.**
98

99 (a) The calendar year report shall be submitted by the SSO by
100 January 12 of the year following the immediately preceding

101 calendar year, subject to the time limits provided for in O.C.G.A. §
102 20-2A-2 and paragraph (4) of this regulation. See paragraph (7) for
103 examples on the timing of reports. Form “IT-QEE-SSO2” shall be
104 used to submit the report. The report shall be submitted electroni-
105 cally in the manner specified by the Department.

106
107 (b) The calendar year report shall be prepared on a calendar-
108 year basis, regardless of the fiscal year of the SSO.

109
110 (c) The calendar year report shall include the following:

111
112 1. The total number and dollar value of individual contributions
113 and qualified education expense credits preapproved - individual
114 contributions include contributions made by those filing income
115 tax returns as single, head of household, married filing separate,
116 and married filing joint;

117
118 2. The total number and dollar value of corporate, trust, S-cor-
119 poration, and partnership contributions and qualified education ex-
120 pense credits preapproved;

121
122 3. The total number and dollar value of scholarships awarded to
123 eligible students;

124
125 4. The total number of scholarship recipients whose families’
126 adjusted gross income falls:

127
128 (i) Under 125% of the federal poverty level;

129
130 (ii) At or above 125% and below or at 250% of the federal pov-
131 erty level;

132
133 (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;

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;

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

8. A copy of the last audit report as required under subparagraph (4)(c); and

9. The amount of the fees or assessments 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)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, 2023, and ends on December 31, 2023. By January 12, 2024, the SSO must submit the required calendar year report for the calendar year that ended December 31, 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, 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, 2025, will include the results of the audit for the year ending December 31, 2023.

(b) An SSO's first fiscal year begins on May 1, 2023, and ends on April 30, 2024. By January 12, 2024, the SSO must submit the required calendar year report for the calendar year that ended December 31, 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, 2024. The SSO must complete the audit by August 28, 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, 2025, will include the results of the audit for the fiscal year ending April 30, 2024.

(c) An SSO's first fiscal year begins on December 1, 2023, and ends on November 30, 2024. By January 12, 2024, the SSO must submit the required calendar year report for the calendar year that ended December 31, 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, 2024. By January 12, 2025, they must submit the required calendar year report for the calendar year that ended December 31, 2024. No audit report will need to be submitted for this second year since the due date for

200 completing the audit report falls after the deadline of January 12,
201 2025. The SSO must complete the audit by March 30, 2025 and
202 submit the audit report and signed declaration within sixty days of
203 completion of the audit. The audit report submitted on or before
204 January 12, 2026, will include the results of the audit for the fiscal
205 year ending November 30, 2024.

206
207 **(8) Failure of the Audit Report to Verify or Failure to Sub-**
208 **mit the Audit Report as Required under O.C.G.A. § 20-2A-2.**
209 Notwithstanding O.C.G.A. §§ 20-2A-7, 48-2-15, 48-7-60, 48-7-61
210 and paragraph (9) of this regulation, if the audit report submitted
211 by the SSO fails to verify: that the SSO obligated its annual reve-
212 nue received from donations for scholarships or tuition grants, in-
213 cluding any interest earned on deposits and investments of such
214 funds, as required under O.C.G.A. § 20-2A-2; that obligated reve-
215 nues were designated for specific student recipients within the time
216 frame required under O.C.G.A. § 20-2A-2; and that all obligated
217 and designated revenue distributed to a qualified school or pro-
218 gram for the funding of multiyear scholarships or tuition grants
219 complied with this regulation; then the Department shall post on its
220 website the details of such failure to verify. If the audit report is
221 not submitted by the required time, the SSO shall be deemed to
222 have failed all three requirements. Until the noncompliant SSO
223 submits an amended audit (or the required audit report in the case
224 of a failure to submit the audit report by the required time), which
225 to the satisfaction of the Department contains the verifications re-
226 quired under O.C.G.A. § 20-2A-2, the Department shall not preap-
227 prove any contributions to the noncompliant SSO.

228
229 **(9) Failure to Report and Confidentiality.** Any SSO that does
230 not submit the audit report or calendar year report as required un-
231 der this regulation or receives a qualified opinion or a disclaimer
232 on their audit report from an independent certified public

233 accountant or otherwise fails to comply with the requirements of
234 Chapter 2A of Title 20 shall be given written notice of their failure
235 and shall have ninety days from receipt of such notice to correct all
236 deficiencies.

237
238 (a) If the SSO fails to correct all deficiencies within ninety days
239 of receipt of notice from the Department, such SSO shall:

240
241 1. Be immediately removed from the Department of Educa-
242 tion's list of approved SSOs.

243
244 2. Be required to cease all operations as an SSO and transfer all
245 scholarship account funds to a properly operating SSO within
246 thirty calendar days of receipt of notice from the Department of re-
247 moval from the approved list; and

248
249 3. Have all applications for preapproval of tax credits under
250 O.C.G.A. § 48-7-29.16 rejected by the Department on or after the
251 date that the Department of Education removes the SSO from its
252 list of approved SSOs.

253
254 (b) Except for the audit report information posted under subpar-
255 agraph (d) of paragraph (6), information reported under subpara-
256 graphs (c)1. through (c)6. of paragraph (6) of this regulation, and
257 details of any failure to report and verify under paragraph (8) of
258 this regulation, all information or reports provided by SSOs to the
259 Department shall be confidential taxpayer information, governed
260 by O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61.

261
262 **(10) Credit Limitations for Individuals and Corporations.**
263 The amount of qualified education expense credit granted to a tax-
264 payer shall not exceed:
265

266 (a) For an individual taxpayer, except as otherwise provided in
267 this paragraph, the credit is limited to the lesser of the actual
268 amount expended or the dollar amount provided in O.C.G.A. § 48-
269 7-29.16.

270

271 (b) For an individual taxpayer filing a married filing separate re-
272 turn, the credit is limited to the lesser of the actual amount ex-
273 pended or \$2,500.00 per tax year.

274

275 (c) For an individual taxpayer who is a member of a limited lia-
276 bility company duly formed under state law (including a member
277 who owns a single-member limited liability company that is disre-
278 garded for income tax purposes), a shareholder of a Subchapter 'S'
279 corporation, or a partner in a partnership, the credit is limited to the
280 lesser of the actual amount expended or \$25,000 per tax year,
281 whichever is less; provided, however, that the tax credits shall only
282 be allowed for the Georgia income on which such tax was actually
283 paid by such member of a limited liability company, shareholder of
284 a Subchapter 'S' corporation, or partner of a partnership. In deter-
285 mining such Georgia income, the shareholder, partner, or member
286 shall exclude any income that was subtracted on their individual
287 Georgia return because the entity paid tax at the pass-through en-
288 tity level in Georgia as provided in Regulation 560-7-3-.03. If the
289 individual taxpayer is a member, partner, or shareholder in more
290 than one pass-through entity, the total credit allowed cannot exceed
291 \$25,000; the individual taxpayer decides which pass-through enti-
292 ties to include when computing Georgia income for purposes of the
293 qualified education expense credit. All Georgia income, loss, and
294 expense from the taxpayer's selected pass-through entities will be
295 combined to determine Georgia income for purposes of the quali-
296 fied education expense credit. Such combined Georgia income
297 shall be multiplied by the applicable marginal tax rate to determine
298 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 20% member of a limited liability company, XYZ Company, which is taxed as a partnership. Taxpayer requests preapproval for the qualified education expense credit for calendar year ~~2023~~2025 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates that Taxpayer's Georgia income from A, Inc. is \$300,000, and that Taxpayer's share of Georgia income from BC Company is ~~\$150,000~~200,000. Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified education expense credit; therefore, the Department preapproves Taxpayer for \$25,000 qualified education expense credit (since \$25,000 is less than ~~\$25,875~~25,950 (~~5.755.19%~~ of ~~\$450,000~~500,000)). The applicable marginal tax rate for ~~2023~~2025 is ~~5.755.19%~~. Taxpayer makes a \$25,000 donation to the SSO within sixty days of receiving preapproval from the Department and before the end of ~~2023~~2025. When Taxpayer files Taxpayer's ~~2023~~2025 Georgia income tax return, Taxpayer received a salary from A, Inc. of \$100,000 and A, Inc.'s actual Georgia income is \$100,000. Taxpayer's actual share of Georgia income from BC Company is \$100,000 and Taxpayer received a

guaranteed payment from BC Company of \$45,000. Taxpayer's actual share of Georgia income from XYZ Company is \$5,000 (Taxpayer can choose to include this company even though it was not considered at the time of preapproval). Taxpayer can only claim ~~\$20,125~~18,165 qualified education expense credit (which is ~~5.755.19%~~ of the \$350,000 actual income from Taxpayer's selected pass-through entities), and the extra ~~\$4,875~~6,835 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the ~~\$20,125~~18,165 qualified education expense credit claimed but not used on the taxpayer's ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to Taxpayer's succeeding ~~five~~three years' tax liability.

(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. Fiduciary entities cannot pass the credit through to their beneficiaries.

1. Example: Taxpayer, a Corporation, requests preapproval for the qualified education expense credit for calendar year ~~2023~~2025 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates its income tax liability for the ~~2023~~2025 tax year to be \$100,000; therefore, the Department preapproves Taxpayer for \$75,000 qualified education expense credit for calendar year ~~2023~~2025. Taxpayer makes a \$75,000 donation to the SSO within sixty days of receiving preapproval from the Department and before the end of ~~2023~~2025. When Taxpayer files its ~~2023~~2025

Georgia income tax return, Taxpayer's income tax liability for tax year ~~2023~~2025 is \$80,000. Taxpayer can only claim \$60,000 of qualified education expense credit (which is 75% of its actual income tax liability for tax year ~~2023~~2025), 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 ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding ~~five~~three years' tax liability.

2. Example: Taxpayer, a S Corporation electing to pay tax at the entity level, requests preapproval for the qualified education expense credit for calendar year ~~2023~~2025 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates its income tax liability for the ~~2023~~2025 tax year to be \$100,000; therefore, the Department preapproves Taxpayer for \$75,000 qualified education expense credit for calendar year ~~2023~~2025. Taxpayer makes a \$75,000 donation to the SSO within sixty days of receiving preapproval from the Department and before the end of ~~2023~~2025. When Taxpayer files its ~~2023~~2025 Georgia income tax return, Taxpayer's income tax liability for tax year 2023 is \$80,000. Taxpayer can only claim \$60,000 of qualified education expense credit (which is 75% of its actual income tax liability for tax year ~~2023~~2025), 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 ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding ~~five~~three years' tax liability but shall not be allowed to be passed through to and used by the shareholders.

(e) Except as provided in subparagraph (10)(d) of this regulation, when the taxpayer is a pass-through entity which has no

income tax liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the year and the limitations of subparagraph (10)(c) of this regulation. The expenditure is made by the pass-through entity but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the student scholarship organization so that the preapproval, claiming, and reporting forms can be filed in the name of its members, shareholders, or partners.

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

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

(a) One hundred million dollars per year for calendar years beginning on or after January 1, 2019, and ending on or before December 31, 2022; and

(b) One hundred twenty million dollars per year for calendar years beginning on or after January 1, 2023.

(c) In no event shall the aggregate amount of tax credits allowed under this paragraph to all business enterprises for gross premium

431 tax liability owed exceed six million dollars.

432

433 (13) **Reporting the Availability of the Credit.** The Depart-
434 ment shall post on its website the current amount of qualified edu-
435 cation expense credits available.

436

437 (14) **Preapproval of the Contribution.**

438

439 (a) The taxpayer must electronically submit Form IT-QEE-TP1
440 through the Georgia Tax Center to request preapproval of the qual-
441 ified education expense credit from the Department of Revenue.
442 The Department will not preapprove any qualified education ex-
443 pense credit where the Form IT-QEE-TP1 is submitted or filed in
444 any other manner. Each SSO shall be registered with the Depart-
445 ment to facilitate the web-based preapproval process for Form IT-
446 QEE-TP1.

447

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

457

458 (c) The electronic Form "IT-QEE-TP1" shall include the fol-
459 lowing information:

460

461 1. The name of the SSO listed on the Department of Educa-
462 tion's website to which the contribution will be made. The SSO
463 should be listed on the Department of Education's website before

- 464 the Form “IT-QEE-TP1” is filed with the Department of Revenue;
465
- 466 2. The taxpayer identification number of the SSO to which the
467 contribution will be made;
468
- 469 3. The name, address and taxpayer identification number of the
470 contributor;
471
- 472 4. The type of taxpayer;
473
- 474 5. If the contributor is an individual, the filing status;
475
- 476 6. If the contributor is an individual filing a joint return, the
477 name and identification number of the joint filer;
478
- 479 7. The intended contribution amount;
480
- 481 8. If the contributor is a corporation, fiduciary, electing S corpo-
482 ration, or electing partnership, 75% of the estimated income tax li-
483 ability the corporation, fiduciary, electing S corporation, or elect-
484 ing partnership expects for the tax year of the corporation, fiduci-
485 ary, S corporation, or partnership in which the contribution will be
486 made;
487
- 488 9. If the contributor is a business enterprise requesting preap-
489 proval for credit against its gross premium tax liability, 75% of the
490 estimated gross premium tax liability the business enterprise ex-
491 pects for the tax year of the business enterprise in which the contri-
492 bution will be made;
493
- 494 10. Tax year end of the contributor;
495
- 496 11. Calendar year in which the contribution will be made;

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12. Any other information the Commissioner of the Department of Revenue may require; and

13. Certification that all information contained on the Form “IT-QEE-TP1” is true to his/her best knowledge and belief and is submitted for the purpose of obtaining preapproval from the Commissioner.

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

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

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

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

(h) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § 48-7-29.16, then the amount of the qualified education expense credit shall not be preapproved or the preapproved qualified education expense credit shall be retroactively denied. With respect to such denied credit, tax, interest, and penalties shall be due if the qualified education expense credit has already been claimed.

(i) Notwithstanding any laws to the contrary, the Department shall not take any adverse action against donors to SSOs if the Commissioner preapproved a donation for a tax credit prior to the 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.

(15) Letter of Confirmation. Form IT-QEE-SSO1 shall be provided by the SSO to the taxpayer to confirm the contribution within 30 days of the contribution.

(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

563 specified by the Department satisfies this requirement.
564

565 (a) A business enterprise claiming the qualified education ex-
566 pense credit against its gross premium tax liability must claim the
567 credit in the manner required by the Office of Commissioner of In-
568 surance and Safety Fire.

569
570 (17) **E-filing Attachment Requirements.** If a taxpayer claim-
571 ing the credit electronically files their tax return, the Form IT-
572 QEE-SSO1 shall be required to be attached to the return only if the
573 Internal Revenue Service allows such attachments when the data is
574 transmitted to the Department. In the event the taxpayer files an
575 electronic return and such information is not attached because the
576 Internal Revenue Service does not, at the time of such electronic
577 filing, allow electronic attachments to the Georgia return, such in-
578 formation shall be maintained by the taxpayer and made available
579 upon request by the Commissioner.

580
581 (18) ~~Carry Forward~~**Carryforward.** Any credit which is
582 claimed but not used in a taxable year shall be allowed to be car-
583 ried forward to apply to the taxpayer's succeeding five years' tax
584 liability for the number of years authorized under O.C.G.A. § 48-7-
585 29.16. However, any amount in excess of the credit amount limits
586 in paragraphs (10) and (11) of this regulation shall not be eligible
587 for carryforward to the taxpayer's succeeding years' tax liability
588 nor shall such excess amount be claimed by or reallocated to any
589 other taxpayer.

590
591 (19) **Taxpayer Must Add Back Portion of Federal Deduction**
592 **on State Return if Taxpayer Takes State Credit.** O.C.G.A. § 48-
593 7-29.16(h)(1) provides that no qualified education expense credit
594 shall be allowed under O.C.G.A. § 48-7-29.16 with respect to any
595 amount deducted from taxable net income by the taxpayer as a

charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code. If the taxpayer is allowed the state income tax deduction in place of the charitable contribution 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 education expense credit is allowed under O.C.G.A. § 48-7-29.16.

(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 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 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 $(\$2,500) \times (\$3,000 / \$4,000)$.

(20) Scholarships.

(a) For all scholarships, including multi-year scholarships, the SSO shall either:

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.

(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.

662

663 (d) For all scholarships, including multi-year scholarships, the
664 qualified school or program shall separately account for each
665 scholarship awarded. Additionally, the income earned on the por-
666 tion of the scholarship which has not yet been applied to tuition
667 shall be separately accounted for and used to provide tuition for
668 such eligible student. The scholarship shall be applied to tuition on
669 the same due dates as the general population of students of such
670 school.

671

672 (e) In making a multi-year distribution to a qualified school or
673 program, the SSO shall require that if the designated student be-
674 comes ineligible or for any other reason the qualified school or
675 program elects not to continue disbursement of the multi-year
676 scholarship or tuition grant to the designated student for all the
677 projected years, then the qualified school or program shall immedi-
678 ately return the remaining funds and the income earned on such
679 portion to the SSO. Upon receipt of such returned scholarship,
680 such SSO shall allocate and obligate such money for scholarships
681 or tuition grants on or before the end of the following calendar
682 year; 100% of such returned money (including the remaining funds
683 and the income earned on such portion) shall be allocated and obli-
684 gated. Once a qualified school or program receives such returned
685 money and such income earned on such returned money, 100% of
686 such amounts received shall be used for an eligible student.

687

688 1. Once the student scholarship organization designates obli-
689 gated revenues for specific student recipients, in the case of multi-
690 year scholarships or tuition grants for which the student scholar-
691 ship organization distributes the obligated and designated revenues
692 to a qualified school or program annually rather than the entire
693 amount, if the designated student becomes ineligible or for any
694 other reason the student scholarship organization elects not to

695 continue disbursement for all years, then the student scholarship
696 organization shall designate any remaining previously obligated
697 revenues for a new specific student recipient on or before the end
698 of the following calendar year.

699
700 (21) **Designation of Contributions.** The tax credit shall not be
701 allowed if the taxpayer directly or indirectly designates the tax-
702 payer's qualified education expense for the direct benefit of any
703 particular individual, whether or not such individual is a dependent
704 of the taxpayer.

705
706 (a) In soliciting contributions, an SSO shall not represent, or di-
707 rect a qualified school or program to represent, that in exchange for
708 contributing to the SSO, a taxpayer shall receive a scholarship for
709 the direct benefit of any particular individual, whether or not such
710 individual is a dependent of the taxpayer. Their status as an SSO
711 shall be revoked for any such organization which violates this sub-
712 paragraph and as such the SSO shall be removed from the Depart-
713 ment of Education's list of approved SSOs. The Department shall
714 not preapprove any contributions to such SSO.

715
716 (22) **Effective Date.** This rule is applicable to years beginning
717 on or after January 1, ~~2023~~2025. Years beginning before January
718 1, ~~2023~~2025 will be governed by the regulations of Chapter 560-7
719 as they existed before January 1, ~~2023~~2025 in the same manner as
720 if the amendments thereto set forth in this regulation had not been
721 promulgated.

722
723 Authority: O.C.G.A. §§ 48-2-12, 48-7-29.16.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.48 Clean Energy Property and Wood Residuals Credit

The purpose of proposed Rule 560-7-8-.48 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and removing provisions relating to the clean energy property credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (1) provides the purpose of the rule.
- Paragraph (2) lists the different agencies involved in administering the credit.
- Paragraph (3) which previously provided the rules for the clean energy property credit, is amended to remove and replace those provisions with the rules for the wood residuals credit previously found at paragraph (4).
- Paragraph (4) which previously provided the rules for the wood residuals credit, is amended to remove and replace those provisions with the denial of the credits previously found at paragraph (6).
- Paragraph (5) which previously provided the credit caps, is amended to remove and replace those provisions with the procedures for claiming the credits previously found at paragraph (7).
- Paragraph (6) which previously provided the denial of the credits, is amended to remove and replace those provisions with the rules relating to pass-through entities previously found at paragraph (8).
- Paragraph (7) which previously provided the procedures for claiming the credits, is amended to remove and replace those provisions with the effective date of the regulation.
- Paragraph (9) which provided the annual reports has been removed.
- Paragraph (10) which provided the tracking and reporting of the credit has been removed.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.48 Clean Energy Property and Wood Residuals Credit

560-7-8-.48 ~~Clean Energy Property and Wood Residuals Tax Credits~~

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the wood residuals tax credits under O.C.G.A. § 48-7-29.14.

(2) **Coordination of Agencies.** The Georgia ~~Environmental Finance Authority~~ Forestry Commission and the Department of Revenue have been designated as the primary agencies responsible within Georgia to administer the program. ~~Additionally, the~~ The Georgia Forestry Commission is the state agency responsible for certifying the dollar amount of wood residuals transported or diverted to a renewable biomass qualified facility. ~~The Office of Insurance and Safety Fire Commissioner is the state agency that administers the gross premium tax.~~

(3) **~~Tax Credits for the Construction, Purchase, or Lease of Clean Energy Property.~~** The tax credit under O.C.G.A. § 48-7-

35 ~~29.14(b)(1) is a tax credit against Georgia income tax, or if the tax-~~
36 ~~payer is an insurance company, against Georgia premium tax. It~~
37 ~~shall be granted to a taxpayer for the construction, purchase, or lease~~
38 ~~of clean energy property that is placed into service in this state be-~~
39 ~~tween July 1, 2008 and December 31, 2014.~~

40
41 ~~(a) Confirmation. Prior to submitting an application for approval~~
42 ~~to claim the clean energy property tax credit (Form IT-CEP-AP), the~~
43 ~~taxpayer must complete a pre-application through the Georgia En-~~
44 ~~vironmental Finance Authority. After completing this form, the tax-~~
45 ~~payer will receive a confirmation. Such confirmation must be at-~~
46 ~~tached to Form IT-CEP-AP.~~

47
48 ~~(b) Credit limitations. The amount of the clean energy property~~
49 ~~tax credit granted to a taxpayer shall not exceed:~~

50
51 ~~1. For all types of clean energy property placed into service for~~
52 ~~any purpose other than single family residential, the credit allowed~~
53 ~~may not exceed the lesser of 35 percent of the cost of the clean en-~~
54 ~~ergy property described in O.C.G.A. § 48-7-29.14(a)(3)(A) through~~
55 ~~O.C.G.A. § 48-7-29.14(a)(3)(C), or the following credit amounts for~~
56 ~~any clean energy property:~~

57
58 ~~(i) For solar energy equipment for solar electric (photovoltaic),~~
59 ~~other solar thermal electric applications, and active space heating as~~
60 ~~described in O.C.G.A. § 48-7-29.14(a)(3)(A) the credit amount shall~~
61 ~~not exceed \$500,000.00 per installation;~~

62
63 ~~(ii) For clean energy property related to solar energy equipment~~
64 ~~for domestic water heating as described in O.C.G.A. § 48-7-~~
65 ~~29.14(a)(3)(A), which is certified for performance by the Solar Rat-~~
66 ~~ing Certification Corporation, Florida Solar Energy Center, or by a~~
67 ~~comparable entity approved by the Georgia Environmental Finance~~

68 Authority to have met the certification of Solar Rating Certification
69 Corporation OG 100 or Florida Solar Energy Center GO 80 for so-
70 lar thermal collectors, the credit amount shall not exceed
71 \$100,000.00 per installation;

72
73 (iii) For Energy Star certified geothermal heat pump systems as
74 described in O.C.G.A. § 48-7-29.14(a)(3)(B), the credit amount
75 shall not exceed \$100,000.00;

76
77 (iv) For a lighting retrofit project as described in O.C.G.A. § 48-
78 7-29.14(a)(3)(C)(i), the credit amount shall not exceed \$0.60 per
79 square foot of the building with a maximum credit amount of
80 \$100,000; and

81
82 (v) For an energy efficient building as described in O.C.G.A. §
83 48-7-29.14(a)(3)(C)(ii), the credit amount for all energy efficient
84 products installed during construction shall not exceed \$1.80 per
85 square foot of the building, with a maximum credit amount of
86 \$100,000.00.

87
88 (I) Example of credit limit in subparagraph 3(b)1. (iv) of this reg-
89 ulation. Taxpayer installs a lighting retrofit project described in
90 O.C.G.A. § 48-7-29.14(a)(3)(C)(i) into a 1,500 square foot building.
91 The lighting retrofit project costs \$1,000. Since 35% of the cost of
92 the lighting retrofit project (equals \$350) is less than \$.60 per square
93 foot of the building (equals \$900), the taxpayer would request a
94 credit amount of \$350 on Form IT-CEP-AP for preapproval.

95
96 (II) Example of the credit limit in subparagraph 3(b)1. (v) of this
97 regulation. Taxpayer installs energy efficient products in an energy
98 efficient building, which is 15,000 square feet, as described in
99 O.C.G.A. § 48-7-29.14(a)(3)(C)(ii). The cost of all energy efficient
100 products installed in the building is \$12,000. Since 35% of the cost

of all energy efficient products (equals \$4,200) is less than \$1.80 per square foot of the building (equals \$27,000), the taxpayer would request a credit amount of \$4,200 on Form IT-CEP-AP for preapproval.

2. For wind equipment as described in O.C.G.A. § 48-7-29.14(a)(3)(D) the credit amount shall not exceed \$500,000.00 per installation.

(i) For biomass equipment as described in O.C.G.A. § 48-7-29.14(a)(3)(E) the credit amount shall not exceed \$500,000.00 per installation.

3. The following credit limits apply to clean energy property placed in service for single family residential purposes, the lesser of 35 percent of the cost or:

(i) For clean energy property related to solar energy equipment for domestic water heating as described in O.C.G.A. § 48-7-29.14(a)(3)(A), which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the Georgia Environmental Finance Authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center GO-80 for solar thermal collectors, Solar Rating Certification Corporation certification OG-300 or Florida Solar Energy Center GP-5-80 for solar thermal residential systems, or both, the credit amount shall not exceed \$2,500.00 per dwelling unit;

(ii) For clean energy property related to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating as described in O.C.G.A. § 48-7-29.14(a)(3)(A), the credit amount shall not exceed \$10,500.00 per

134 dwelling unit; and

135
136 ~~(iii) For Energy Star certified geothermal heat pump systems de-~~
137 ~~scribed in O.C.G.A. § 48-7-29.14(a)(3)(B), the credit amount shall~~
138 ~~not exceed \$2,000.00 per installation.~~

139
140 ~~(c) Credit amount. Any credit allowed under O.C.G.A. § 48-7-~~
141 ~~29.14(b)(1) for calendar year 2012, 2013, or 2014 must be taken in~~
142 ~~four equal installments over four successive taxable years beginning~~
143 ~~with the taxable year in which the credit is allowed.~~

144
145 ~~(d) Carry forward. Any unused credit or unused installment credit~~
146 ~~amount in a taxable year may be carried forward for five years from~~
147 ~~the close of the taxable year in which the installation of the clean~~
148 ~~energy property occurred.~~

149
150 **~~(4)(3) Tax Credit for Transporting or Diverting Wood Resid-~~**
151 **~~uals.~~** The tax credit under O.C.G.A. § 48-7-29.14(b)(2) is a tax
152 credit against Georgia income tax and shall be granted to a taxpayer
153 who transports or diverts wood residuals to a renewable biomass
154 qualified facility on or after July 1, 2008. The taxpayer eligible to
155 claim this credit shall be the taxpayer that received certification from
156 the Georgia Forestry Commission for transporting or diverting wood
157 residuals.

158
159 (a) Certification. Prior to submitting an application for approval
160 (Form IT-WR-AP) to claim the tax credit for transporting or divert-
161 ing wood residuals, the taxpayer must receive certification, which
162 attributes a dollar value to such transported or diverted wood resid-
163 uals, from the Georgia Forestry Commission. Such certification
164 must be attached to Form IT-WR-AP.

165
166 (b) Credit limitation. The amount of wood residual tax credit

167 granted to a taxpayer shall not exceed the actual amount certified by
168 the Georgia Forestry Commission to the taxpayer.

169
170 (c) ~~Carry forward~~Carryforward. Any unused credit for transport-
171 ing or diverting wood residuals shall be allowed ~~against succeeding~~
172 ~~years' tax liability~~to be carried forward for the number of years au-
173 thorized under O.C.G.A. § 48-7-29.14.

174
175 ~~(5) Credit Cap. In no event shall the total amount of tax credits~~
176 ~~allowed under both O.C.G.A. § 48-7-29.14(b)(1) and (b)(2) exceed~~
177 ~~the following amounts:~~

178
179 ~~(a) For calendar year 2008, \$2,500,000;~~

180
181 ~~(b) For calendar year 2009, \$2,500,000;~~

182
183 ~~(c) For calendar year 2010, \$2,500,000;~~

184
185 ~~(d) For calendar year 2011, \$2,500,000;~~

186
187 ~~(e) For calendar year 2012, \$5,000,000;~~

188
189 ~~(f) For calendar year 2013, \$5,000,000; and~~

190
191 ~~(g) For calendar year 2014, \$5,000,000.~~

192
193 ~~(6)~~(4) **Denial of Credit.** In the event it is determined that the tax-
194 payer has not met all the ~~re-quirments~~requirements of O.C.G.A. §
195 48-7-29.14 and this regulation, then the amount of the credits shall
196 not be tentatively approved or the tentatively approved credits shall
197 be retroactively denied. With respect to such denied credits, tax, in-
198 terest, and penalties shall be due if the credits have already been
199 claimed.

~~(7)(5)~~ **Claiming tax credits under O.C.G.A. § 48-7-29.14(b)(1) and (b)(2).** Any taxpayer seeking to claim tax credits under O.C.G.A. § 48-7-29.14(b)(1) or (b)(2), must submit the appropriate forms to the Department of Revenue as provided in this paragraph.

~~(a) Application. A taxpayer seeking to claim tax credits under O.C.G.A. § 48-7-29.14(b)(1), whether utilizing the credit against income tax or premium tax, must submit Form IT-CEP-AP and a confirmation from the Georgia Environmental Finance Authority to the Commissioner for tentative approval.~~

~~4. A taxpayer seeking to claim tax credits under O.C.G.A. § 48-7-29.14(b)(2), must submit Form IT-WR-AP, and a certification from the Georgia Forestry Commission, to the Commissioner for tentative approval.~~

~~(b) Notification. The Department will notify each taxpayer of the tax credits, tentatively approved and allocated to such taxpayer, within sixty (60) days from the date the application was received.~~

~~(c) Allocation of tax credits. The Commissioner shall allow tax credits under O.C.G.A. § 48-7-29.14(b)(1) and (b)(2) on a first come, first served basis. The postmark of Form IT-CEP-AP and Form IT-WR-AP shall be used to determine such first come, first served basis.~~

~~(d) Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limits in paragraph (5) of this regulation, then the tax credits shall be allocated among the taxpayers whose applications were received by the~~

Commissioner on the day the maximum aggregate limit was exceeded on a pro rata basis based upon amounts otherwise allowed under O.C.G.A. § 48-7-29.14 and this regulation. Only credit amounts on applications received on the day the maximum aggregate limits were exceeded will be allocated on a pro rata basis.

(e) ~~Waiting list.~~ If a taxpayer is denied all or part of the tax credit under O.C.G.A. § 48-7-29.14(b)(1), because the credit cap in paragraph (5) of this regulation has been reached, the Commissioner shall add such taxpayer to a waiting list prioritized by the postmark of the taxpayer's first application. For the credit allocation in subsequent years, taxpayers on the waiting list shall have priority over other taxpayers with a later postmark regardless of the year the clean energy property was installed. A taxpayer that is allowed the credit pursuant to this subparagraph in calendar year 2012, 2013, or 2014 must take the credit in four equal installments over four successive taxable years beginning with the taxable year in which the credit is allowed.

(f) ~~Income or Premium tax.~~ A taxpayer claiming income or premium tax credits under O.C.G.A. § 48-7-29.14(b)(1) must attach an approved Form IT-CEP-AP and Form IT-CEP to its Georgia income or premium tax return for each tax year in which income or premium tax credits are claimed.

~~1.~~ A taxpayer claiming income tax credits under O.C.G.A. § 48-7-29.14(b)(2) must attach an approved Form IT-WR-AP and Form IT-WR to its Georgia income tax return each year in which income tax credits are claimed.

(g) ~~Withholding tax.~~ A taxpayer may claim any excess tax credit from O.C.G.A. § 48-7-29.14(b)(1), the clean energy property tax credit, against its withholding tax liability. For taxpayers

preapproved to claim the clean energy property tax credit in calendar year 2012, 2013, or 2014, the excess tax credit amount cannot exceed the limit in paragraph (3)(c) of this regulation. The withholding tax benefit may only be applied against the withholding tax account used by the taxpayer for payroll purposes.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the taxpayer's withholding tax liability, the taxpayer must file Revenue Form IT-WH at least thirty (30) days prior to the due date of the Georgia income tax return (including extensions) or at least thirty (30) days prior to the filing of the income tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

(i) If the taxpayer is an insurance company, to claim any excess tax credit not used on the premium tax return against the taxpayer's withholding tax liability, the taxpayer must file Revenue Form IT-WH-CEP with both the Department of Revenue and the Office of Insurance and Safety Fire Commissioner at least thirty (30) days prior to the due date of the Georgia premium tax return (including extensions) or at least thirty (30) days prior to the filing of the premium tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has ninety (90) days from the date the income tax return claiming the tax credit is received to review the credit and make a determination of the

299 amount eligible to be used against withholding tax.

300

301 (i) ~~The Department of Revenue has ninety (90) days from the date~~
302 ~~the premium tax return claiming the tax credit is received by the~~
303 ~~Office of Insurance and Safety Fire Commissioner to review the~~
304 ~~credit and make a determination of the amount eligible to be used~~
305 ~~against withholding tax.~~

306

307 3. ~~Letter of Eligibility. Once the review is completed, a letter will~~
308 ~~be sent to the taxpayer stating the tax credit amount which may be~~
309 ~~applied against withholding and when the taxpayer may begin to~~
310 ~~claim the tax credit against withholding tax. The Department of~~
311 ~~Revenue shall treat this amount as a credit against future withhold-~~
312 ~~ing tax payments and will not refund any previous withholding pay-~~
313 ~~ments.~~

314

315 ~~(8)(6)~~ **Pass-Through Entities.** When the taxpayer is a pass-
316 through entity, and has no income tax liability of its own, the tax
317 credits will pass to its members, shareholders, or partners based on
318 the year ending profit/loss percentage. The credit forms will initially
319 be filed with the tax return of the taxpayer to establish the amount
320 of the credit available for pass through. The credit will then pass
321 through to its shareholders, members, or partners to be applied
322 against the tax liability on their income tax returns. ~~The sharehold-~~
323 ~~ers, members, or partners may not claim any excess clean energy~~
324 ~~property tax credit against their withholding tax liabilities.~~ The cred-
325 its are available for use as a credit by the shareholders, members, or
326 partners for their tax year in which the income tax year of the pass-
327 through entity ends. For example: A partnership earns the credit for
328 its tax year ending January 31, 2009. The partnership passes the
329 credit to a calendar year partner. The credit is available for use by
330 the partner beginning with the calendar 2009 tax year.

331

332 ~~(9) **Annual Reports.** The Georgia Environmental Finance Au-~~
333 ~~thority shall provide an annual report of a determination of associ-~~
334 ~~ated energy and economic benefits to the state.~~

335
336 ~~(a) The Department of Revenue shall provide an annual report~~
337 ~~consisting of:~~

338
339 ~~1. The number of taxpayers that claimed the credits allowed un-~~
340 ~~der O.C.G.A. § 48-7-29.14;~~

341
342 ~~2. The cost of business property and clean energy property with~~
343 ~~respect to which credits were claimed;~~

344
345 ~~3. The location and type of clean energy property installed; and~~

346
347 ~~4. The total amount of credits allowed.~~

348
349 ~~(10) **Tracking and Reporting the Status and Availability of**~~
350 ~~**Credits.** By the end of the month following the end of each calendar~~
351 ~~year quarter, the Department of Revenue shall post on its website~~
352 ~~the amount of credits preapproved through the end of such quarter,~~
353 ~~the amount preapproved year to date, and the amount of credits that~~
354 ~~are available to be claimed.~~

355
356 ~~(7) **Effective Date.** This rule is applicable to taxable years begin-~~
357 ~~ning on or after January 1, 2025. Taxable years beginning before~~
358 ~~January 1, 2025 will be governed by the regulations of Chapter 560-~~
359 ~~7 as they existed before January 1, 2025 in the same manner as if~~
360 ~~the amendments thereto set forth in this regulation had not been~~
361 ~~promulgated.~~

362
363 Authority: O.C.G.A. §§ 48-2-12, 48-7-29.14.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.49 Seed-Capital Fund Tax Credits

The purpose of proposed Rule 560-7-8-.49 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (2) states the research fund under the credit.
- Paragraph (6) provides the carryforward of the credit.
- Paragraph (8) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.49 Seed-Capital Fund Tax Credits

560-7-8-.49 Seed-Capital Fund Tax Credits

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of tax credits under O.C.G.A. §§ 48-7-40.27 and 48-7-40.28.

(2) **Research Fund.** O.C.G.A. §§ 48-7-40.27 and 48-7-40.28 ~~together~~ together create a maximum of one research fund which is used for purposes of both O.C.G.A. §§ 48-7-40.27 and 48-7-40.28.

(3) **Tax Credits for Qualified Investments under O.C.G.A. § 48-7-40.27.** The tax credit under O.C.G.A. § 48-7-40.27 shall be granted to a taxpayer for any qualified investment in the research fund made on or after July 1, 2008.

(a) Credit amount. The amount of the tax credit granted to a taxpayer shall be equal to 25 percent of the taxpayer's qualified investment.

(b) Certification. Prior to claiming the seed-capital fund tax credit for any qualified investment in the research fund, the qualified investment must be certified by the research fund. This certification must be attached to Form IT-SCF when claiming the credit.

(c) Credit limitation. Once qualified investments in the research fund reach \$30 million in private investments, private investments will no longer be eligible for the credit.

(d) Qualified Investment. No taxpayer shall be eligible to claim the tax credits under O.C.G.A. § 48-7-40.27 for a cash investment if they claim the tax credit provided in O.C.G.A. § 48-7-40.28 for such cash investment.

(e) Annual Report. The research fund shall provide the Department, at least on an annual basis, a report that includes the taxpayer's name, the last four digits of the taxpayer's social security number or the employer identification number, as appropriate, and the amount of the taxpayer's qualified investment for which the research fund has issued to such taxpayer the certification pursuant to O.C.G.A. § 48-7-40.27. Such report shall also include copies of each certification issued during the reporting year. The research fund shall file this report with the Department no later than January 31 of the year following the end of the reporting year.

(4) Tax Credits for Qualified Investments under O.C.G.A. § 48-7-40.28. The tax credit under O.C.G.A. § 48-7-40.28 shall be granted to a taxpayer for any qualified investment made on or after July 1, 2008, in a legal entity in which the research fund has invested.

(a) Credit Amount. The amount of the tax credit granted to a

67 taxpayer shall be equal to 10 percent of the taxpayer's qualified in-
68 vestment.

69
70 (b) Certification. Prior to claiming the seed-capital fund tax credit
71 for any qualified investment in a legal entity in which the research
72 fund has invested, the qualified investment must be certified by the
73 research fund. This certification must be attached to Form IT-SCF
74 when claiming the credit.

75
76 (c) Credit limitation. Once the total amount of qualified invest-
77 ments in legal entities that the research fund has invested in reaches
78 \$75 million, investments will no longer be eligible for the credit.

79
80 (d) Qualified Investment. A taxpayer cannot claim the tax credit
81 provided under O.C.G.A. § 48-7-40.28 for a cash investment into
82 the research fund.

83
84 (e) Annual Report. The research fund shall provide the Depart-
85 ment, at least on an annual basis, a report that includes the taxpayer's
86 name, the last four digits of the taxpayer's social security number or
87 the employer identification number, as appropriate, and the amount
88 of the taxpayer's qualified investment for which the research fund
89 has issued to such taxpayer the certification pursuant to O.C.G.A. §
90 48-7-40.28. Such report shall also include copies of each certifica-
91 tion issued during the reporting year. The research fund shall file
92 this report with the Department no later than January 31 of the year
93 following the end of the reporting year.

94
95 (5) **Claiming tax credits under O.C.G.A. §§ 48-7-40.27 and**
96 **48-7-40.28.** Any taxpayer seeking to claim tax credits under
97 O.C.G.A. § 48-7-40.27 and /or § 48-7-4.28 must submit Form IT-
98 SCF and certification(s) issued by the research fund with the tax-
99 payer's Georgia income tax return each year in which tax credits are

100 claimed.

101

102 (6) ~~Carry Forward~~**Carryforward**. Any credit which is claimed
103 under O.C.G.A. § 48-7-40.27 or § 48-7-40.28 but not used in a tax-
104 able year may be carried forward for ~~a maximum of ten years~~the
105 number of years authorized under O.C.G.A. § 48-7-40.27 or § 48-7-
106 40.28.

107

108 (7) **Pass-Through Entities**. When the taxpayer is a pass-through
109 entity, and has no income tax liability of its own, the tax credits will
110 pass to its members, shareholders, or partners in the same manner as
111 they would account for their proportionate shares of income or loss
112 from such entities. The credit forms will initially be filed with the
113 tax return of the taxpayer to establish the amount of the credit avail-
114 able for pass through. The credit will then pass through to its share-
115 holders, members, or partners to be applied against the tax liability
116 on their income tax returns. The credits are available for use as a
117 credit by the shareholders, members, or partners for their tax year in
118 which the income tax year of the pass-through entity ends. For ex-
119 ample: A partnership earns the credit for its tax year ending January
120 31, 2009. The partnership passes the credit to a calendar year part-
121 ner. The credit is available for use by the partner beginning with the
122 calendar 2009 tax year.

123

124 (8) **Effective Date**. ~~The effective date for this regulation is July~~
125 ~~1, 2008.~~This rule is applicable to taxable years beginning on or after
126 January 1, 2025. Taxable years beginning before January 1, 2025
127 will be governed by the regulations of Chapter 560-7 as they existed
128 before January 1, 2025 in the same manner as if the amendments
129 thereto set forth in this regulation had not been promulgated.

130

131 Authority: O.C.G.A. §§ 48-2-12, 48-7-40.27, 48-7-40.28.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.50 Conservation Tax Credit

The purpose of proposed Rule 560-7-8-.50 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (10) provides the carryforward of the credit.
- Paragraph (14) provides the rules relating to selling or transferring the credit.
- Paragraph (15) explains the process of selling or transferring the credit.
- Paragraph (17) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.50 Conservation Tax Credit

560-7-8-.50 Conservation Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-29.12.

(2) **Coordination of Agencies.** The Department of Natural Resources (DNR) is the state agency responsible for determining that the qualified donation under O.C.G.A. § 48-7-29.12 is suitable for two conservation purposes and meets the additional requirements provided by O.C.G.A. § 48-7-29.12(c). The State Properties Commission is the state agency responsible for approving the appraisal amount submitted or for recommending a lower appraisal amount based on its review.

(3) **Definition.** "Tax parcel" means adjacent or contiguous real property with common ownership valued as a unit by the county tax assessor.

34
35 (4) **Credit Amount.** Except as otherwise provided in this regu-
36 lation, a taxpayer shall be granted a tax credit for each qualified do-
37 nation under O.C.G.A. § 48-7-29.12 in an amount not to exceed the
38 lesser of: \$500,000, or 25 percent of the fair market value of the
39 donated real property as fair market value is established for the year
40 in which the donation occurred, or 25 percent of the difference be-
41 tween the fair market value and the amount paid to the donor if the
42 donation is effected by a sale of property for less than fair market
43 value as established for the year in which the donation occurred.

44
45 (a) Credit Amount for a Partnership. If the taxpayer is a partner-
46 ship, the partnership shall be granted a tax credit for each qualified
47 donation of real property for conservation purposes in an amount
48 not to exceed the lesser of: \$500,000, or 25 percent of the fair market
49 value of the donated real property as fair market value is established
50 for the year in which the donation occurred, or 25 percent of the
51 difference between the fair market value and the amount paid to the
52 donor if the donation is effected by a sale of property for less than
53 fair market value as established for the year in which the donation
54 occurred.

55
56 (5) **Per Taxpayer Credit Limitation.** The credit amount al-
57 lowed under paragraph (4) of this regulation shall be further limited
58 for each taxpayer for a taxable year and shall not exceed the follow-
59 ing amounts:

60
61 (a) Entity Limit. \$500,000 for an entity with respect to tax liabil-
62 ity determined under O.C.G.A. § 48-7-21. This limit applies to a
63 return filed by a C-Corporation, S-Corporation with an entity level
64 income tax liability, and to each return filed by partners in a partner-
65 ship where such partners are C-Corporations or S-Corporations with
66 an entity level income tax liability.

(b) Other Limit. \$250,000 with respect to tax liability determined under O.C.G.A. § 48-7-20. This limit applies to a return filed by an individual or a married couple filing a joint return, a return filed by a trust or an estate, and each return filed by partners in a partnership, members of a limited liability company, and shareholders of an S-Corporation where such partners, members, or shareholders are individuals, trusts, or estates.

1. Example 1 of Credit Amount and Per Taxpayer Credit Limitations. A taxpayer donates real property for conservation purposes. The taxpayer is a partnership composed of two partners: Partner A owns 60% and is an S-Corporation (with no entity level income tax liability) composed of one individual shareholder, shareholder C; Partner B owns 40% and is an individual taxpayer. The fair market value of the donated property, which is not effected by a sale of property for less than fair market value, is \$5 million. The credit amount for the partnership is \$500,000 (because \$500,000 is less than \$1,250,000, which is 25 percent of the fair market value). Partner A's (an S-Corporation) credit amount is \$300,000. Shareholder C's credit amount is \$250,000 (due to an individual credit limit of \$250,000). Partner B's (individual taxpayer) credit amount is \$200,000.

2. Example 2 of Credit Amount and Per Taxpayer Credit Limitations. A taxpayer donates real property for conservation purposes. The taxpayer is a limited liability company treated as a partnership for tax purposes, composed of three individual members: Member A owns 80 percent, members B and C each own 10 percent. The fair market value of the donated property, which is not effected by a sale of property for less than fair market value, is \$3 million. The credit amount for the limited liability company is \$500,000 (because \$500,000 is less than \$750,000, which is 25 percent of the fair

market value). Member A's credit amount is \$250,000 (due to an individual credit limit of \$250,000). The credit amount for Members B and C is \$50,000.

(6) Qualified Donation Limitation. Only one qualified donation may be made with respect to any real property that was, in the five years prior to the year of the donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel. There must be five years between each donation year in the case of a phased easement. For example, a donation is made in year 1. The five intervening years are years two through six. A donation would be allowed in year seven. This is allowed even when the evidence of the easement might remain as part of the same deed filing because once the easement is contributed its value is removed and it then is not part of the same tax parcel of record.

(7) Credit Cap. Beginning with qualified donations occurring on or after January 1, 2016, the total amount of tax credits preapproved under O.C.G.A. § 48-7-29.12 and this regulation shall not exceed \$30 million per calendar year. Beginning with qualified donations occurring on or after June 1, 2022, and ending on December 31, 2026, the total amount of tax credits preapproved under O.C.G.A. § 48-7-29.12 and this regulation shall not exceed \$4 million per calendar year.

(8) Preapproval of the Credit. Any taxpayer seeking preapproval to claim a tax credit under O.C.G.A. § 48-7-29.12 for a qualified donation that occurs on or after January 1, 2016, must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this paragraph. Before submitting an application to the Department of Revenue, the taxpayer shall have

completed the donation, received the State Property Commission's determination, and certification from DNR. The taxpayer must apply for preapproval for the calendar year for which the qualified donation occurred.

(a) Application. A taxpayer seeking preapproval to claim the tax credit under O.C.G.A. § 48-7-29.12 must electronically submit Form IT-CONSV-AP, the appraisal of the donated property, certification from DNR, and the State Property Commission's determination for approval through the Georgia Tax Center.

(b) Notification. The Department will notify each taxpayer of the tax credits preapproved and allocated to such taxpayer.

(c) Allocation of Tax Credit. The Commissioner shall allow the tax credit under O.C.G.A. § 48-7-29.12 on a first-come, first-served basis. The date the Form IT-CONSV-AP is electronically submitted shall be used to determine such first-come, first-served basis.

(d) Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in paragraph (7) of this regulation, then the tax credits shall be allocated among the taxpayers who submitted Form IT-CONSV-AP on the day the maximum aggregate limit was exceeded on a pro rata basis based upon amounts otherwise allowed under O.C.G.A. § 48-7-29.12 and this regulation. Only credit amounts on applications received on the day the maximum aggregate limit was exceeded will be allocated on a pro rata basis.

(e) Once the calendar year preapproval limit is reached for a calendar year, taxpayers shall no longer be eligible for a credit under O.C.G.A. § 48-7-29.12 for a qualified donation that occurred during

such calendar year. If any Form IT-CONSV-AP 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.

(f) Any amount preapproved under this paragraph is subject to the limitations of paragraph (5) of this regulation.

(g) In the event it is determined that the taxpayer has not met all the requirements of O.C.G.A. § 48-7-29.12 and this regulation, then the amount of credits shall not be preapproved or the preapproved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(9) **Claiming the conservation tax credit.** Any taxpayer claiming the conservation tax credit for a qualified donation that occurred before January 1, 2016, must submit Form IT-CONSV, certification(s) from DNR, the State Property Commission's determination, and the appraisal of the donated property with the taxpayer's Georgia income tax return in the tax year in which the qualified donation occurred; Form IT-CONSV must be submitted with the Georgia income tax return each year the credit is claimed. Any taxpayer claiming the conservation tax credit for a qualified donation that occurs on or after January 1, 2016, must submit Form IT-CONSV with the taxpayer's Georgia income tax return each year the conservation tax credit is claimed.

(10) ~~Carry Forward~~**Carryforward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward to apply to the taxpayer's succeeding ten years' tax liability (five years' tax liability for credits earned in taxable years beginning before January 1, 2008) for the number of years authorized under O.C.G.A. § 48-7-29.12. However, the amount in excess of the

199 annual dollar limits specified in paragraph (5) of this regulation shall
200 not be eligible for carryover to the taxpayer's succeeding years' tax
201 liability nor shall such excess amount be claimed by, reallocated to,
202 or transferred or sold to any other taxpayer.

203
204 **(11) Joint Tenancy, Tenancy in Common, and Similar**
205 **Groups.** When owners of real property included in a joint tenancy,
206 tenancy in common, or similar group make a qualified donation, the
207 tax credits will be allocated to each owner based on that owner's
208 ownership percentage of the donated real property.

209
210 **(12) Add Back Federal Deduction.** For qualified donations
211 made in taxable years beginning on or after January 1, 2013, no
212 credit shall be allowed under O.C.G.A. § 48-7-29.12 with respect to
213 any amount deducted from taxable net income by the taxpayer as a
214 charitable contribution.

215
216 (a) Example 1. A taxpayer claims a \$100,000 charitable deduc-
217 tion on their federal return. The taxpayer is allowed a \$25,000 state
218 tax credit ($\$100,000 \times 25\%$). The taxpayer must add back \$100,000
219 of the charitable contribution deduction on their Georgia return.

220
221 (b) Example 2. A taxpayer claims a \$100,000 charitable deduc-
222 tion on their federal return in year 1 but due to federal limitations is
223 only allowed to deduct \$25,000 in year 1 and \$75,000 in year 2. The
224 taxpayer is allowed a \$25,000 state tax credit ($\$100,000 \times 25\%$). The
225 taxpayer must add back \$25,000 in year 1 and \$75,000 in year 2 of
226 the charitable contribution deduction on their Georgia returns.

227
228 (c) Example 3. A taxpayer claims a \$2,000,000 charitable deduc-
229 tion on their federal return. The taxpayer computes a \$500,000 state
230 tax credit ($\$2,000,000 \times 25\%$) before considering the per taxpayer
231 credit limitation. After considering the per taxpayer credit

limitation, the taxpayer is allowed a \$250,000 state tax credit. The taxpayer must add back \$1,000,000 of the charitable contribution deduction on their Georgia return (\$250,000 / 25%).

(d) Example 4. A taxpayer claims a \$2,000,000 charitable deduction on their federal return in year 1 but due to federal limitations is allowed to deduct \$750,000 in year 1 and \$1,250,000 in year 2. The taxpayer computes a \$500,000 state tax credit (\$2,000,000 x 25%) before considering the per taxpayer credit limitation. After considering the per taxpayer credit limitation, the taxpayer is allowed a \$250,000 state tax credit. The taxpayer must add back a total of \$1,000,000 of the charitable contribution deduction on their Georgia returns (\$250,000 / 25%). The taxpayer must add back \$750,000 in year 1 and \$250,000 in year 2 on their Georgia returns.

(13) Pass-Through Entities. When the taxpayer is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage and the limitations of this regulation. The credit forms will initially be filed with the tax return of the taxpayer to establish the amount of the credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2014. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2014 tax year.

(14) Selling or Transferring the Conservation Tax Credit. Beginning on January 1, 2012, a taxpayer may sell or transfer in whole

or in part any conservation tax credit, previously claimed but not used by such taxpayer against its income tax, to another Georgia taxpayer subject to the following conditions:

(a) For qualified donations made in taxable years beginning on or after January 1, 2013, the taxpayer may only make a one-time sale or transfer of conservation tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee. For example, taxpayer 1 earns a \$50,000 credit in year 1. In year 2 they sell \$20,000 of the credit to taxpayer 2. In year 3 they are allowed to sell the remaining \$30,000 of the credit to taxpayer 3. However, both taxpayer 2 and taxpayer 3 are not allowed to resell the credit since the credit can only be sold one-time.

(b) The conservation tax credit may be transferred before the tax return is filed by the taxpayer. However, the amount transferred cannot exceed the amount of the credit which will be claimed and not used on the income tax return of the transferor.

(c) The taxpayer must file Form IT-TRANS "Notice of Tax Credit Transfer" with the Department of Revenue within 30 days of the transfer or sale of the conservation tax credit. With respect to any taxpayer which sells the credit on or after January 1, 2017, Form IT-TRANS must be submitted electronically to the Department of Revenue through the Georgia Tax Center or alternatively as provided in subparagraph (14)(c)1. With respect to such taxpayer, the Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. If the taxpayer is a disregarded entity then Form IT-TRANS should be filed in the name of the owner of the disregarded entity but the certification from the Department of Natural Resources and Form IT-CONSV should be in the name of the disregarded entity.

1. The web-based portal on the Georgia Tax Center. The taxpayer may provide selective information to a representative for the purpose of allowing the representative to submit Form IT-TRANS on their behalf on the Georgia Tax Center outside of a login. The provision of such information shall authorize the representative to submit such Form IT-TRANS. The representative must provide all information required by the web-based portal on the Georgia Tax Center to submit Form IT-TRANS.

(d) The taxpayer must provide all required conservation tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the conservation tax credit being disallowed until the taxpayer complies with such requirements.

(e) The ~~carry forward~~carryforward period of the conservation tax credit for the transferee will be the same as it was for the taxpayer. This credit may be carried forward ~~to apply to the taxpayer's succeeding ten years' tax liability (five years' tax liability for credits earned in taxable years beginning before January 1, 2008)~~for the number of years authorized under O.C.G.A. § 48-7-29.12. For example: The taxpayer sells a conservation tax credit on May 15, ~~2013~~2025. This credit is based on a donation from calendar ~~2013~~2025 tax year. The credit may be claimed by the transferee on the ~~2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, or 2023~~2025, 2026, 2027, 2028, 2029, or 2030 return and the ~~carry forward~~carryforward period for this credit will expire on December 31, ~~2023~~2030. This ~~carry forward~~carryforward treatment applies regardless of whether it is being claimed by the taxpayer or the transferee.

(f) A transferee shall have only such rights to claim and use the conservation tax credit that were available to the taxpayer at the time of the transfer. Thus, a transferee shall not have the right to

subsequently transfer such credit since that right has been utilized by the transferor.

(15) How to sell or transfer the tax credit.

(a) The taxpayer may sell or transfer the conservation tax credit directly to a Georgia taxpayer. A pass-through entity may make an election to sell or transfer the unused conservation tax credit earned in a taxable year at the entity level. However, the amount of the credit that may be sold by a pass-through entity cannot exceed the amount that the shareholders, members, or partners would be allowed pursuant to paragraph (5) of this regulation for the year the qualified donation is made. To the extent the pass-through entity makes the election to sell the conservation tax credit at the entity level, the credit does not pass through to the shareholders, members, or partners. The elected amount is then subtracted proportionally from the amount each shareholder, member, or partner would receive.

1. Example: A taxpayer donates real property for conservation purposes. The taxpayer is a partnership composed of two partners: Partner A owns 75% and is an S-Corporation (with no entity level income tax liability) composed of two individual shareholders, shareholder C (75% ownership) and shareholder D (25% ownership); Partner B owns 25% and is an individual taxpayer. The fair market value of the donated property, which is not effected by a sale of property for less than fair market value, is \$5 million. The credit amount for the partnership is \$500,000 (because \$500,000 is less than \$1,250,000, which is 25 percent of the fair market value). Partner A's (an S-Corporation) credit amount is \$375,000. Shareholder C's credit amount is \$250,000 (reduced from the \$281,250 by the per taxpayer credit limitation), and Shareholder D's credit amount is \$93,750. Partner B's (individual taxpayer) credit amount is

364 \$125,000. The taxpayer sells \$225,000 of the credit at the partner-
365 ship level which leaves \$243,750 that will flow through. Shareholder
366 C's credit is reduced by \$120,000 ($\$250,000/\$468,750 \times \$225,000$)
367 and therefore is entitled to a credit of \$130,000. Shareholder D's
368 credit is reduced by \$45,000 ($\$93,750/\$468,750 \times \$225,000$) and
369 therefore is entitled to a credit of \$48,750. Partner B's credit is re-
370 duced by \$60,000 ($\$125,000/\$468,750 \times \$225,000$) and therefore is
371 entitled to a credit of \$65,000.

372

373 (b) In all cases, the effect of the sale of the credit on the income
374 of the seller and buyer of the credit will be the same as provided in
375 the Internal Revenue Code.

376

377 (c) Pass-Through Entity. The taxpayer may be structured as a
378 pass-through entity. To the extent the pass-through entity does not
379 make an election to sell or transfer the tax credit at the entity level
380 as provided in paragraph (15) of this regulation, the tax credit will
381 pass through to the shareholders, partners, or members of the entity
382 based on their year ending profit/loss percentage and as provided in
383 this regulation. The shareholders, members, or partners may then
384 sell their respective conservation tax credit to a Georgia taxpayer.

385

386 (d) Transferee Pass-through Entity. The taxpayer, or its share-
387 holders, members, or partners, may sell or transfer the credit to a
388 pass-through entity. The pass-through entity shall elect on behalf of
389 its shareholders, members or partners which year the credit shall be
390 passed through to its shareholders, members or partners (as provided
391 in subparagraph (15)(e) of this regulation). If the pass-through entity
392 has no income tax liability of its own, the pass-through entity may
393 then pass the credit through to its shareholders, members, or partners
394 based on the pass-through entity's year ending profit/loss percentage
395 for such elected year. For example, if a calendar year partnership is
396 buying the credit earned by a taxpayer in the calendar year 2013 tax

year and elects to use the credit in such year, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2013 tax year in which the credit was established. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the conservation tax credit.

(e) The credits are available for use by the transferee provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected pursuant to O.C.G.A. § 48-2-35 as provided in subparagraphs 1. through 3. below, and provided that unused conservation tax credits earned in taxable years beginning before January 1, 2012 can only be claimed by the transferee in a taxable year beginning on or after January 1, 2012:

1. In the transferee's tax year in which the income tax year of the taxpayer, which generates and claims the conservation tax credit for the qualified donation associated with the credit being sold, ends; or

2. During any later tax year before the ~~ten-year carry forward~~ carryforward period (~~five-year carry forward period for credits earned in taxable years beginning before January 1, 2008~~) associated with the tax credit ends.

(i) Example: A taxpayer makes a qualified donation and claims the conservation tax credit in calendar year ~~2013~~2025. The taxpayer sells the conservation tax credit to a Georgia taxpayer in calendar ~~2014~~2026 tax year. The transferee Georgia taxpayer may claim the purchased conservation tax credit on either their ~~2013~~2025 return (transferee's tax year in which the income tax year of the taxpayer transferor ends) or their ~~2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, or 2023~~2026, 2027, 2028, 2029, or 2030 return (during any later tax year before the ~~ten-year carry forward~~carryforward

period associated with the tax credit ends).

3. The transferee's tax credit amount cannot exceed the limits in paragraph (5) of this regulation in the year in which the qualified donation was made. Any tax credit amount that exceeds the limits in paragraph (5) of this regulation for the year in which the qualified donation was made cannot be claimed or transferred by the transferee in any tax year.

(i) Example: In ~~2013~~2025, an individual taxpayer makes a qualified donation. ~~After~~After applying the limits in paragraph (5) of this regulation, the taxpayer claims the conservation tax credit for \$250,000 on their joint tax return. In ~~2015~~2027, this taxpayer purchases \$100,000 conservation tax credit from a qualified donation made in ~~2013~~2025. Since this taxpayer has already met the limits in paragraph (5) of this regulation for ~~2013~~2025, the taxpayer cannot claim the \$100,000 conservation tax credit in any tax year.

(16) **Sunset Date.** The Department of Natural Resources shall accept no new applications for tax credits after December 31, 2026.

(17) **Effective Date.** This rule is applicable to taxable years beginning on or after January 1, 2025. Taxable years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12, 48-7-29.12.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.51 Quality Jobs Tax Credit

The purpose of proposed Rule 560-7-8-.51 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 482 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (2) provides the definitions.
- Paragraph (4) provides the rules for establishing eligibility of the credit.
- Paragraph (6) provides the computation of the quality jobs tax credits based on twelve-month periods only.
- Paragraph (7) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (9) provides the carryforward of the credit.
- Paragraph (12) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.51 Quality Jobs Tax Credit

560-7-8-.51 Quality Jobs Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the quality jobs tax credit under O.C.G.A. § 48-7-40.17.

(2) **Definitions.** As used in this regulation:

(a) **County average wage.** The term “county average wage” means the average wage of the county in which a new quality job is located as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor as specified in this regulation. For purposes of this definition, ~~wages~~wage means the total dollars paid during the year to an employee, including but not limited to bonuses, incentive pay, and deductions from gross pay. As such, contributions by an employee to 401(k) plans, cafeteria plans, etc. shall be included in determining the wages. ~~Wages~~Wage does not mean contributions made by employers on behalf of employees to health insurance, retirement, or

any other benefit program.

1. For all purposes of this regulation, bonuses shall be treated as being paid ratably during the months for which the job existed during the taxable year in which the bonus was paid.

(b) **New quality job.** The term “new quality job” means employment for an individual located in this state which:

1. Has a regular work week of thirty (30) hours or more;

2. Is not a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for;

3. Pays at or above 110 percent of the county average wage. For purposes of determining the 110% requirement in years one through seven, the job must pay at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the tax year in which the taxpayer first elected jobs to qualify as new quality jobs; thus the 110% county average wage threshold remains constant over the life of the credit; and

4. For a taxpayer that initially claimed the credit in a taxable year beginning before January 1, 2012, the job has no predetermined end date.

(c) **Qualified investment property.** The term “qualified investment property” means all real and personal property purchased or acquired by a taxpayer for use in a qualified project, including, but not limited to, amounts expended on land acquisition, improvements, buildings, building improvements, and any personal property

68 to be used in the facility or facilities. Any lease for a period of three
69 years or longer of any real or personal property used in a new or
70 expanded facility or facilities which would otherwise constitute
71 qualified investment property shall be treated as the purchase or ac-
72 quisition thereof by the lessee. The taxpayer may treat the full value
73 of the leased property as qualified investment property in the year in
74 which the lease becomes binding on the lessor and the taxpayer.

75
76 (d) **Qualified investment property requirement.** The term
77 “qualified investment property requirement” means the requirement
78 that a minimum of \$2.5 million in qualified investment property will
79 have been purchased or acquired by the taxpayer to be used with
80 respect to a qualified project. Such qualified investment property
81 must be placed in service by the end of the two-year period specified
82 in subparagraph (4)(b) of this regulation.

83
84 (e) **Qualified project.** The term “qualified project” means a pro-
85 ject which meets the qualified investment property requirement and
86 which involves the lease or construction of one or more new facili-
87 ties in this state or the expansion of one or more existing facilities in
88 this state. For purposes of this definition, the term “facilities” means
89 all facilities comprising a single project, including noncontiguous
90 parcels of land, improvements to such land, buildings, building im-
91 provements, and any personal property that is used in the facility or
92 facilities.

93
94 (f) **Project.** The term “project” is defined in Department of Rev-
95 enue Regulation 560-7-8-.37.

96
97 (g) **Rural County.** The term “rural county” means a county that
98 has a population of less than 50,000 with 10 percent or more of such
99 population living in poverty based upon the most recent, reliable,
100 and applicable data published by the United States Bureau of the

Census. On or before December 31, of each year, the Commissioner of the Department of Community Affairs shall publish a list of such counties.

(h) **Taxpayer.** For a taxpayer that initially qualifies to claim the credit in a taxable year beginning on or after January 1, 2016, the term “taxpayer” means any person required by law to file a return or to pay taxes, except that any taxpayer may elect to consider the jobs within its disregarded entities, as defined in the Internal Revenue Code, for purposes of calculating the number of new quality jobs created by the taxpayer. Such election shall be irrevocable and must be made on the initial qualifying return (on Form IT-QJ) or within one year of the earlier of the date the initial qualifying return was filed or the date such return was due, including extensions. In the event such election is made, such disregarded entities shall not be separately eligible for the credit. Organizations exempt from tax pursuant to O.C.G.A. § 48-7-25 shall be defined as “taxpayers” only to the extent that a trade or business operated by such organization generates unrelated business income as defined in Section 512 of the Internal Revenue Code; for such organizations, eligibility for the credit are based only on the projects and investments, which are related primarily to such trade or business, and the jobs that qualify solely based on such trade or business.

(3) **Transferred jobs do not qualify.** New quality jobs must be new to the state of Georgia. Jobs that are transferred from other Georgia locations of the taxpayer, or from other Georgia locations of an affiliate of the taxpayer, would not be jobs that are new to the state of Georgia. However, an employee in a new quality job may be employed at a temporary location in this state pending completion of construction or renovation work.

(4) **Establishing eligibility for the credit.**

(a) A taxpayer must establish new quality jobs or relocate new quality jobs in a taxable year that begins on or after January 1, 2009. If the taxpayer first withholds wages for new quality jobs in this state (pursuant to Code Section 48-7-101) on a date in a taxable year beginning before January 1, 2017, the taxpayer is required to employ at least fifty (50) persons in new quality jobs within one year from the first date on which the taxpayer withholds wages for new quality jobs in this state (pursuant to Code Section 48-7-101). For purposes of determining the start of such ~~one-year~~one-year period, the taxpayer shall elect the month in which they want jobs to qualify as new quality jobs. When the number of new quality jobs in a particular month, during such ~~one-year~~one-year period, exceeds the monthly average of new quality jobs that existed in the prior ~~twelve month~~twelve-month period by fifty (50), such requirement shall be met. Taxpayers who were not located in Georgia during the prior ~~twelve-month~~twelve-month period shall use a prior ~~twelve month~~twelve-month period average of zero.

1. For purposes of such prior ~~twelve-month~~twelve-month determination:

(i) The number of new quality jobs for each month in such period shall be computed by determining the number of jobs that would have met the definition of new quality jobs (except for the requirement that the job be new to Georgia) even if a portion of such prior ~~twelve-month~~twelve-month period occurs before the tax year that begins on or after January 1, 2009; and

(ii) For purposes of determining the 110% requirement for any months that occurred in the prior taxable year, the job must have paid at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages

167 Averages Report of the Department of Labor that is available as of
168 the last day of the prior taxable year.

169

170 2. Example: A calendar year taxpayer elects to have jobs qualify
171 as new quality jobs in July of 2009. The average number of new
172 quality jobs from July 2008 until June 2009 is 89. In August of 2009
173 the taxpayer has 140 new quality jobs and therefore meets the 50
174 new quality jobs requirement ($140 - 89 = 51$). Accordingly, the tax-
175 payer may claim the credit in the tax year ending 12/31/09.

176

177 (b) Except as provided in subparagraphs (4)(c) and (4)(d) of this
178 regulation if the taxpayer first withholds wages for new quality jobs
179 on a date in a taxable year beginning on or after January 1, 2017, the
180 taxpayer is required to employ at least fifty (50) persons in new qual-
181 ity jobs within two years from the first date on which the taxpayer
182 withholds wages for new quality jobs in this state (pursuant to Code
183 Section 48-7-101). For purposes of determining the start of such ~~two~~
184 ~~year~~two-year period, the taxpayer shall elect the month in which
185 they want jobs to qualify as new quality jobs. When the number of
186 new quality jobs in a particular month, during such ~~two-year~~two-
187 year period, exceeds the monthly average of new quality jobs that
188 existed in the prior ~~twelve-month~~twelve-month period prior to the
189 start of the ~~two-year~~two-year period by fifty (50), such requirement
190 shall be met. Taxpayers who were not located in Georgia during the
191 prior ~~twelve-month~~twelve-month period shall use a prior ~~twelve~~
192 ~~month~~twelve-month period average of zero.

193

194 1. For purposes of such prior ~~twelve-month~~twelve-month deter-
195 mination:

196

197 (i) The number of new quality jobs for each month in such period
198 shall be computed by determining the number of jobs that would
199 have met the definition of new quality jobs (except for the

requirement that the job be new to Georgia) even if a portion of such prior ~~twelve-month~~twelve-month period occurs before the tax year that begins on or after January 1, 2017; and

(ii) For purposes of determining the 110% requirement for any months that occurred in the prior taxable year, the job must have paid at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the prior taxable year.

2. Example: A calendar year taxpayer elects to have jobs qualify as new quality jobs in January of 2017. The average number of new quality jobs from January 2016 until December 2016 is 109. In August of 2018 the taxpayer has 160 new quality jobs and therefore meets the 50 new quality jobs requirement ($160-109=51$). Accordingly, the taxpayer may claim the credit in the tax year ending 12/31/2018.

(c) If the taxpayer first withholds wages for new quality jobs on a date in a taxable year beginning on or after January 1, 2020, the taxpayer is only required to employ at least ten (10) persons in new quality jobs within a single rural county within one year from the first date on which the taxpayer withholds wages for new quality jobs in this state (pursuant to Code Section 48-7-101), provided that such county is designated as a tier 1 county by the Commissioner of Community Affairs in accordance with Code Section 48-7-40. For purposes of determining the start of such ~~one-year~~one-year period, the taxpayer shall elect the month in which they want jobs to qualify as new quality jobs. When the number of new quality jobs in a particular month, during such ~~one-year~~one-year period, exceeds the monthly average of new quality jobs that existed in the prior ~~twelve month~~twelve-month period by ten (10), such requirement shall be

met. Taxpayers who were not located in Georgia during the prior ~~twelve-month~~twelve-month period shall use a prior ~~twelve-month~~twelve-month period average of zero.

1. For purposes of such prior ~~twelve-month~~twelve-month determination:

(i) The number of new quality jobs for each month in such period shall be computed by determining the number of jobs that would have met the definition of new quality jobs (except for the requirement that the job be new to Georgia) even if a portion of such prior ~~twelve-month~~twelve-month period occurs before the tax year that begins on or after January 1, 2020; and

(ii) For purposes of determining the 110% requirement for any months that occurred in the prior taxable year, the job must have paid at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the prior taxable year.

2. Example: A calendar year taxpayer elects to have jobs qualify as new quality jobs in July of 2020. The average number of new quality jobs from July 2019 until June 2020 is 60. In August of 2020 the taxpayer has 71 new quality jobs in a rural county that is in a tier 1 county and therefore meets the 10 new quality jobs requirement ($71-60=11$) for a rural county located in a tier 1 county. Accordingly, the taxpayer may claim the credit in the tax year ending 12/31/2020.

(d) If the taxpayer first withholds wages for new quality jobs on a date in a taxable year beginning on or after January 1, 2020, the taxpayer is only required to employ at least twenty-five (25) persons

266 in new quality jobs within a single rural county within one year from
267 the first date on which the taxpayer withholds wages for new quality
268 jobs in this state (pursuant to Code Section 48-7-101), provided that
269 such county is designated as a tier 2 county by the Commissioner of
270 Community Affairs in accordance with Code Section 48-7-40. For
271 purposes of determining the start of such ~~one-year~~one-year period,
272 the taxpayer shall elect the month in which they want jobs to qualify
273 as new quality jobs. When the number of new quality jobs in a par-
274 ticular month, during such ~~one-year~~one-year period, exceeds the
275 monthly average of new quality jobs that existed in the prior ~~twelve~~
276 ~~month~~twelve-month period by twenty-five (25), such requirement
277 shall be met. Taxpayers who were not located in Georgia during the
278 prior ~~twelve-month~~twelve-month period shall use a prior ~~twelve~~
279 ~~month~~twelve-month period average of zero.

280
281 1. For purposes of such prior ~~twelve-month~~twelve-month deter-
282 mination:

283
284 (i) The number of new quality jobs for each month in such period
285 shall be computed by determining the number of jobs that would
286 have met the definition of new quality jobs (except for the require-
287 ment that the job be new to Georgia) even if a portion of such prior
288 ~~twelve-month~~twelve-month period occurs before the tax year that
289 begins on or after January 1, 2020; and

290
291 (ii) For purposes of determining the 110% requirement for any
292 months that occurred in the prior taxable year, the job must have
293 paid at or above 110% of the county average wage as reported in the
294 most recent annual issue of the Georgia Employment and Wages
295 Averages Report of the Department of Labor that is available as of
296 the last day of the prior taxable year.

297
298 2. Example: A calendar year taxpayer elects to have jobs qualify

as new quality jobs in July of 2020. The average number of new quality jobs from July 2019 until June 2020 is 50. In August of 2020 the taxpayer has 76 new quality jobs in a rural county located in a tier 2 county and therefore meets the 25 new quality jobs requirement ($76-50=26$) in a rural county located in a tier 2 county. Accordingly, the taxpayer may claim the credit in the tax year ending 12/31/2020.

(e) In the taxable year in which the taxpayer first employs the required number of persons in new quality jobs under this paragraph, the taxpayer shall be entitled to claim the quality jobs tax credit even if the average number of new quality jobs is less than the required number of new quality jobs under this paragraph for such taxable year. However, in subsequent taxable years the average number of new quality jobs must be at least the required number of new quality jobs under this paragraph for a taxable year in order for the new quality jobs to be claimed. If such required average number of new quality jobs requirement is not met, the taxpayer shall forfeit the right to claim the credit for such jobs in such taxable year. However, if in a subsequent taxable year such required average number of new quality jobs requirement is met, the taxpayer may continue taking the credit and shall resume the credit schedule from when the credit was initially claimed.

(f) Once the taxpayer has determined under subparagraph (4)(a), (4)(b), (4)(c), or (4)(d) of this regulation that they qualify for the credit, the new quality jobs are determined for a taxable year by computing the average number of new quality jobs subject to Georgia income tax withholding for the taxable year and subtracting from this number the average number of new quality jobs in the prior taxable year.

1. These averages shall be determined by the following method:

(i) For each month of the taxable year, count the total number of new quality jobs that are subject to Georgia income tax withholding as of the last payroll period of the month (each job must individually meet the definition of new quality job as provided in subparagraphs (2)(b)1., 3., and 4. of this regulation and cannot have been, for any time before the taxpayer first elects to have jobs qualify as new quality jobs, a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for).

(ii) Add the monthly totals of new quality jobs (each job must individually meet the definition of new quality job as provided in subparagraphs (2)(b)1., 3., and 4. of this regulation and cannot have been, for any time before the taxpayer first elects to have jobs qualify as new quality jobs, a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for).

(iii) Divide the results by the number of months in the taxable year.

2. However, for the initial year the new quality jobs credit is claimed (year one) the increase in new quality jobs is determined for such taxable year by computing the average number of new quality jobs subject to Georgia income tax withholding for the taxable year in the manner specified above and subtracting from this number the average number of new quality jobs in the prior twelve month period as determined in subparagraph (4)(a), (4)(b), (4)(c), or (4)(d) of this regulation.

3. Example: Taxpayer elects to have jobs qualify as new quality jobs in July of 2009. The prior ~~twelve-month~~twelve-month period average number of jobs from July 2008 until June 2009 is 89. In

365 August of 2009 the taxpayer meets the 50 new quality jobs require-
366 ment because they have 140 jobs ($140-89=51$) so the tax year ending
367 12/31/09 will be the taxpayer's year one. Assume the average num-
368 ber of new quality jobs from January 2009 to December 2009 is 132.
369 The taxpayer is eligible to claim credits for 43 new quality jobs
370 ($132-89$) in year one. Assume the average number of new quality
371 jobs from January 2010 to December 2010 is 180. The taxpayer is
372 eligible to claim 48 new quality jobs in year two ($180-132$) and the
373 43 new quality jobs maintained from year one.

374
375 4. Example: Taxpayer elects to have jobs qualify as new quality
376 jobs in January of 2017. The prior ~~twelve-month~~twelve-month pe-
377 riod average number of jobs from January 2016 until December
378 2016 is 109. In August of 2018 the taxpayer meets the 50 new qual-
379 ity jobs requirement because they have 160 jobs ($160-109=51$) so
380 the tax year ending 12/31/2018 will be the taxpayer's year one. As-
381 sume the average number of new quality jobs from January 2018 to
382 December 2018 is 158. The taxpayer is eligible to claim credits for
383 49 new quality jobs ($158-109$) in year one. Assume the average
384 number of new quality jobs from January 2019 to December 2019
385 is 240. The taxpayer is eligible to claim 82 new quality jobs in year
386 two ($240-158$) and 49 new quality jobs maintained from year one.

387
388 (g) Other credits.
389

390 1. The taxpayer must elect not to receive the tax credits provided
391 for by Code Sections 48-7-40 and 48-7-40.1 for such jobs. This
392 election is deemed to have been made when the taxpayer claims the
393 quality jobs tax credit on its state income tax return. Taxpayers may
394 not alternatively claim the jobs credit provided by Code Sections 48-
395 7-40 and 48-7-40.1 and the quality jobs tax credit with respect to
396 such jobs. These credits are not interchangeable. Jobs for which the
397 job tax credit is claimed under Code Sections 48-7-40 and 48-7-

40.1 shall be excluded from all calculations for the quality jobs tax credit under this regulation.

2. The taxpayer must elect not to receive the tax credits provided for by Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-40.7, 48-7-40.8, and 48-7-40.9 for such project. This election is deemed to have been made when the taxpayer claims the quality jobs tax credit on its state income tax return. Taxpayers cannot alternatively elect to claim the investment tax credit or the optional investment tax credit in one year and the quality jobs tax credit in the next year for a given project. These credits are not interchangeable. Taxpayers may elect to take only one of the investment, optional investment, or quality jobs tax credit for a given project.

(5) Credit amount per new quality job created in the same tax year. A taxpayer that has established eligibility for the quality jobs tax credit shall receive the same credit amount for each new quality job created in the same tax year. The credit amount is as follows and is based on a comparison of the average weekly wage for all new quality jobs in both prior and subsequent seven-year periods (determined below in subparagraph (5)(c) of this regulation) with the county average wage, as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the taxable year in which the new quality jobs were created:

Average Weekly Wage/County Average Wage	Credit Amount
110% but less than 120%	\$2,500
120% but less than 150%	\$3,000
150% but less than 175%	\$4,000
175% but less than 200%	\$4,500
200% or more	\$5,000

(a) Credit for new quality jobs created in year one may be claimed in year one and may also be claimed for each of the four immediately succeeding taxable years, provided the new quality jobs are maintained in each year, and provided that the average number of new quality jobs required in subparagraph (4)(e) of this regulation are maintained in each year. The credit amount for new quality jobs created in the same tax year must be recalculated each year for the four immediately succeeding taxable years using the applicable county average wage (from the year in which the new quality jobs were created).

(b) Credit amount for additional new quality jobs created in years two through seven. Additional new quality jobs means those new quality jobs created in years two through seven that increase the monthly full-time employment average for such years above the monthly full-time employment average for year one. The credit amount for additional new quality jobs created in years two through seven shall be determined by using the applicable county average wage from the year in which the additional new quality jobs are created.

(c) The average weekly wage for all new quality jobs in a taxable year shall be calculated using the following method:

1. Aggregate the actual wages paid for all new quality jobs in that taxable year.

2. Divide the result by the average number of all new quality jobs.

3. Divide the result by 52 to arrive at the average weekly wage paid to each new quality job.

(d) The average weekly wage shall then be compared to the county average wage from the year in which the new quality jobs were deemed created.

(e) Example: Taxpayer creates 50 new quality jobs in year one. The average weekly wage paid for each of these 50 jobs is \$725. The county average wage is \$652. Taxpayer creates 20 additional new quality jobs in year two which results in 70 new quality jobs that are eligible for the credit. The average weekly wage paid for each of these 70 jobs is \$785. The county average wage for year two is \$660.

1. Year One: Since the taxpayer's "average weekly wage/county average wage" for year one is 111% ($\$725/\652), which is between 110% and 120% of the county average wage, the taxpayer will be eligible to claim a credit of \$2,500 for each of the 50 new quality jobs. The taxpayer's credit amount for year one is \$125,000.

2. Year Two:

(i) Jobs created in year one: The taxpayer will be eligible to claim a credit amount of \$3,000 for the year one 50 new quality jobs deemed maintained in year two since the "average weekly wage/county average wage" is 120% ($\$785/\652) (credit= $\$3,000 \times 50$ new quality jobs= $\$150,000$).

(ii) Jobs created in year two: Since the taxpayer's "average weekly wage/county average wage" for year two is 119% ($\$785/\660), which is between 110% and 120% of the county average wage, the taxpayer will be eligible to claim a credit of \$2,500 for each of the 20 new quality jobs deemed created in year two (credit= $\$2,500 \times 20$ new quality jobs= $\$50,000$).

(iii) The taxpayer's total credit amount for year two is \$150,000 + \$50,000=\$200,000.

(f) Credit amount for a taxpayer with new quality jobs in more than one county. If a taxpayer qualifies for the quality jobs tax credit and has new quality jobs located in different counties, for each year jobs are created, a weighted county average wage for the counties must be computed to calculate the credit amount. If a taxpayer creates a subsequent seven-year job creation period under paragraph (8) of this regulation and the new qualified project is located in a different county then the previous seven-year job creation period counties, all new quality jobs created in such subsequent seven-year job creation period shall be treated as being created in such different county and as such this subparagraph shall not apply. First, the average wage for each county, as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the taxable year in which the new quality jobs were deemed created, must be multiplied by a ratio. The numerator of the ratio consists of the total new quality jobs in the county created in such year and the denominator of the ratio consists of the total new quality jobs created in such year in all counties. Once this multiplication is done for all counties, the resulting amounts should be added together to arrive at the weighted county average wage for the counties. The weighted county average wage for each year jobs are created is compared to the average weekly wage for all new quality jobs to determine the taxpayer's credit amount in the same manner as provided in paragraph (5) of this regulation. Such weighted county average wage is not used to determine if the job is a new quality job.

(6) Computation of the quality jobs tax credit based on twelve-month periods only. In years two through seven, a taxpayer

530 must compute increases and decreases in full-time jobs on the basis
531 of ~~twelve-month~~ twelve-month periods only, even when the taxpayer
532 has taxable years that are not equal to twelve months. This may
533 cause the quality jobs tax credit calculation period to be different
534 from the tax year of the taxpayer.
535

536 (7) **Claiming the credit.** The quality jobs tax credit shall be
537 claimed on an income tax return for the first taxable year in which
538 the taxpayer first becomes eligible for the credit. The quality jobs
539 tax credit must be claimed within one year of the earlier of the date
540 the original return was filed or the date such return was due, includ-
541 ing extensions.
542

543 (a) Income tax. For a taxpayer to claim the quality jobs tax credit,
544 the taxpayer must submit Form IT-QJ and a listing of new quality
545 jobs employees, which includes the name of the employee, the last
546 four digits of the employee's social security number, wages, and any
547 other information that the Commissioner may request, with the tax-
548 payer's Georgia income tax return. The taxpayer may seek the Com-
549 missioner's permission to provide alternative employee identifica-
550 tion numbers such as taxpayer's internal employee identification
551 numbers instead of providing the employee's social security num-
552 ber. A software program's Form IT-QJ that is electronically filed
553 with the Georgia income tax return in the manner specified by the
554 Department satisfies this requirement.
555

556 (b) Withholding tax. A taxpayer may claim any excess quality
557 jobs tax credit against its withholding tax liability. The withholding
558 tax benefit may only be applied against the withholding tax account
559 used by the taxpayer for payroll purposes. Unless an election is
560 made pursuant to subparagraph (2)(h) of this regulation, in the event
561 the entity that earned the credit is a single member limited liability
562 company that is disregarded for income tax purposes, the

withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company. A taxpayer must notify the commissioner each year of their, in the manner specified in subparagraph (7)(b)1., below, for any tax year for which they are making an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payments for such taxpayer. When this election is made, the excess quality jobs tax credit will not pass through to the shareholders, partners, or members of the taxpayer if the taxpayer is a pass-through entity.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the taxpayer's withholding tax liability, the taxpayer must file Revenue Form IT-WH through the Georgia Tax Center within the three-year statute of limitations period thirty (30) days after the due date of the Georgia income tax return (including extensions) ~~or within thirty (30) days after the filing of a timely filed Georgia income tax return, whichever occurs first.~~ Failure to file this form as provided in this subparagraph will result in disallowance of the withholding tax benefit. Such irrevocable election may only be made one time with respect to each tax year for which the credit is earned for such tax year, for all or part of the excess tax credit remaining at the time of the election. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year. If an election is made pursuant to subparagraph (2)(h) of this regulation, the taxpayer shall each year include an attachment showing the amounts they want to use against the withholding liabilities of the taxpayer and each of its qualifying disregarded entities.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under

subparagraph (7)(b)1. of this regulation is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the taxpayer stating the tax credit amount which may be applied against withholding and when the taxpayer may begin to claim the tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.

(8) Subsequent seven-year job creation period. For taxable years beginning on or after January 1, 2017, a taxpayer may create a subsequent seven-year job creation period for a new qualified project in Georgia. In order to create the subsequent seven-year job creation period, the taxpayer must complete the creation of a qualified project in a taxable year beginning on or after January 1, 2017 and create 50 or more new quality jobs above its single previous high yearly average number of new quality jobs during any prior seven-year job creation period, at the site or sites of the qualified project or the facility or facilities resulting therefrom. A subsequent seven-year job creation period is subject to all the requirements of O.C.G.A. § 48-7-40.17 and this regulation.

(a) A taxpayer that begins a subsequent seven-year job creation period must notify the Department by completing the applicable sections regarding a subsequent seven-year job creation period on Form IT-QJ.

(b) If a taxpayer begins a subsequent seven-year job creation period, existing new quality jobs generated under previous seven-year job creation periods shall continue to be eligible for the quality jobs

tax credit. New quality jobs created under a subsequent seven-year job creation period shall count toward the subsequent period. No new quality jobs may be created under previous periods of eligibility after a subsequent seven-year job creation period of eligibility has begun. New quality jobs created in a subsequent seven-year job creation period shall not be counted as additional new quality jobs under a previous seven-year job creation period. A taxpayer must maintain the number of new quality jobs created in previous seven-year job creation periods in order to claim new quality jobs in subsequent seven-year job creation periods. Therefore, to determine the number of new quality jobs in a particular year that are attributable to each seven-year job creation period, the taxpayer shall begin with the first seven-year job creation period and attribute to it new quality jobs up to the single high yearly average number of new quality jobs for that seven-year job creation period. Continue in that manner by attributing the remainder of new quality jobs to each subsequent seven-year job creation period from the oldest to the newest seven-year job creation period, up to the single high yearly average number of new quality jobs for each seven-year job creation period. The remainder of new quality jobs after all previous seven-year creation periods have been thus attributed shall be attributed to the most recent seven-year job creation period.

(c) A taxpayer may create more than one subsequent seven-year job creation period.

(d) If at the time a taxpayer begins a subsequent seven-year job creation period, the taxpayer had a year or years in the prior seven-year job creation period where the number of new quality jobs were below the single high yearly average number of new quality jobs, the taxpayer shall be allowed to make an irrevocable election to use the average number of new quality jobs for the completed years in the prior seven-year job creation period instead of the single high

yearly average number of new quality jobs for all purposes under paragraph (8) of this regulation. Such election must be made on the initial qualifying return (on Form IT-QJ) or within one year of the earlier of the date the initial qualifying return was filed or the date such return was due, including extensions. If such election is made, the number of new quality jobs in the years subsequent to the completed years for the prior seven-year job creation period shall be deemed to not exceed the average number of new quality jobs for the completed years in the prior seven-year job creation period. New quality jobs over such average number shall be attributed to the subsequent seven-year job creation period as provided in paragraph (8) of this regulation.

(e) For purposes of computing the credit amount per new quality job as provided in paragraph (5) of this regulation, the taxpayer shall compute the average weekly wage for all new quality jobs including those in any prior seven-year job creation period.

(f) Form IT-QJ includes an example of how to attribute new quality jobs when a taxpayer begins a subsequent seven-year job creation period.

(9) ~~Carry forward~~**Carryforward**. Any quality jobs tax credit which is claimed but not used in a taxable year may be carried forward for 10 years from the close of the taxable year in which the new quality jobs were created. For example, quality job tax credits created by an employment increase in year one, but not used in year one, may be carried forward to years two through eleven.

(10) **Pass-through entities**. When the taxpayer is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage and the limitations of this regulation. The

credit forms will initially be filed with the tax return of the taxpayer to establish the amount of the credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess quality jobs tax credit against their withholding tax liabilities. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2010. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2010 tax year.

(11) **No waiver for a job already located in Georgia.** Since the definition of new quality job in O.C.G.A. § 48-7-40.17 requires that the job not be a job that is or was already located in Georgia, regardless of which taxpayer the individual performed services for, the Commissioner has no authority to grant a waiver of this requirement.

(12) **Effective Date.** This regulation as amended shall be applicable to taxable years beginning on or after January 1, 2025. However, subparagraph (2)(h) of this regulation shall be applicable to taxable years beginning on or after January 1, 2023. Taxable years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2025 in the same manner as if the amendments set forth in this regulation had not been promulgated, except that subparagraph (2)(h) of this regulation as amended will still govern for taxable years beginning on or after January 1, 2023.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40.17.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.52 Qualified Investor Tax Credit

The purpose of proposed Rule 560-7-8-.52 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (3) provides the registration requirements.
- Paragraph (9) provides the carryforward of the credit.
- Paragraph (13) provides the recapture of the credit.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.52 Qualified Investor Tax Credit

560-7-8-.52 Qualified Investor Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-40.30.

(2) **Definitions.** As used in this regulation:

(a) **Headquarters.** The term “headquarters” means the principal central administrative office of a business located in this state which conducts significant operations of such business.

(b) **Pass-Through Entity.** The term “pass-through entity” means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(c) **Professional Services.** The term “professional services” means those services specified in paragraph (2) of O.C.G.A. § 14-7-

34 2 or any service which requires as a condition precedent to the ren-
35 dering of such service the obtaining of a license from a state licens-
36 ing board under Title 43 of the O.C.G.A.

37
38 (d) Qualified Business. The term “qualified business” means a
39 business that:

40
41 1. Is either a corporation, limited liability company, or a general
42 or limited partnership located in this state;

43
44 2. Was organized no more than three years before the qualified
45 investment was made;

46
47 3. Has its headquarters located in this state at the time the invest-
48 ment was made and has maintained such headquarters for the entire
49 time the qualified business benefited from the tax credit under
50 O.C.G.A. § 48-7-40.30.

51
52 4. Employs 20 or fewer people in this state at the time it is regis-
53 tered as a qualified business;

54
55 5. Has had in any complete fiscal year before registration gross
56 annual revenue as determined in accordance with the Internal Rev-
57 enue Code of \$500,000.00 or less on a consolidated basis;

58
59 6. Has not obtained during its existence more than \$1 million in
60 aggregate gross cash proceeds from the issuance of its equity or debt
61 investments, not including commercial loans from chartered bank-
62 ing or savings and loan institutions;

63
64 7. Has not utilized the tax credit under O.C.G.A. § 48-7-40.26;

65
66 8. Is primarily engaged in manufacturing, processing, online and

digital warehousing, online and digital wholesaling, software development, information technology services, or research and development or is a business providing services other than those described in subparagraph (2)(d)9. of this regulation; and

9. Does not substantially engage in any of the following:

(i) Retail sales;

(ii) Real estate or construction;

(iii) Professional services;

(iv) Gambling;

(v) Natural resource extraction;

(vi) Financial, brokerage, or investment activities or insurance;
or

(vii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

(viii) A business shall be substantially engaged in one of the above activities if its gross revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement or similar organizational documents to engage in such activity as one of its primary purposes.

(e) Qualified Investment. The term “qualified investment” means an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for

100 cash of qualified subordinated debt in a qualified business; provided,
101 however, that funds constituting a qualified investment cannot have
102 been raised or be raised as a result of other tax incentive programs.
103 Furthermore, no investment of common or preferred stock or an equity
104 interest or purchase of subordinated debt shall qualify as a qualified
105 investment if a broker fee or commission or a similar remuneration
106 is paid or given directly or indirectly for soliciting such investment
107 or purchase.

108
109 (f) Qualified Investor. The term “qualified investor” means an
110 accredited investor as that term is defined by the United States Securities
111 and Exchange Commission who is:

112
113 1. An individual person who is a resident of this state or a non-
114 resident who is obligated to pay taxes imposed by O.C.G.A. § 48-7-
115 20; or

116
117 2. A pass-through entity, owned by individual persons, which is
118 formed for investment purposes, has no business operations, has
119 committed capital under management of equal to or less than \$5 million,
120 and is not capitalized with funds raised or pooled through private
121 placement memoranda directed to institutional investors. A
122 venture capital fund or commodity fund with institutional investors
123 or a hedge fund shall not qualify as a qualified investor.

124
125 (g) Qualified Subordinated Debt. The term “qualified subordinated
126 debt” means indebtedness that is not secured, that may or may
127 not be convertible into common or preferred stock or other equity
128 interest, and that is subordinated in payment to all other indebtedness
129 of the qualified business issued or to be issued for money borrowed
130 and no part of which has a maturity date less than five years
131 after the date such indebtedness was purchased.

132

133 (3) **Registration.** A qualified business must electronically regis-
134 ter with the Commissioner by electronically submitting Form IT-
135 QBR through the Georgia Tax Center; registration shall constitute
136 certification by the Commissioner for 12 months beginning on the
137 date of the Commissioner's approval. The Department will not pro-
138 cess any Form IT-QBR for registration that is submitted or filed in
139 any other manner. A business shall be permitted to renew its regis-
140 tration with the Commissioner so long as at the time of renewal, the
141 business remains a qualified business. In order to be certified, the
142 qualified business shall provide the Commissioner any information
143 required by the Commissioner.

144
145 (a) Registration Conditions and Limitations. The registration of
146 a business as a qualified business shall be subject to the following:

147
148 1. If the Commissioner finds that any of the information con-
149 tained in Form IT-QBR is false, the Commissioner shall revoke the
150 registration of such business. The Commissioner shall not revoke
151 the registration of a business solely because it ceases business oper-
152 ations for an indefinite period of time, as long as the business renews
153 its registration;

154
155 2. Registration as a qualified business may not be sold or other-
156 wise transferred, except that, if a qualified business enters into a
157 merger, conversion, consolidation or other similar transaction with
158 another business and the surviving company would otherwise meet
159 the criteria for being a qualified business, the surviving company
160 retains the registration for the ~~12-month~~twelve-month registration
161 period without further application to the Commissioner. In such a
162 case, the surviving company which constitutes the qualified busi-
163 ness must provide the Commissioner with written notice of the mer-
164 ger, conversion, consolidation, or similar transaction and such other
165 information as required by the Commissioner.

166
167 (4) **Credit Amount.** A qualified investor that makes a qualified
168 investment directly in a qualified business in calendar year 2011,
169 2012, 2013, 2014, 2015, 2016, 2017, or 2018 shall be allowed a tax
170 credit of 35 percent of the amount invested commencing on January
171 1 of the second year following the year in which the qualified in-
172 vestment was made.

173
174 (5) **Per Individual Credit Limitation.** The credit amount al-
175 lowed under paragraph (4) of this regulation shall be further limited
176 for each individual, for one or more qualified investments whether
177 made directly or by a pass-through entity, for a taxable year and shall
178 not exceed \$50,000.00.

179
180 (6) **Credit Cap.** In no event shall the total amount of tax credits
181 allowed under O.C.G.A. § 48-7-40.30 exceed the following
182 amounts:

183
184 (a) For investments made in calendar year 2011 and claimed and
185 allowed in taxable year 2013, \$10 million;

186
187 (b) For investments made in calendar year 2012 and claimed and
188 allowed in taxable year 2014, \$10 million;

189
190 (c) For investments made in calendar year 2013 and claimed and
191 allowed in taxable year 2015, \$10 million;

192
193 (d) For investments made in calendar year 2014 and claimed and
194 allowed in taxable year 2016, \$5 million;

195
196 (e) For investments made in calendar year 2015 and claimed and
197 allowed in taxable year 2017, \$5 million;

199 (f) For investments made in calendar year 2016 and claimed and
200 allowed in taxable year 2018, \$5 million;

201
202 (g) For investments made in calendar year 2017 and claimed and
203 allowed in taxable year 2019, \$5 million; and

204
205 (h) For investments made in calendar year 2018 and claimed and
206 allowed in taxable year 2020, \$5 million.

207
208 (7) **Claiming the Credit.** Any qualified investor seeking to claim
209 the tax credit under O.C.G.A. § 48-7-40.30, must submit the appro-
210 priate forms to the Department as provided in this paragraph.

211
212 (a) Application. A qualified investor seeking to claim the tax
213 credit under O.C.G.A. § 48-7-40.30 shall electronically submit
214 Form IT-QI-AP for tentative approval through the Georgia Tax Cen-
215 ter between September 1 and October 31 of the year for which the
216 tax credit is claimed and allowed. The Department will not preap-
217 prove any qualified investor tax credit where Form IT-QI-AP is sub-
218 mitted or filed in any other manner.

219
220 (b) Notification. The Department will notify each qualified in-
221 vestor of the tax credits, tentatively approved and allocated to such
222 qualified investor by December 31 of the year in which the applica-
223 tion was submitted.

224
225 (c) Allocation of Tax Credit. In the event the credit amounts on
226 applications filed with the Commissioner exceed the maximum ag-
227 gregate limit of tax credits under paragraph (6) of this regulation,
228 then the tax credits shall be allocated among the qualified investors
229 who filed a timely application through the Georgia Tax Center on a
230 pro rata basis based upon the amounts otherwise allowed under
231 O.C.G.A. § 48-7-40.30 and this regulation.

1. A qualified investor claiming the tax credit under O.C.G.A. § 48-7-40.30 must attach an approved Form IT-QI-AP and Form IT-QI to its Georgia income tax return for each year in which the credit is claimed.

2. In no event shall the amount of credit claimed by an individual for a taxable year exceed such individual's Georgia net income tax liability after all other credits have been applied.

3. In the event it is determined that the qualified investor has not met all the requirements of O.C.G.A. § 48-7-40.30 and this regulation, then the amount of credits shall not be tentatively approved or the tentatively approved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(8) E-Filing Attachment Requirements. If a taxpayer claiming the credit electronically files their tax return, the approved Form IT-QI-AP 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.

(9) ~~Carry Forward~~ Carryforward. Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward for ~~five years~~ the number of years authorized under O.C.G.A. § 48-7-40.30 from the close of the taxable year in which the qualified investment was made. However, any amount in excess of the credit

amount limits in paragraphs (4) and (5) of this regulation shall not be eligible for carryover to the qualified investor's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(10) **Pass-Through Entities.** When the qualified investor is a pass-through entity, and has no income tax liability of its own, the tax credit will pass to its individual members, shareholders, or partners in the same manner as they would account for their proportionate shares of income or loss from such entities. The credit forms will initially be filed with the tax return of the pass-through entity to establish the amount of the credit available for pass through. The credit will then pass through to its individual shareholders, members, or partners to be applied against the tax liability on their income tax returns. The credits are available for use as a credit by the individual shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2013. The partnership passes the credit to a calendar year partner. The credit is available for use by the individual partner beginning with the calendar 2013 tax year.

(11) **Qualified Investor's Basis.** The qualified investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced by the amount of credit claimed by the qualified investor.

(12) **Qualified Investor Tax Credit Not Transferrable.** The tax credit under O.C.G.A. § 48-7-40.30 is not transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse upon incident of divorce.

298 (13) **Recapture.** Any credit claimed under O.C.G.A. § 48-7-
299 40.30 shall be recaptured if any of the following occur:

300

301 (a) Within two years after the qualified investment was made, the
302 qualified investor transfers any of the securities or subordinated debt
303 received in the qualified investment to another person or entity,
304 other than a transfer resulting from one of the following:

305

306 1. The death of the qualified investor;

307

308 2. A transfer to the spouse of the qualified investor upon incident
309 of divorce; or

310

311 3. A merger, conversion, consolidation, sale of the qualified busi-
312 ness' assets, or similar transaction requiring approval by the owners
313 of the qualified business under applicable law, to the extent the qual-
314 ified investor does not receive cash or tangible property in such mer-
315 ger, conversion, consolidation, sale, or other similar transaction;

316

317 (b) Except as provided in subparagraph (13)(a) of this regulation,
318 within five years after the qualified investment was made, the qual-
319 ified business makes a redemption with respect to the securities re-
320 ceived or pays any principal of the subordinated debt; or

321

322 (c) Within two years after the qualified investment was made, the
323 qualified investor participates in the operation of a qualified busi-
324 ness, or the qualified investor's spouse, parent, sibling, or child, or
325 a business controlled by any of these individuals, provides services
326 of any nature to the qualified business for compensation, whether as
327 an employee, a contractor, or otherwise. However, a person who
328 provides uncompensated professional advice to a qualified business
329 whether as an officer, a member of the board of directors or manag-
330 ers or otherwise or participates in a stock or membership option or

331 stock or membership plan, or both, shall be eligible for the credit;
332

333 (14) **Recapture Amount.** The amount of credit recaptured:
334

335 (a) Shall apply only to the qualified investment in the particular
336 qualified business in which the investment was made; and
337

338 (b) Shall be added to the qualified investor's income tax liability
339 for the taxable year in which the recapture occurs.
340

341 (15) **Qualified Business Ceases Business Operations, Dis-**
342 **solves, or Liquidates.** In the event the qualified business ceases
343 business operations, dissolves, or liquidates, the qualified investor
344 may claim either the credit authorized under O.C.G.A. § 48-7-40.30
345 or any capital loss the qualified investor otherwise would be able to
346 claim regarding that qualified business, but shall not be authorized
347 to claim and be allowed both. If the qualified investor claims a cap-
348 ital loss and has already utilized the credit, the credit shall be recap-
349 tured.
350

351 Authority: O.C.G.A. §§ 48-2-12, 48-7-40.30.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.56 Historic Rehabilitation Tax Credit

The purpose of proposed Rule 560-7-8-.56 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of Senate Bill 496 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (4) provides the rules for the historic rehabilitation credit for a historic home.
- Paragraph (6) provides the rules for the historic rehabilitation credit for other certified structures.
- Paragraph (9) provides the sunset date of the credit.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.56 Historic Rehabilitation Tax Credit

560-7-8-.56 Historic Rehabilitation Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credits under O.C.G.A. § 48-7-29.8.

(2) **Coordination of Agencies.** The Georgia Department of Community Affairs is the state agency responsible for certifying that the rehabilitation meets the requirements of O.C.G.A. § 48-7-29.8.

(3) **Definitions.** As used in this regulation, the terms “certified rehabilitation”, “certified structure”, “historic home”, “qualified rehabilitation expenditure”, “substantial rehabilitation”, and “target area” shall have the same meaning as in O.C.G.A. § 48-7-29.8. As used in this regulation, the terms “full-time employee” and “full-time permanent job” means a person who works a job that requires 30 or more hours per week.

(4) **Historic Rehabilitation Tax Credit for a Historic Home.** A

35 taxpayer shall be allowed a tax credit equal to 25 percent of the
36 qualified rehabilitation expenditures for the certified rehabilitation
37 of a historic home in the taxable year in which the certified
38 rehabilitation is placed in service; except that in the case of a historic
39 home located within a target area, an additional credit equal to 5
40 percent of the qualified rehabilitation expenditures shall be allowed.

41
42 (a) Credit cap. In no event shall the aggregate amount allowed
43 for historic homes exceed the maximum aggregate limit in
44 paragraph (5) for calendar year 2022 and \$5 million per year for
45 calendar years 2023 ~~and 2024~~through 2029. No credit shall be
46 issued for historic homes completed on or after January 1,
47 ~~2025~~2030.

48
49 (b) Credit limitation. The amount of historic rehabilitation tax
50 credit for a historic home shall not exceed \$100,000 in any 120-
51 month period.

52
53 (c) Preapproval for Historic Homes. Any taxpayer seeking
54 preapproval to claim the historic rehabilitation tax credit for a
55 historic home completed on or after January 1, 2022 must
56 electronically submit Form IT-RHC-AP and their precertification
57 from the Georgia Department of Community Affairs through the
58 Georgia Tax Center. The taxpayer must estimate their credit
59 amounts on Form IT-RHC-AP if the certified rehabilitation has not
60 been completed. The amount of tax credit claimed on the taxpayer's
61 applicable Georgia income tax return must be based on the actual
62 amount of the qualified rehabilitation expenditures. If the taxpayer
63 is preapproved for an amount that exceeds the amount that is
64 calculated using the actual amount of the qualified rehabilitation
65 expenditures when the return is filed, the excess preapproved
66 amount cannot be claimed by the taxpayer, nor shall the excess
67 preapproved amount be claimed by, reallocated to, assigned to,

68 transferred to, or sold to any other taxpayer. If the taxpayer is a
69 disregarded entity, then such information should be submitted in the
70 name of the owner of the disregarded entity.

71
72 (d) Notification. The Department will notify each taxpayer of the
73 tax credits preapproved and allocated to such taxpayer within thirty
74 (30) days from the date the fully completed Form IT-RHC-AP and
75 all required supporting documentation were submitted through the
76 Georgia Tax Center.

77
78 (e) Allocation of Tax Credit. For any taxpayer seeking
79 preapproval to claim the tax credits for a historic home completed
80 on or after January 1, 2022, the Commissioner shall allow the tax
81 credit on a first-come, first-served basis. The date the fully
82 completed Form IT-RHC-AP is electronically submitted shall be
83 used to determine such first-come, first-served basis.

84
85 (f) Applications received on the day the maximum credit amount
86 is reached. In the event that the credit amounts on applications
87 received by the Commissioner for historic homes completed on or
88 after January 1, 2022 exceed the maximum aggregate limit in
89 paragraphs (4) and (5) of this regulation, then the tax credits shall be
90 allocated among the taxpayers who submitted Form IT-RHC-AP on
91 the day the maximum aggregate limit was exceeded on a pro rata
92 basis based upon amounts otherwise allowed under O.C.G.A. § 48-
93 7-29.8 and this regulation. Such proration shall include all
94 applications received on the day the maximum aggregate limit was
95 exceeded, regardless of whether it is for the credit cap year at issue
96 or for an earlier year where the credit cap has been reached. Only
97 credit amounts for applications received on the day the maximum
98 aggregate limit was exceeded will be allocated on a pro rata basis.

99
100 (g) For historic homes, priority for prorated applications and

101 applications submitted after a calendar year cap is reached. Any
102 application for the 2022 calendar year credit that is prorated because
103 the 2022 calendar year credit cap is reached and any application for
104 the 2022 calendar year credit that is submitted after the 2022
105 calendar year credit cap is reached shall not be approved for a
106 subsequent calendar year whose credit cap has not been reached and
107 shall not have priority over any applications with a later submission
108 date. Any other application that is prorated because a calendar-year
109 credit cap is reached and any other application that is submitted after
110 a calendar-year credit cap is reached shall be approved for a
111 subsequent calendar year whose credit cap has not been reached and
112 shall have priority over any applications with a later submission
113 date. In such cases, the taxpayer shall claim the credit in the taxable
114 year that begins in such subsequent preapproved calendar year or as
115 provided in paragraph (7) of this regulation. If the calendar-year
116 credit cap for all subsequent calendar years has been reached, then
117 the application shall be denied.

118
119 1. Example: Taxpayer submits the electronic Form IT-RHC-AP
120 through the Georgia Tax Center on April 25, 2022 seeking
121 preapproval to claim the 2022 historic rehabilitation tax credit for a
122 historic home. On April 25, 2022, the 2022 calendar-year credit cap
123 for historic homes was reached, and Taxpayer received an allocation
124 of the 2022 historic rehabilitation tax credit on a pro rata basis.
125 Taxpayer's preapproval application will not be approved for a
126 subsequent calendar year and will not receive priority over
127 applications with a later submission date.

128
129 2. Example: Taxpayer submits the electronic Form IT-RHC-AP
130 through the Georgia Tax Center in 2023 seeking preapproval to
131 claim the 2023 historic rehabilitation tax credit for a historic home.
132 On the day that Taxpayer submits Form IT-RHC-AP, the 2023
133 calendar-year credit cap for historic homes was reached, and

134 Taxpayer received an allocation of the 2023 historic rehabilitation
135 tax credit on a pro rata basis. Taxpayer's preapproval application
136 will be approved for the 2024 calendar year if the 2024 credit cap
137 has not been reached and will receive priority over applications with
138 a later submission date.

139
140 (h) Claiming the Historic Rehabilitation Tax Credit for a Historic
141 Home. For a taxpayer to claim the historic rehabilitation tax credit
142 for a historic home, the taxpayer must submit with the taxpayer's
143 Georgia income tax return Form IT-RHC, the property tax bill for
144 the year immediately before the beginning of the 24 month (or 60
145 month) period, the property tax bill for the year immediately after
146 the beginning of the 24 month (or 60 month) period, and their
147 completed final certification from the Georgia Department of
148 Community Affairs.

149
150 (i) In the event it is determined that a taxpayer has not met all the
151 requirements of O.C.G.A. § 48-7-29.8 and this regulation, then the
152 credits shall not be approved or the approved credits shall be
153 retroactively denied. The taxpayer shall file amended returns for the
154 taxable year the credit was claimed, reducing the credit. With
155 respect to such denied credits, tax, interest, and penalties shall be
156 due if the credits have already been used by the taxpayer or have
157 been sold or transferred, regardless of whether the transferee has
158 used the credit or not.

159
160 (j) ~~Carry Forward~~Carryforward. Any unused historic
161 rehabilitation tax credit for a historic home may be carried forward
162 for ten years after the close of the taxable year in which the certified
163 rehabilitation was completed.

164
165 (k) Sale of the Historic Home. Except as provided in
166 subparagraph (4)(l) of this regulation, in the event a historic

167 rehabilitation tax credit for a historic home is claimed and allowed
168 to the taxpayer, upon the sale or transfer of the historic home, the
169 taxpayer shall be authorized to transfer the remaining unused
170 amount of such historic rehabilitation tax credit to the purchaser of
171 such historic home. If a historic home for which a certified
172 rehabilitation has been completed by a nonprofit corporation is sold
173 or transferred, the full amount of the credit to which the nonprofit
174 corporation would be entitled if taxable shall be transferred to the
175 purchaser or transferee at the time of the sale or transfer.

176
177 1. Such purchaser shall be subject to the limitations of this
178 paragraph and O.C.G.A. § 48-7-29.8 and shall file with the
179 purchaser's tax return a copy of the final certification from the
180 Georgia Department of Community Affairs and a copy of the form
181 evidencing the transfer of the tax credit.

182
183 2. Such purchaser shall be entitled to rely in good faith on the
184 information contained in and used in connection with obtaining the
185 final certification of the credit including, without limitation, the
186 amount of the qualified rehabilitation expenditures.

187
188 (l) Recapture of the Historic Rehabilitation Tax Credit for a
189 Historic Home. If an owner other than a nonprofit corporation sells
190 a historic home within three years of receiving the credit, the seller
191 shall recapture the credit to the Department as follows:

192
193 1. If the property is sold within one year of receiving the credit,
194 the recapture amount will equal the lesser of the credit or the net
195 profit of the sale;

196
197 2. If the property is sold within two years of receiving the credit,
198 the recapture amount will equal the lesser of two-thirds of the credit
199 or the net profit of the sale; or

200
201 3. If the property is sold within three years of receiving the credit,
202 the recapture amount will equal the lesser of one-third of the credit
203 or the net profit of the sale.

204
205 (m) Exception to Recapture Provision. The recapture provisions
206 in subparagraph (4)(l) of this regulation shall not apply to a sale
207 resulting from the death of the owner.

208
209 **(5) Credit cap for 2022 for Historic Homes and for Any Other**
210 **Certified Structure earning \$300,000 or less.** In no event shall the
211 aggregate amount allowed for historic homes completed on or after
212 January 1, 2022 and any other certified structures earning \$300,000
213 or less, together, exceed \$5 million for calendar year 2022.

214
215 **(6) Historic Rehabilitation Tax Credit for Any Other**
216 **Certified Structure.** A taxpayer shall be allowed a tax credit equal
217 to 25 percent of the qualified rehabilitation expenditures for the
218 certified rehabilitation of any other certified structure, other than a
219 historic home, in the taxable year in which the certified
220 rehabilitation is placed in service, except as provided in
221 subparagraph (6)(j) of this regulation and paragraph (7) of this
222 regulation.

223
224 (a) Credit limitations. For certified rehabilitations completed
225 before January 1, 2017, the historic rehabilitation tax credit for any
226 other certified structure shall not exceed \$300,000 in any 120-month
227 period.

228
229 (b) For certified rehabilitations completed on or after January 1,
230 2017, the maximum credit for any other individual certified
231 structure shall be \$5 million per taxable year; except that in the case
232 of a project that creates 200 or more full-time permanent jobs or \$5

million in annual payroll within two years of the placed in service date, the maximum credit amount is \$10 million for any other individual certified structure. For purposes of this regulation, a full-time permanent job means a person who works a job that requires 30 or more hours per week.

(c) For certified rehabilitations completed on or after January 1, 2017, in no event shall more than one application for any individual certified structure be approved in any 120-month period, but a taxpayer is allowed to submit an additional electronic Form IT-RHC-AP if it is the same project. Such additional electronic Form IT-RHC-AP is subject to the requirements of this regulation and shall not be given priority over applications with an application date that is earlier than the additional preapproval application date.

(d) Credit ~~Carry—Forward~~Carryforward. For certified rehabilitations completed before January 1, 2017, any unused historic rehabilitation tax credit for any other certified structure may be carried forward for ten years after the close of the taxable year in which the certified rehabilitation was completed. For certified rehabilitations completed on or after January 1, 2017, no unused historic rehabilitation tax credit for any other certified structure shall be allowed to the taxpayer or the transferee against succeeding years' tax liability.

(e) Credit cap for any other certified structure. For certified rehabilitations completed on or after January 1, 2017, in no event shall historic rehabilitation tax credits for any other certified structure earning more than \$300,000 in historic rehabilitation tax credits under subparagraph (6)(b) of this regulation exceed \$25 million per calendar year for calendar years ending on or before December 31, 2022. For calendar year 2022, in no event shall historic rehabilitation tax credits for any other certified structure

266 earning \$300,000 or less in historic rehabilitation tax credits exceed
267 the maximum aggregate limit in paragraph (5). For calendar years
268 beginning on or after January 1, 2023, and ending on or before
269 December 31, ~~2027~~2029, in no event shall historic rehabilitation tax
270 credits issued for any other certified structure other than a historic
271 home, regardless of the amount of credits earned, exceed \$30
272 million per calendar year.

273
274 (f) Preapproval. For certified rehabilitations earning \$300,000 or
275 less that were completed on or after January 1, 2022 and for all other
276 certified rehabilitations completed on or after January 1, 2017, any
277 taxpayer seeking preapproval to claim the tax credits must
278 electronically submit Form IT-RHC-AP, including the information
279 required by subparagraph (6)(f)1. of this regulation, and their
280 precertification from the Georgia Department of Community Affairs
281 through the Georgia Tax Center. For a certified rehabilitation
282 earning \$300,000 or less that was expected to be completed in 2021
283 or before and that has preapproval for such year, the taxpayer is not
284 required to request another preapproval but must complete the
285 project within the two-year period as provided in paragraph (7) of
286 this regulation. The taxpayer must estimate their credit amounts on
287 Form IT-RHC-AP if the certified rehabilitation has not been
288 completed. The amount of tax credit claimed on the taxpayer's
289 applicable Georgia income tax return must be based on the actual
290 amount of the qualified rehabilitation expenditures. If the taxpayer
291 is preapproved for an amount that exceeds the amount that is
292 calculated using the actual amount of the qualified rehabilitation
293 expenditures when the return is filed, the excess preapproved
294 amount cannot be claimed by the taxpayer, nor shall the excess
295 preapproved amount be claimed by, reallocated to, assigned to,
296 transferred to, or sold to any other taxpayer. If the taxpayer is a
297 disregarded entity, then such information should be submitted in the
298 name of the owner of the disregarded entity.

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1. The following information must be submitted with Form IT-RHC-AP:

(i) Documentation to show one of the following:

(I) If the certified structure was purchased by the applicant, a copy of the warranty deed indicating the applicant as the owner of the property; or

(II) If the certified structure is leased by the applicant, documentation showing that the applicant leases the property and showing that the qualified rehabilitation expenditures would not be disqualified by Internal Revenue Code Section 47(c)(2)(B), which disallows expenditures, if, on the date the rehabilitation is completed, the remaining term of the lease is less than the building's recovery period. This documentation must include a copy of the lease and documentation showing whether the property is residential rental property with a recovery period of 27.5 years or nonresidential real property with a recovery period of 39 years;

(ii) The ownership and/or membership of the applicant entity. This documentation must include information regarding each owner or member of the applicant and, if any owner or member is itself a pass-through entity, information regarding its ownership and/or membership. Such information must include the name, federal identification number, ownership percentage, whether or not they are a tax-exempt entity, and whether they control the applicant entity;

(iii) Which entities or members of a pass-through entity intend to claim the credit and in what percentage(s);

332 (iv) The percentage of the subject property that will be used for
333 non-profit purposes, if any;

334

335 (v) Whether the applicant or another entity intends to sublease
336 the property to other entities, which entities they intend to sublease
337 to, and if such entities are tax-exempt entities;

338

339 (vi) If the property is being leased, whether or not the owner of
340 the property is a tax-exempt entity;

341

342 (vii) Whether or not the project qualifies for the Federal
343 Rehabilitation Credit allowed under Internal Revenue Code Section
344 47; and

345

346 (viii) Any other information requested by the Department.

347

348 (g) Notification. The Department will notify each taxpayer of the
349 tax credits preapproved and allocated to such taxpayer within thirty
350 (30) days from the date the fully completed Form IT-RHC-AP and
351 all required supporting documentation were submitted through the
352 Georgia Tax Center.

353

354 (h) Allocation of Tax Credit. For any taxpayer seeking
355 preapproval to claim the tax credits for any other certified structure,
356 the Commissioner shall allow the tax credit on a first-come, first-
357 served basis. The date the fully completed Form IT-RHC-AP is
358 electronically submitted shall be used to determine such first-come,
359 first-served basis.

360

361 (i) Applications received on the day the maximum credit amount
362 is reached for any other certified structure. In the event that the credit
363 amounts on applications received by the Commissioner exceed the
364 maximum aggregate limit in subparagraph (6)(e) of this regulation,

365 then the tax credits shall be allocated among the taxpayers who
366 submitted Form IT-RHC-AP on the day the maximum aggregate
367 limit was exceeded on a pro rata basis based upon amounts
368 otherwise allowed under O.C.G.A. § 48-7-29.8 and this regulation.
369 Such proration shall include all applications received on the day the
370 maximum aggregate limit was exceeded, regardless of whether it is
371 for the credit cap year at issue or for an earlier year where the credit
372 cap has been reached. Only credit amounts for applications received
373 on the day the maximum aggregate limit was exceeded will be
374 allocated on a pro rata basis.

375
376 (j) For any other certified structure, priority for pro-rated
377 applications and applications submitted after a calendar year cap is
378 reached. Any application for the 2022 calendar year credit that is
379 prorated because the 2022 calendar year credit cap is reached and
380 any application for the 2022 calendar year credit that is submitted
381 after the 2022 calendar year credit cap is reached shall not be
382 approved for a subsequent calendar year whose credit cap has not
383 been reached and shall not have priority over any applications with
384 a later submission date. Any other application that is prorated
385 because a calendar-year credit cap is reached and any application
386 that is submitted after a calendar-year credit cap is reached shall be
387 approved for a subsequent calendar year whose credit cap has not
388 been reached and shall have priority over any applications with a
389 later submission date. In such cases, the taxpayer shall claim the
390 credit in the taxable year that begins in such subsequent preapproved
391 calendar year or as provided in paragraph (7) of this regulation. If
392 the calendar-year credit cap for all subsequent calendar years has
393 been reached, then the application shall be denied.

394
395 1. Example: Taxpayer submits the electronic Form IT-RHC-AP
396 through the Georgia Tax Center on January 4, 2022 seeking
397 preapproval to claim the 2022 historic rehabilitation tax credit for a

398 certified structure other than a historic home. On January 4, 2022,
399 the 2022 calendar year credit cap for certified structures other than
400 historic homes was reached, and Taxpayer received an allocation of
401 the 2022 historic rehabilitation tax credit on a pro rata basis.
402 Taxpayer's preapproval application will not be approved for a
403 subsequent calendar year and will not receive priority over
404 applications with a later submission date.

405
406 2. Example: Taxpayer submits the electronic Form IT-RHC-AP
407 through the Georgia Tax Center in 2023 seeking preapproval to
408 claim the 2023 historic rehabilitation tax credit for a certified
409 structure other than a historic home. On the day that Taxpayer
410 submits the Form IT-RHC-AP, the 2023 calendar year credit cap for
411 certified structures other than historic homes was reached, and
412 Taxpayer received an allocation of the 2023 historic rehabilitation
413 tax credit on a pro rata basis. Taxpayer's preapproval application
414 will be approved for the 2024 calendar year if the 2024 credit cap
415 has not been reached and will receive priority over applications with
416 a later submission date.

417
418 (k) Preapproval for Calendar Year 2022 for any other certified
419 structure earning more than \$300,000 in historic rehabilitation tax
420 credits. Taxpayers that were prorated or denied the any other
421 certified structure credit for a project earning more than \$300,000
422 because the credit cap was met for 2017, 2018, 2019, 2020, or 2021
423 may submit the electronic Form IT-RHC-AP for 2022 for additional
424 credit amounts so long as it is the same project, and they will have
425 priority as provided in this regulation. Taxpayers that meet the
426 requirements for any other certified structure for a credit amount of
427 more than \$300,000 and choose to apply for the noncapped credit
428 for any other certified structure (for a credit amount of \$300,000 or
429 less) for 2017, 2018, 2019, 2020, or 2021 may submit an electronic
430 Form IT-RHC-AP for 2022 for any other certified structure earning

431 more than \$300,000 for additional credit amounts so long as it is the
432 same project and they will have priority as provided in this
433 regulation.

434
435 (l) Change of Ownership. If ownership of the other certified
436 structure subsequently changes after historic rehabilitation tax
437 credits were preapproved and allocated to the initial owners and no
438 rehabilitation has begun, then the new owners must contact the
439 Department to request reallocation of the preapproved credits to the
440 new owners. Along with their request, the new owners must submit
441 the amended precertification from the Georgia Department of
442 Community Affairs and the information required by subparagraph
443 (6)(f)1 of this regulation. Once the credits are reallocated to the new
444 owners, the initial owners cannot claim, sell, or transfer the credits.

445
446 (m) Claiming the Historic Rehabilitation Tax Credit for Any
447 Other Certified Structure. A taxpayer claiming the tax credits under
448 subparagraph (6)(a) of this regulation shall attach to its Georgia
449 income tax return, for each year the credit is claimed on Form IT-
450 RHC, the property tax bill for the year immediately before the
451 beginning of the 24 month (or 60 month) period, the property tax
452 bill for the year immediately after the beginning of the 24 month (or
453 60 month) period, and their completed final certification from the
454 Georgia Department of Community Affairs. A taxpayer claiming
455 the tax credits under subparagraph (6)(b) of this regulation must
456 attach to its Georgia income tax return, for each year the credit is
457 claimed, an approved Form IT-RHC-AP, Form IT-RHC, the
458 property tax bill for the year immediately before the beginning of
459 the 24 month (or 60 month) period, the property tax bill for the year
460 immediately after the beginning of the 24 month (or 60 month)
461 period, and their completed final certification from the Georgia
462 Department of Community Affairs.

463

464 (n) In the event it is determined that the taxpayer has not met all
465 the requirements of O.C.G.A. § 48-7-29.8 and this regulation, then
466 the amount of credits shall not be approved or the approved credits
467 shall be retroactively denied. The taxpayer shall file amended
468 returns for the taxable year the credit was claimed, reducing the
469 credit. With respect to such denied credits, tax, interest, and
470 penalties shall be due if the credits have already been used by the
471 taxpayer or have been sold or transferred, regardless of whether the
472 transferee has used the credit or not.

473
474 (o) Pass-through entities. When the taxpayer is a pass-through
475 entity and has no income tax liability of its own, the historic
476 rehabilitation tax credit for any other certified structure shall be
477 allocated to the partners, members, or shareholders of that entity in
478 accordance with the provisions of any agreement among the
479 partners, members, or shareholders of that entity and without regard
480 to the ownership interest of the partners, members, or shareholders
481 in the rehabilitated certified structure, provided that the entity or
482 person that claims the credit must be subject to Georgia tax. The
483 credit forms will initially be filed with the tax return of the pass-
484 through entity to establish the amount of the credit available for pass
485 through. The credit will then pass through to its shareholders,
486 members, or partners to be applied against the tax liability on their
487 income tax returns. The credits are available for use as a credit by
488 the shareholders, members, or partners for their tax year in which
489 the income tax year of the pass-through entity ends. For example: A
490 partnership earns the credit for its tax year ending January 31, 2017.
491 The partnership passes the credit to a calendar-year partner. The
492 credit is available for use by the individual partner beginning with
493 the calendar 2017 tax year.

494
495 (p) Selling or Transferring the Historic Rehabilitation Tax Credit
496 for Any Other Certified Structure. The taxpayer may sell or transfer

497 in whole or in part any historic rehabilitation tax credit for any other
498 certified structure earned under subparagraph (6)(b) of this
499 regulation that was previously claimed but not used by such
500 taxpayer against its income tax to another Georgia taxpayer subject
501 to the following conditions:

502

503 1. The taxpayer may only make a one-time sale or transfer of
504 historic rehabilitation tax credits for any other certified structure
505 earned in each taxable year. However, the sale or transfer may
506 involve more than one transferee. For example, taxpayer 1 earns a
507 \$100,000 credit in year 1. In year 2, they sell \$75,000 of the credit
508 to taxpayer 2. In year 3, they are allowed to sell the remaining
509 \$25,000 of the credit to taxpayer 3. However, both taxpayer 2 and
510 taxpayer 3 are not allowed to resell the credit since the credit can
511 only be sold once.

512

513 2. The historic rehabilitation tax credits for any other certified
514 structure may be transferred before the tax return is filed by the
515 taxpayer, provided the historic rehabilitation tax credits have been
516 earned. However, the amount transferred cannot exceed the amount
517 of the credit which will be claimed and not used on the income tax
518 return of the transferor. The credit is considered earned when the
519 credit has been preapproved by the Department, the certified
520 rehabilitation has been completed, and the taxpayer has received
521 their completed final certification from the Georgia Department of
522 Community Affairs. Preapproval of the credits by itself does not
523 qualify as earning the credit.

524

525 3. The taxpayer must file Form IT-TRANS, "Notice of Tax
526 Credit Transfer," with the Department of Revenue within 30 days of
527 the transfer or sale of the historic rehabilitation tax credit for any
528 other certified structure. Form IT-TRANS must be submitted
529 electronically to the Department of Revenue through the Georgia

530 Tax Center, or alternatively, as provided in subparagraph (6)(p)3.(i)
531 of this regulation. The Department of Revenue will not process any
532 Form IT-TRANS submitted or filed in any other manner. If the
533 taxpayer is a disregarded entity, then Form IT-TRANS should be
534 filed in the name of the owner of the disregarded entity, but Form
535 IT-RHC should be in the name of the disregarded entity and attached
536 to the owner's Georgia income tax return.

537
538 (i) The web-based portal on the Georgia Tax Center. The
539 taxpayer may provide selective information to a representative for
540 the purpose of allowing the representative to submit Form IT-
541 TRANS on their behalf on the Georgia Tax Center outside of a login.
542 The provision of such information shall authorize the representative
543 to submit such Form IT-TRANS. The representative must provide
544 all information required by the web-based portal on the Georgia Tax
545 Center to submit Form IT-TRANS.

546
547 4. The taxpayer must provide all required historic rehabilitation
548 tax credit for any other certified structure detail and transfer
549 information to the Department of Revenue. Failure to do so will
550 result in the historic rehabilitation tax credit for any other certified
551 structure being disallowed until the taxpayer complies with such
552 requirements.

553
554 5. The carryforward period of the historic rehabilitation tax credit
555 for any other certified structure for the transferee will be the same
556 as it was for the taxpayer. For certified rehabilitations completed on
557 or after January 1, 2017, no unused historic rehabilitation tax credit
558 for any other certified structure shall be allowed to be carried
559 forward.

560
561 (i) Example: Taxpayer sells the historic rehabilitation tax credit
562 for any other certified structure on March 15, 2018. This credit is

563 from a certified rehabilitation that received preapproval from the
564 Department for calendar year 2017 and was placed in service in the
565 taxpayer's calendar 2017 tax year. The transferee is a calendar-year
566 taxpayer. The credit may be claimed by the transferee on the
567 calendar 2017 tax year return. This credit cannot be carried forward
568 by the taxpayer or the transferee. This credit can only be utilized in
569 tax year 2017.

570
571 6. A transferee shall have only such rights to claim and use the
572 historic rehabilitation tax credit for any other certified structure that
573 were available to the taxpayer at the time of the transfer. Thus, a
574 transferee shall not have the right to subsequently transfer such
575 credit since that right has been utilized by the transferor.

576
577 7. Only the taxpayer who earned the historic rehabilitation tax
578 credit for any other certified structure and no subsequent good faith
579 transferee shall be responsible in the event of a recapture, reduction,
580 disallowance, or other failure related to such credit, provided the
581 credit was properly claimed by the taxpayer.

582
583 (q) How to Sell or Transfer the Historic Rehabilitation Tax Credit
584 for Any Other Certified Structure. The taxpayer may sell or transfer
585 the historic rehabilitation tax credit for any other certified structure
586 directly to a Georgia taxpayer (or multiple Georgia taxpayers, as
587 provided in subparagraph (6)(p)1. of this rule). A pass-through
588 entity may make an election to sell or transfer the unused historic
589 rehabilitation tax credit for any other certified structure earned in a
590 taxable year at the entity level. If the pass-through entity makes the
591 election to sell the historic rehabilitation tax credit for any other
592 certified structure at the entity level, the credit does not pass through
593 to the shareholders, members, or partners. In all cases, the effect of
594 the sale of the credit on the income of the seller and buyer of the
595 credit will be the same as provided in the Internal Revenue Code.

596

597 1. Pass-Through Entity. The taxpayer may be structured as a
598 pass-through entity. If a pass-through entity does not make an
599 election to sell or transfer the tax credit at the entity level as provided
600 in subparagraph (6)(q) of this rule, the tax credit will pass through
601 to the shareholders, partners, or members of the entity based on any
602 agreement among the partners, members, or shareholders of that
603 entity without regard to the ownership interest of the partners,
604 members, or shareholders in the rehabilitated certified structure,
605 provided that the entity or person that claims the credit must be
606 subject to Georgia tax. The shareholders, members, or partners may
607 then sell their respective historic rehabilitation tax credit for any
608 other certified structure to a Georgia taxpayer.

609

610 2. Transferee Pass-Through Entity. The taxpayer or its
611 shareholders, members, or partners may sell or transfer the tax credit
612 to a pass-through entity. If the pass-through entity has no income tax
613 liability of its own, it may then pass the credit through to its
614 shareholders, members, or partners based on any agreement among
615 the partners, members, or shareholders of that entity without regard
616 to the ownership interest of the partners, members, or shareholders
617 in the pass-through entity, provided that the entity or person that
618 claims the credit must be subject to Georgia tax. For example, if a
619 calendar-year partnership buys the credit earned by a taxpayer in
620 calendar year 2017 and the credit was preapproved by the
621 Department for calendar year 2017, then all the partners receiving
622 the credit must have been a partner in the partnership no later than
623 the end of the 2017 tax year of the partnership. The credits are
624 available for use as a credit by the shareholders, members, or
625 partners for their tax year in which the income tax year of the pass-
626 through entity ends. For example, a taxpayer that received
627 preapproval for calendar year 2017 and placed in service the
628 certified rehabilitation for any other certified structure in July of

2017 sells the credit to a pass-through entity in August of 2017, and the generating taxpayer claims the credit on their calendar year 2017 income tax return. The pass-through entity is entitled to use the credits on its calendar year 2017 tax return. The pass-through entity has two partners. The first partner is a calendar-year partner. This credit can only be utilized on the calendar tax year 2017 return and cannot be carried forward by the partner. The second partner is a corporation with a fiscal year ending June 30, 2018. This credit can only be utilized on the fiscal year ending June 30, 2018 and cannot be carried forward by the partner.

3. The credits are available for use by the transferee, provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected under O.C.G.A. § 48-2-35 in the transferee's tax year in which the income tax year of the taxpayer who claims the historic rehabilitation tax credit for any other certified structure for the certified rehabilitation associated with the credit being sold ends.

(i) Example: Taxpayer sells the historic rehabilitation tax credit for any other certified structure on March 15, 2018. This credit is from a certified rehabilitation that received preapproval from the Department for calendar year 2017 and was placed in service on or after January 1, 2017 and within the generating taxpayer's fiscal tax year ending June 30, 2017. The transferee is a calendar-year taxpayer. The credit may be claimed by the transferee on the calendar 2017 tax year return. This credit cannot be carried forward by the taxpayer or the transferee. This credit can only be utilized in tax year 2017 by the transferee.

(ii) Example: Taxpayer sells the historic rehabilitation tax credit for any other certified structure on March 15, 2018. This credit is from a certified rehabilitation that received preapproval from the

662 Department for calendar year 2017 (on their Form IT-RHC-AP, the
663 completion calendar year was 2017 and the credit was awarded for
664 such year) and was placed in service on December 31, 2019. As
665 provided in paragraph (7), the taxpayer chooses to claim the credit
666 on their tax year ending June 30, 2020 tax return. The transferee is
667 a calendar-year taxpayer. The credit must be claimed by the
668 transferee on the calendar 2020 tax year return. This credit cannot
669 be carried forward by the taxpayer or the transferee. This credit can
670 only be utilized on the transferee's calendar 2020 tax year return.

671
672 (r) Required reporting. Notwithstanding Code Sections 48-2-
673 15, 48-7-60, and 48-7-61, the Department shall furnish a report to
674 the chairperson of the House Committee on Ways and Means and
675 the chairperson of the Senate Finance Committee by June 30 of each
676 year. Such report shall contain the total sales tax collected in the
677 prior calendar year, the average number of full-time employees at
678 the certified structure, and the total value of credits claimed for each
679 taxpayer claiming credits under subparagraph (6)(b).

680
681 1. For certified rehabilitations completed on or after January 1,
682 2017, any taxpayer that generates and claims the tax credit under
683 subparagraph (6)(b) of this regulation must electronically report to
684 the Department through the Georgia Tax Center, using Form IT-
685 RHC-RPT, the monthly average full-time employees employed at
686 the certified structure, the total sales tax collected, and the credits
687 claimed. Such reports must be submitted to the Department for five
688 calendar years following the calendar year in which the credit is
689 claimed by the taxpayer. Such report shall be due by the February
690 28th date that follows the calendar year that is being reported.

691
692 2. For purposes of this subparagraph, in the event that the
693 taxpayer that generates and claims the tax credit under subparagraph
694 (6)(b) of this regulation leases such other certified structure, all total

695 sales tax receipts from the certified structure and all total full-time
696 employees at the certified structure shall be aggregated.

697

698 3. For certified rehabilitations completed on or after January 1,
699 2017, where the maximum credit amount exceeds \$5 million for any
700 other individual certified structure, the taxpayer shall report using
701 Form IT-RHC-RPT whether or not they created 200 or more full-
702 time permanent jobs or had \$5 million in annual payroll within two
703 years of the placed-in-service date. Such report shall be due no later
704 than 60 days following the end of such two-year period.

705

706 **(7) Completion of the Project for Preapproved Projects.**

707

708 (a) For certified rehabilitations of any other certified structure
709 under subparagraph (6)(b) of this regulation completed on or after
710 January 1, 2017 and historic homes preapproved on or after January
711 1, 2022, the project must be placed in service within two years after
712 the completion calendar year listed in the taxpayer's Form IT-RHC-
713 AP (the year for which the credit was originally reserved). If the
714 taxpayer has a fiscal year, such completion calendar year shall, for
715 purposes of this paragraph, be the tax year that begins in such
716 completion calendar year. If this requirement is met, the taxpayer
717 claims the credit in the year listed in the taxpayer's preapproval
718 letter from the Department of Revenue; or the taxpayer may claim
719 the credit in the tax year in which the project is placed in service,
720 provided the project is placed in service within two years after the
721 completion calendar year listed in their Form IT-RHC-AP and
722 provided such placed-in-service year ends later than the end of the
723 year listed in the taxpayer's preapproval letter from the Department
724 of Revenue. If the project is not placed in service within such time
725 period, the credit is lost and cannot be claimed, sold, or transferred
726 unless the taxpayer reapplies for the credit and receives preapproval
727 for such other time period. Unless the Department has evidence to

the contrary, the date of completion listed in the final certification authorized by the Georgia Department of Community Affairs shall be used to determine when the project was placed in service. This paragraph shall apply even if the taxpayer is given priority under subparagraph (6)(j) of this regulation and is preapproved for a subsequent calendar year.

1. Example 1. The taxpayer lists 2017 in their Form IT-RHC-AP as the completion calendar year and is preapproved to claim the credit for 2017. The taxpayer is a calendar-year taxpayer. The taxpayer must place the project in service on or before December 31, 2019. This taxpayer places the project in service on November 15, 2019. The taxpayer may claim the credit on their taxable year end December 31, 2017 Georgia income tax return or their taxable year end December 31, 2019 Georgia income tax return.

2. Example 2. The taxpayer lists 2018 in their Form IT-RHC-AP as the completion calendar year and is preapproved to claim the credit for 2018. The taxpayer is a fiscal year filer with a February 28 taxable year end. The taxpayer must place the project in service on or before February 28, 2021. This taxpayer places the project in service on March 31, 2019. The taxpayer may claim the credit on their taxable year end February 28, 2019 Georgia income tax return or their taxable year end February 28, 2020 Georgia income tax return.

(b) The following examples illustrate how the credit is claimed if the taxpayer is preapproved for the credit in a subsequent year, as provided by subparagraph (6)(j):

1. Example 3. The taxpayer lists 2018 in their Form IT-RHC-AP as the completion calendar year and is preapproved to claim the credit for 2019. The taxpayer is a calendar-year taxpayer. This

761 taxpayer places the project in service on November 15, 2020. The
762 taxpayer may claim the credit on their taxable year end December
763 31, 2019 Georgia income tax return or their taxable year end
764 December 31, 2020 Georgia income tax return.

765

766 2. Example 4. The taxpayer lists 2018 in their Form IT-RHC-AP
767 as the completion calendar year and is preapproved to claim the
768 credit for 2019. The taxpayer is a fiscal year filer with a February 28
769 taxable year end. This taxpayer places the project in service on
770 January 31, 2021. The taxpayer may claim the credit on their taxable
771 year end February 28, 2020 Georgia income tax return or their
772 taxable year end February 28, 2021 Georgia income tax return.

773

774 (c) For historic homes estimated to be completed before January
775 1, 2022 and which are not actually completed before January 1,
776 2022, the project must be placed in service within two years after
777 the estimated completion year listed on the precertification from the
778 Georgia Department of Community Affairs. If this two-year
779 requirement is met, the taxpayer claims the credit in the estimated
780 completion year listed on the precertification from the Georgia
781 Department of Community Affairs, and the taxpayer does not need
782 to apply for preapproval for the historic home. If the project is not
783 placed in service within such time period, the credit is lost and
784 cannot be claimed, sold, or transferred unless the taxpayer reapplies
785 for the credit and receives preapproval for such other time period.
786 Unless the Department has evidence to the contrary, the date of
787 completion listed in the final certification authorized by the Georgia
788 Department of Community Affairs shall be used to determine when
789 the project was placed in service.

790

791 (d) A project that is delayed beyond two years may submit an
792 application for a later year, subject to all the other requirements of
793 this regulation.

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(8) Qualified Rehabilitation Expenditures Only Counted Once. Qualified rehabilitation expenditures can only be counted once in determining the amount of the tax credit available, and more than one entity may not utilize the historic rehabilitation tax credit for the same qualified expenditures.

(9) Sunset Date. O.C.G.A. § 48-7-29.8, the historic rehabilitation tax credit, shall be repealed on December 31, ~~2027~~2029. As such, projects completed on or after January 1, ~~2028~~2030 are not eligible except as allowed by paragraph (7) of this regulation.

(10) Effective Date. This regulation shall be applicable to certified rehabilitations completed on or after January 1, 2017, regardless of when the certified rehabilitation was started.

Authority: O.C.G.A. §§ 48-2-12, 48-7-29.8.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.57 Qualified Rural Hospital Organization Expense Tax Credit

The purpose of proposed Rule 560-7-8-.57 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1339 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (4) provides the credit amount.
- Paragraph (5) provides the aggregate credit cap.
- Paragraph (6) specifies the per individual rural hospital organization limitation.
- Paragraph (7) specifies the individual rural hospital organization per tax type preapproval limitations.
- Paragraph (8) provides the mandatory electronic preapproval application for the credit.
- Paragraph (9) specifies the letter of confirmation.
- Paragraph (11) provides the carryforward of the credit.
- Paragraph (19) provides the sunset date of the credit.
- Paragraph (20) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.57 Qualified Rural Hospital Organization Expense Tax Credit

**560-7-8-.57 Qualified Rural Hospital Organization Expense
Tax Credit**

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of the tax credit under O.C.G.A. § 48-7-29.20.

(2) **Coordination of Agencies.** The Georgia Department of Community Health is the state agency responsible for approving rural hospital organizations and administering O.C.G.A. § 31-8-9.1. The Department of Community Health shall maintain a current list of approved rural hospital organizations on its website.

(3) **Definitions.** As used in this regulation, the terms "qualified rural hospital organization expense" and "rural hospital organization" shall have the same meaning as in O.C.G.A. § 48-7-29.20.

(4) **Credit Amount.** From January 1 to June 30 of each calendar year of the credit, the amount of qualified rural hospital

organization expense tax credit allowed a taxpayer shall be as follows:

(a) For an individual taxpayer, the credit amount shall not exceed the actual amount expended or \$5,000, whichever is less.

(b) For an individual taxpayer filing married filing separate, the credit amount shall not exceed the actual amount expended or \$5,000, whichever is less.

(c) For individual taxpayers filing married filing joint, the credit amount shall not exceed the actual amount expended or \$10,000, whichever is less.

1. Example: Taxpayers, married couple filing joint, request preapproval for the qualified rural hospital organization expense tax credit for calendar year ~~2023~~2025 by electronically submitting Form IT-QRHOE-TP1 through the Georgia Tax Center on May 31, 2025. On Form IT-QRHOE-TP1 Taxpayers' intended contribution for ~~2023~~2025 is \$7,100, therefore the Department preapproves Taxpayers for \$7,100. Taxpayers make a \$3,000 donation to the rural hospital organization within 180 days of receiving preapproval from the Department and before ~~the end of 2023~~October 31, 2025 (this is the only amount contributed by taxpayers to an approved rural hospital organization in ~~2023~~2025). When taxpayers file their ~~2023~~2025 Georgia income tax return, Taxpayers can only claim \$3,000 qualified rural hospital organization expense tax credit (which is the actual amount contributed), and the extra \$4,100 that was preapproved but not contributed cannot be claimed by Taxpayers and cannot be carried forward. Any amount of the \$3,000 qualified rural hospital organization expense tax credit claimed but not used on the taxpayers' ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to the

68 taxpayer's succeeding five years' tax liability.

69

70 (d) For an individual taxpayer who is a member of a limited lia-
71 bility company duly formed under state law (including a member
72 who owns a single member limited liability company that is disre-
73 garded for income tax purposes), a shareholder of a Subchapter 'S'
74 corporation, or a partner in a partnership, the credit is limited to the
75 lesser of the actual amount expended or ~~\$10,000~~\$25,000 per tax
76 year, whichever is less; provided, however, that the tax credits
77 shall only be allowed for the Georgia income on which such tax
78 was actually paid by such member of a limited liability company,
79 shareholder of a Subchapter 'S' corporation, or partner in a part-
80 nership. In determining such Georgia income, the shareholder,
81 partner, or member shall exclude any income that was subtracted
82 on their Georgia return because the entity paid tax at the pass-
83 through entity level in Georgia as provided in Regulation 560-7-3-
84 .03. If the individual taxpayer is a member, partner, or shareholder
85 in more than one pass-through entity, the total credit allowed can-
86 not exceed ~~\$10,000~~\$25,000; the individual taxpayer decides which
87 pass-through entities to include when computing Georgia income
88 for purposes of the qualified rural hospital organization expense
89 tax credit. All Georgia income, loss, and expense from the tax-
90 payer selected pass-through entities will be combined to determine
91 Georgia income for purposes of the qualified rural hospital organi-
92 zation expense tax credit. Such combined Georgia income shall be
93 multiplied by the applicable marginal tax rate to determine the tax
94 that was actually paid. If the taxpayer is filing a joint return, the
95 taxpayer's spouse may also claim a credit for their ownership inter-
96 ests and shall separately be eligible for a credit as provided in this
97 subparagraph. If the taxpayer is preapproved for an amount that
98 exceeds the amount that is calculated as allowed when the return is
99 filed, the excess amount cannot be claimed by the taxpayer and
100 cannot be carried forward.

101
102 1. Example: Taxpayer, an individual taxpayer, is the sole share-
103 holder of A, Inc, an S corporation, Taxpayer is also a 50% partner,
104 in BC Company, a partnership, and Taxpayer is also a 20% mem-
105 ber of a limited liability company, XYZ Company, which is taxed
106 as a partnership. Taxpayer requests preapproval for the qualified
107 rural hospital organization expense tax credit for calendar year
108 ~~2023~~2025 by submitting Form IT-QRHOE-TP1 on May 31, 2025.
109 On Form IT-QRHOE-TP1, Taxpayer estimates that the taxpayer's
110 Georgia income from A, Inc. is ~~\$120,000~~\$300,000, and that Tax-
111 payer's share of Georgia income from BC Company is
112 ~~\$60,000~~\$200,000, Taxpayer chooses not to include any income
113 from XYZ Company when estimating Georgia income for pur-
114 poses of the qualified rural hospital organization expense tax
115 credit; therefore the Department preapproves Taxpayer for
116 ~~\$10,000~~\$25,000 qualified rural hospital organization expense tax
117 credit (since ~~\$10,000~~\$25,000 is less than ~~\$10,350~~\$25,950 (~~5.755.19%~~
118 of ~~\$180,000~~\$500,000)), the applicable marginal tax rate for
119 ~~2023~~2025 is ~~5.755.19%~~. Taxpayer makes a ~~\$10,000~~\$25,000 dona-
120 tion to the rural hospital organization within 180 days of receiving
121 preapproval from the Department and before ~~the end of 2023~~Octo-
122 ber 31, 2025. When Taxpayer files Taxpayer's ~~2023~~2025 Georgia
123 income tax return, Taxpayer received a salary from A, Inc. of
124 \$50,000 and A, Inc's actual Georgia income is \$60,000; Tax-
125 payer's actual share of Georgia income from BC Company is
126 \$20,000 and Taxpayer received a guaranteed payment from BC
127 Company of \$15,000; Taxpayer's actual share of Georgia income
128 from XYZ Company is \$5,000 (the Taxpayer can choose to in-
129 clude this company even though it was not considered at the time
130 of preapproval), Taxpayer can only claim ~~\$8,625~~\$7,785 qualified
131 rural hospital organization expense tax credit (which is ~~5.755.19%~~
132 of the \$150,000 actual income from Taxpayer's selected pass-
133 through entities), and the extra ~~\$1,375~~\$17,215 cannot be claimed by

134 Taxpayer and cannot be carried forward. Any amount of the
135 ~~\$8,625~~\$7,785 qualified rural hospital organization expense tax
136 credit claimed but not used on the taxpayer's ~~2023~~2025 Georgia
137 income tax return shall be allowed to be carried forward to apply to
138 the taxpayer's succeeding five years' tax liability.

139
140 (e) For a corporation taxpayer, fiduciary taxpayer, an S corpora-
141 tion that makes the election to pay tax at the entity level under
142 O.C.G.A. § 48-7-21, or a partnership that makes the election to pay
143 tax at the entity level under O.C.G.A. § 48-7-23, the credit amount
144 shall not exceed the actual amount expended or 75 percent of the
145 corporation's, fiduciary's, electing S corporation's, or electing
146 partnership's income tax liability, whichever is less. S corporations
147 and partnerships that elect to pay taxes at the entity level cannot
148 pass the credit through to their members, partners, or shareholders.
149 Fiduciary entities cannot pass the credit through to their beneficiar-
150 ies.

151
152 1. Example: Taxpayer, a corporation, requests preapproval for
153 the qualified rural hospital organization expense tax credit for cal-
154 endar year ~~2023~~2025 by electronically submitting Form IT-
155 QRHOE-TP1 through the Georgia Tax Center on May 31, 2025.
156 On Form IT-QRHOE-TP1 Taxpayer's intended contribution for
157 ~~2023~~2025 is \$100,000; and Taxpayer's estimated income tax lia-
158 bility for the ~~2023~~2025 tax year is \$150,000; therefore, the Depart-
159 ment preapproves Taxpayer for \$100,000 qualified rural hospital
160 organization expense tax credit for calendar year ~~2023~~2025. Tax-
161 payer makes a \$100,000 donation to the rural hospital organization
162 within 180 days of receiving preapproval from the Department and
163 before ~~the end of 2023~~October 31, 2025. When Taxpayer files its
164 ~~2023~~2025 Georgia income tax return, Taxpayer's income tax lia-
165 bility for tax year ~~2023~~2025 is \$80,000, Taxpayer can only claim
166 \$60,000 of qualified rural hospital organization expense tax credit

167 (\$60,000 is 75% of its actual Georgia income tax liability for tax
168 year ~~2023~~2025, which is less than \$100,000), and the extra
169 \$40,000 cannot be claimed by Taxpayer and cannot be carried for-
170 ward. Any amount of the \$60,000 qualified rural hospital organiza-
171 tion expense tax credit claimed but not used on the taxpayer's
172 ~~2023~~2025 Georgia income tax return shall be allowed to be carried
173 forward to apply to the taxpayer's succeeding five years' tax liabil-
174 ity.

175
176 2. Example: Taxpayer, a S corporation electing to pay tax at the
177 entity level, requests preapproval for the qualified rural hospital or-
178 ganization expense tax credit for calendar year ~~2023~~2025 by elec-
179 tronically submitting Form IT-QRHOE-TP1 through the Georgia
180 Tax Center on May 31, 2025. On Form IT-QRHOE-TP1 Tax-
181 payer's intended contribution for ~~2023~~2025 is \$100,000; and Tax-
182 payer's estimated income tax liability for the ~~2023~~2025 tax year is
183 \$150,000; therefore, the Department preapproves Taxpayer for
184 \$100,000 qualified rural hospital organization expense tax credit
185 for calendar year ~~2023~~2025. Taxpayer makes a \$100,000 donation
186 to the rural hospital organization within 180 days of receiving pre-
187 approval from the Department and before ~~the end of 2023~~October
188 31, 2025. When Taxpayer files its ~~2023~~2025 Georgia income tax
189 return, Taxpayer's income tax liability for tax year ~~2023~~2025 is
190 \$80,000. Taxpayer can only claim \$60,000 of qualified rural hospi-
191 tal organization expense tax credit (\$60,000 is 75% of its actual
192 Georgia income tax liability for tax year ~~2023~~2025, which is less
193 than \$100,000), and the extra \$40,000 cannot be claimed by Tax-
194 payer and cannot be carried forward. Any amount of the \$60,000
195 qualified rural hospital organization expense tax credit claimed but
196 not used on the taxpayer's ~~2023~~2025 Georgia income tax return
197 shall be allowed to be carried forward to apply to the taxpayer's
198 succeeding five years' tax liability but shall not be allowed to be
199 passed through to and used by the shareholders.

(f) Except as provided in subparagraph (4)(e) of this regulation, when the taxpayer is a pass-through entity which has no income tax liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the year and the limitations of subparagraph (4)(d) of this regulation. The expenditure is made by the pass-through entity but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the rural hospital organization so that the preapproval, claiming and reporting forms can be filed in the name of its members, shareholders, or partners.

(g) From July 1 to December 31 of each calendar year of the credit, the amount of qualified rural hospital organization expense tax credit allowed a taxpayer shall be as follows:

1. For an individual taxpayer, the credit amount shall not exceed the actual amount expended.

2. For an individual taxpayer filing married filing separate, the credit amount shall not exceed the actual amount expended.

3. For individual taxpayers filing married filing joint, the credit amount shall not exceed the actual amount expended.

4. For an individual taxpayer who is a member of a limited liability company duly formed under state law (including a member who owns a single member limited liability company that is disregarded for income tax purposes), a shareholder of a Subchapter 'S'

corporation, or a partner in a partnership, the credit is limited to the actual amount expended per tax year; 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 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. From July 1 to December 31, the option to indicate pass-through entity ownership is not available on the Georgia Tax Center, since the credit is not limited for individual taxpayers during this time period. Regardless, such members may choose to apply the pass-through entity provisions when claiming the credit or such provisions are applied if subparagraph (4)(g)6. of this regulation applies.

5. 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 expended or 75 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability, whichever is less. S corporations and partnerships that elect to pay taxes at the entity level cannot pass the credit through to their members, partners, or shareholders. Fiduciary entities cannot pass the credit through to their beneficiaries. See examples in subparagraph (4)(e) of this regulation.

6. Except as provided in subparagraph (4)(g)5. of this regulation, when the taxpayer is a pass-through entity which has no income tax liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their

profit/loss percentage at the end of the year and the limitations of subparagraph (4)(g)4. of this regulation. The expenditure is made by the pass-through entity but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the rural hospital organization so that the preapproval, claiming, and reporting forms can be filed in the name of its members, shareholders, or partners.

(h) A taxpayer may apply to make a donation to multiple rural hospital organizations or may apply to make multiple donations to the same rural hospital organization or may apply to make a donation both before and after July 1; provided, however, each donation must be applied for separately.

(i) Unspecified or undesignated contributions will be treated as provided in O.C.G.A. § 48-7-29.20.

(5) Credit Cap. In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-29.20 exceed \$75 million perfor taxablecalendar years ending on or before December 31, 2024. For calendar years beginning on or after January 1, 2025, the aggregate amount of tax credits allowed shall not exceed \$100 million.

(6) Per Individual Rural Hospital Organization Limitation. For each calendar year of the credit, no more than \$4 million of credit shall be preapproved for any individual rural hospital organization. On the day and time any Form IT-QRHOE-TP1 is received for a calendar year that causes the per individual rural hospital organization limitation in this paragraph to be reached, then any

subsequent applicants for such individual rural hospital organization shall be denied. There shall be no proration based on the date an application is received. The Department shall notify such individual rural hospital organization if the \$4 million limitation is reached. Such rural hospital organization shall within 15 days of the date of such notification, notify the Georgia Department of Community Health that the \$4 million limitation was reached.

(a) If a taxpayer is ~~denied preapproval for this tax credit by the Department due to~~ submits a Form IT-QRHOE-TP1 that causes the per individual rural hospital organization limitation in paragraph (6) of this regulation to be reached, ~~the taxpayer may reapply for preapproval and list at~~ the Department shall preapprove the proportional amount of the desired donation up to the selected rural hospital organization's per individual rural hospital organization limitation and any remainder of the desired donation shall be preapproved and attributed to a rural hospital organization from the Department of Community Health's list of approved rural hospital organizations with the highest financial need that has not reached the per individual rural hospital organization limitation. ~~For purposes of priority in case the credit cap is reached, the taxpayer's date of re-application will govern.~~

(7) Individual Rural Hospital Organization Per Tax Type Preapproval Limitations. Subject to the aggregate limit in paragraph (5) of this regulation and the per individual rural hospital organization limitation in paragraph (6) of this regulation, the Department shall only preapprove contributions for this tax credit in the following manner:

(a) From January 1st to June 30th of each calendar year of the credit, the Department shall only preapprove credits for each rural hospital organization from individual taxpayers in an aggregate

amount not to exceed \$2 million, and from corporate, fiduciary, electing S corporation, and electing partnership taxpayers in an aggregate amount not to exceed \$2 million. The Department shall notify such individual rural hospital organization if either \$2 million limit is reached; and

(b) On the day and time any Form IT-QRHOE-TP1 is received for a calendar year that causes the per tax type preapproval limit in paragraph (7)(a) of this regulation to be reached, then any subsequent applicants for such tax type for such individual rural hospital organization shall be denied. There shall be no proration based on the date an application is received.

(c) If an individual taxpayer, or corporate, fiduciary, electing S corporation, or electing partnership taxpayer is denied preapproval for the tax credit between January 1st and June 30th of a calendar year, due to the limitation in paragraph (7)(a) of this regulation, then the taxpayer may reapply for preapproval on or after July 1st of that calendar year for such individual rural hospital organization but will not be given any priority over other applicants. Such taxpayer may alternatively reapply for preapproval for a different individual rural hospital organization. For purposes of priority in case the credit cap is reached, the taxpayer's date of re-application will govern.

(d) From July 1st to December 31st of each calendar year of the credit, the Department shall preapprove contributions from individual taxpayers and corporate, fiduciary, electing S corporation, and electing partnership taxpayers until the annual credit cap is reached.

(e) For all preapprovals requested for each calendar year of the credit, the Department shall review the reports required by

paragraphs (14) and (15) of this regulation. In the event preapproved contributions are not contributed by the contribution deadlines set forth in O.C.G.A. § 48-7-29.20 or the rural hospital organization fails to timely file the report required by paragraph (14) of this regulation or the taxpayer fails to timely file the report required by paragraph (15) of this regulation for the period for which a paragraph (15) report was required, the Department shall add any such uncontributed or not timely reported amount to the amount available for each respective calendar year of the credit and adjust any used individual rural hospital organization limitation and adjust any used individual rural hospital organization per tax type preapproval limitation. Such uncontributed amount shall be added within a reasonable time of the Department's determination and until the end of the calendar year; and such amount shall be added directly to the total tax credit amount available for preapproval on the Georgia Tax Center and to the respective individual rural hospital's Georgia Tax Center available amount for preapproval. The Department shall notify the individual rural hospital organization of such adjusted limits. If such rural hospital organization had previously met the \$4 million limitation, they shall within 15 days of the date of such notification, notify the Georgia Department of Community Health of the additional rural hospital limitation amount. Any taxpayer previously denied preapproval of the credit because the annual credit cap had previously been reached, must reapply as provided in subparagraph (7)(c) of this regulation and will not be given any priority over other applicants.

(8) **Mandatory Electronic Preapproval Application.** The preapproval process allocates the credit caps. A taxpayer seeking preapproval to claim the tax credits under paragraph (4) of this regulation must electronically submit Form IT-QRHOE-TP1 through the Georgia Tax Center. The Department will not preapprove any qualified rural hospital organization expense tax credit where Form

398 IT-QRHOE-TP1 is submitted or filed in any other manner. Each
399 rural hospital organization shall be registered with the Department
400 to facilitate the web-based preapproval process for Form IT-
401 QRHOE-TP1.

402

403 (a) The taxpayer should not file Form IT-QRHOE-TP1 with the
404 Department of Revenue until the taxpayer's recipient rural hospital
405 organization is listed on the Department of Community Health's
406 website. If the taxpayer's recipient rural hospital organization is
407 not listed on the Department of Community Health's website at the
408 time that the Department of Revenue attempts to verify the rural
409 hospital organization's listing, the Department of Revenue shall
410 deny the preapproval request. If at a later date the taxpayer's recip-
411 ient rural hospital organization becomes listed, the taxpayer will
412 have to submit a new Form IT-QRHOE-TP1 to the Department of
413 Revenue.

414

415 (b) The qualified rural hospital organization expense tax credit
416 shall be allowed on a first-come, first-served basis. The date and
417 time the Form IT-QRHOE-TP1 is electronically submitted shall be
418 used to determine such first-come, first-served basis. There shall
419 be no proration based on the date an application is received.

420

421 (c) The Department will notify each taxpayer and the taxpayer's
422 selected rural hospital organization of the contribution amount, the
423 tax credit certificate number, and the tax credits preapproved and
424 allocated to such taxpayer within thirty days from the date the
425 Form IT-QRHOE-TP1 was received. If the taxpayer's contribution
426 was attributed to multiple rural hospital organizations, then the De-
427 partment will notify such taxpayer of the contribution amounts at-
428 tributed to each rural hospital organization, the tax credit certificate
429 number, and the tax credits preapproved and allocated to such tax-
430 payer within thirty days from the date the Form IT-QRHOE-TP1

431 was received. The Department will also notify each rural hospital
432 organization only the contribution amounts attributed to it, the tax
433 credit certificate number, and the tax credits preapproved and allo-
434 cated to such taxpayer within thirty days from the date the Form
435 IT-QRHOE-TP1 was received.

436
437 (d) If a taxpayer was preapproved for tax credits before Septem-
438 ber 30th of the year, the contribution must be made by the tax-
439 payer within 180 days of the date of the preapproval notice re-
440 ceived from the Department and within the calendar year in which
441 it was preapproved but not later than October 31st of the year. If a
442 taxpayer was preapproved for tax credits after September 30th, the
443 contribution must be made by the taxpayer on or before December
444 31st.

445
446 (e) In the event it is determined that the contributor has not met
447 all the requirements of O.C.G.A. § 48-7-29.20 and this regulation,
448 then the amount of the qualified rural hospital organization ex-
449 pense tax credit shall not be preapproved or, if already claimed, the
450 preapproved qualified rural hospital organization expense tax
451 credit shall be disallowed. With respect to such disallowed credit,
452 tax and interest shall be due.

453
454 (f) Notwithstanding any laws to the contrary, the Department
455 shall not disallow donors' credits for contributions to rural hospital
456 organizations if the Commissioner preapproved a donation for a
457 tax credit prior to the date the rural hospital organization is re-
458 moved from the Department of Community Health list pursuant to
459 O.C.G.A. § 31-8-9.1, and all such donations shall remain as preap-
460 proved tax credits subject only to the donor's compliance with
461 O.C.G.A. § 48-7-29.20(e)(3) and this regulation.

462
463 (g) 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. § 48-7-29.20, for such calendar year unless subsequently uncontributed amounts result in the calendar year limit not being reached. If any Form IT-QRHOE-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 even in the event that the calendar year limit is subsequently not reached due to uncontributed amounts.

(9) **Letter of Confirmation.** Form IT-QRHOE-RHO1 shall be provided by the rural hospital organization to the taxpayer to confirm the contribution within ~~45~~30 days of the contribution.

(10) **Claiming the Credit.** A taxpayer claiming the qualified rural hospital organization expense tax credit, unless indicated otherwise by the Commissioner, must submit Form IT-QRHOE-TP2 with the taxpayer's Georgia tax return when the qualified rural hospital organization expense tax credit is claimed. An electronically filed Georgia income tax return that includes the software's electronic Form IT-QRHOE-TP2 satisfies this requirement.

(11) ~~Carry Forward~~**Carryforward.** Any credit which 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 (4) 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.

(12) **Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § 48-7-29.20(g) provides that no qualified rural hospital organization

expense tax credit shall be allowed under O.C.G.A. § 48-7-29.20, with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code. If the taxpayer is allowed the state income tax deduction in place of the charitable contribution 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 rural hospital organization expense tax credit is allowed under O.C.G.A. § 48-7-29.20.

(a) If a taxpayer's itemized deductions are limited federally (and therefore 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 rural hospital organization expense tax 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 rural hospital organization expense tax credit (credit amount is \$2,500) and has property taxes of \$1,500 both of which are subject to limitation. The taxpayer also has investment 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 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) X (\$3,000 / \$4,000)).

(13) **Designation of Contributions.** The tax credit shall not be allowed if the taxpayer directly or indirectly designates the taxpayer's qualified rural hospital organization expense tax credit for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer.

(14) **Reports by Rural Hospital Organization.** Rural hospital organizations must submit a monthly Form IT-QRHOE-RHO2 to the Department of Revenue. The report shall be due within 90 days of the end of each respective month. The report shall be submitted electronically through the Georgia Tax Center. The report shall be prepared on a monthly basis regardless of the fiscal year of the rural hospital organization. If the rural hospital organization fails to timely file the report, the donor taxpayer shall not be allowed the credit. The taxpayer may again request preapproval for such denied donation subject to the credit caps. The report shall include the following for each respective month:

(a) The month and year that is being reported;

(b) The total number and dollar value of individual contributions and qualified rural hospital organization expense tax credits preapproved. Individual contributions include contributions made

563 by those filing income tax returns as single, head of household,
564 married filing separate, and married filing joint;

565

566 (c) The total number and dollar value of corporate, fiduciary, S
567 corporation, and partnership contributions and qualified rural hos-
568 pital organization expense tax credits preapproved;

569

570 (d) A list of donors (which includes the donor's name, address,
571 and identification number), including the dollar value of each do-
572 nation, the dollar value of each preapproved qualified rural hospital
573 organization expense tax credit, and each Department issued tax
574 credit certificate number; and

575

576 (e) Any other information required by the Commissioner.

577

578 (15) **Report by Donor.** Until the time the Department changed
579 the Georgia Tax Center on June 26, 2019, each taxpayer that re-
580 ceived preapproval of the qualified rural hospital organization ex-
581 pense tax credit had to report to the Department the amount of the
582 contribution and the Department issued tax credit certificate num-
583 ber and had to provide a copy of the Form IT-QRHOE-RHO1 to
584 the Department. Such information had to be submitted within 30
585 days of the date of the contribution and had to be submitted elec-
586 tronically through the Georgia Tax Center. If the taxpayer failed to
587 timely file the report, the taxpayer shall not be allowed the credit.
588 The taxpayer may again request preapproval for such denied dona-
589 tion subject to the credit caps.

590

591 (16) **Confirmation of Donations.** Upon the rural hospital or-
592 ganization's confirmation to the Department, as required by para-
593 graph (14) of this regulation, of the receipt of donations that have
594 been preapproved by the Department, any taxpayer preapproved by
595 the Department shall receive the full benefit of the qualified rural

596 hospital organization expense tax credit even though the rural hos-
597 pital organization to which the taxpayer made a donation does not
598 properly comply with the reports or filings required by O.C.G.A. §
599 48-7-29.20.

600

601 (17) **Website posting.** The Department shall post the following
602 in a prominent location on the Department's website:

603

604 (a) All pertinent timelines relating to the tax credit, including
605 but not limited to:

606

607 1. Beginning date when contributions can be submitted for pre-
608 approval by donors for the January 1 to June 30 period;

609

610 2. Ending date when contributions can be submitted for preap-
611 proval by donors for the January 1 to June 30 period;

612

613 3. Beginning date when contributions can be submitted for pre-
614 approval by donors for the July 1 to December 31 period;

615

616 4. Ending date when contributions can be submitted for preap-
617 proval by donors for the July 1 to December 31 period; and

618

619 5. Date by which preapproved contributions are required to be
620 sent to the rural hospital organization;

621

622 (b) The list and ranking order of rural hospital organizations eli-
623 gible to receive contributions under O.C.G.A. § 31-8-9.1(b)(1).

624

625 (c) A monthly progress report including:

626

627 1. Total preapproved contributions to date by rural hospital or-
628 ganizations;

629

630 2. Total contributions received to date by rural hospital organi-
631 zations;

632

633 3. Total aggregate amount of preapproved contributions made to
634 date; and

635

636 4. Aggregate amount of tax credits available; and

637

638 (d) A list of all preapproved contributions that were made to an
639 unspecified or undesignated rural hospital organization and the ru-
640 ral hospital organizations that received such contributions.

641

642 **(18) Preapproval Periods.**

643

644 (a) Beginning of an Approval or Preapproval Period. Pursuant
645 to O.C.G.A. § 48-2-39, when the approval or preapproval period
646 (January 1 through December 31) for the qualified rural hospital
647 organization expense tax credit begin on a Saturday, Sunday, legal
648 holiday, or day on which the Federal Reserve Bank is closed, such
649 beginning dates shall be postponed until the first day following
650 which is not a Saturday, Sunday, legal holiday, or day on which
651 the Federal Reserve Bank is closed. Preapprovals, which must be
652 requested through the Department's Georgia Tax Center, may be
653 submitted beginning at 8:00AM on such following day.

654

655 (b) First-Come, First-Served Basis. Any application submitted
656 on a Saturday, Sunday, legal holiday, or day on which the Federal
657 Reserve Bank is closed, shall be considered to have been submitted
658 on such date and time and shall not be prorated based on the date
659 the application is received. This paragraph shall only apply to an
660 application submitted on a day following the beginning date of the
661 approval or preapproval period as provided by subparagraph

Returns and Collections

Chapter 560-7-8

662 (18)(a) of this regulation.

663

664 (19) **Sunset Date.** O.C.G.A. § 48-7-29.20, the qualified rural
665 hospital organization expense tax credit, shall be repealed on De-
666 cember 31, ~~2024~~2029.

667

668 (20) **Effective Date.** This regulation shall be applicable to years
669 beginning on or after January 1, ~~2023~~2025. Years beginning before
670 January 1, ~~2023~~2025 will be governed by the regulations of Chap-
671 ter 560-7 as they existed before January 1, ~~2023~~2025 in the same
672 manner as if the amendments thereto set forth in this regulation
673 had not been promulgated.

674

675 Authority: O.C.G.A. §§ 48-2-12, 48-7-29.20.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.59 Postproduction Film Tax Credit

The purpose of proposed Rule 560-7-8-.59 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (7) provides the credit amount limitations.
- Paragraph (14) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (15) provides the carryforward period of the credit.
- Paragraph (18) provides the rules for selling or transferring the credit.
- Paragraph (19) provides the procedures of selling or transferring the credit.
- Paragraph (21) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.59 Postproduction Film Tax Credit

560-7-8-.59 Postproduction Film Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the postproduction film tax credit under O.C.G.A. § 48-7-40.26A.

(2) **Definitions.** As used in this regulation, the terms “affiliates”, “multimarket commercial distribution”, “qualified postproduction activities”, “qualified production”, and “total aggregate payroll” have the same meaning as in O.C.G.A. § 48-7-40.26A.

(a) “Postproduction Company” means a company that:

1. Maintains a business location physically located in Georgia;

2. Has total aggregate payroll of \$250,000 or more for employees working within the state in the taxable year that the postproduction company claims the postproduction film tax credit; or for a postproduction company that has incurred at least \$100,000 but less than

35 \$500,000 in qualified postproduction expenditures, has a total ag-
36 gregate payroll of at least \$100,000 but less than \$500,000 for em-
37 ployees working within the state in the taxable year that the postpro-
38 duction company claims the postproduction film tax credit.

39
40 3. Is engaged in qualified postproduction activities; and

41
42 4. Has been certified by the Department as provided in paragraph
43 (3) of this regulation.

44
45 This term shall not mean or include any form of business owned,
46 affiliated, or controlled, in whole or in part, by any company or per-
47 son which is in default on any tax obligation of the state, or a loan
48 made by the state or a loan guaranteed by the state. In the instance
49 of a work for hire in which one postproduction company hires an-
50 other postproduction company to engage in qualified postproduction
51 activities for pay, the hired postproduction company shall be con-
52 sidered a service provider for the hiring postproduction company
53 and the hiring postproduction company shall be entitled to the post-
54 production film tax credit for postproduction expenditures related to
55 the hired postproduction company only if the Department certifies
56 that the hired postproduction company is a Georgia company em-
57 ploying workers in this state and that the work on the postproduction
58 expenditures is solely in this state. In order to make such certifica-
59 tion, the postproduction company must certify on Form IT-PC that
60 the hired postproduction company is a Georgia company employing
61 workers in this state and that the work on the postproduction ex-
62 penditures is solely in this state. If the Department determines at any
63 time that the certification is not valid, then the Department shall dis-
64 allow the postproduction expenditures related to the hired postpro-
65 duction company. In the event that the hiring postproduction com-
66 pany does not qualify for the postproduction film tax credit, because
67 the hiring postproduction company does not meet the definition of a

68 postproduction company under O.C.G.A. § 48-7-40.26A and this
69 paragraph, then the hired postproduction company would be entitled
70 to the postproduction film tax credit for its qualified postproduction
71 expenditures provided it otherwise qualifies.

72
73 (b) "Work for hire" means an arrangement whereby one postpro-
74 duction company contracts with another postproduction company to
75 engage in qualified postproduction activities pursuant to a produc-
76 tion services agreement. Merely financing or providing funding to a
77 postproduction company does not make the financing/funding com-
78 pany the "hiring" postproduction company for purposes of the post-
79 production film tax credit. In the instance of co-productions, the
80 claiming company must attach a written agreement to Form IT-PFC
81 when the credit is claimed as to which party will be entitled to earn
82 and claim the tax credit. Failure to execute and attach such agree-
83 ment shall result in the loss of the postproduction film tax credit.

84
85 **(3) Certification for a Postproduction Company.**

86
87 (a) The postproduction company must electronically certify on
88 Form IT-PC to the Department of Revenue through the Georgia Tax
89 Center that:

90
91 1. The postproduction company maintains a business location
92 physically located in this state; and

93
94 2. The postproduction company has expended or intends to ex-
95 pend a total aggregate payroll of \$250,000 or more for employees
96 working within this state in the taxable year that the postproduction
97 company claims the postproduction film tax credit; or if the postpro-
98 duction company has incurred at least \$100,000 but less than
99 \$500,000 in qualified postproduction expenditures, that the postpro-
100 duction company has expended or intends to expend a total

101 aggregate of at least \$100,000 but less than \$500,000 for employees
102 working within this state in the taxable year that the postproduction
103 company claims the postproduction film tax credit.

104

105 (b) If the postproduction company is a disregarded entity then
106 such information should be submitted in the name of the owner of
107 the disregarded entity.

108

109 (4) **Qualified Postproduction Expenditures.** Qualified post-
110 production expenditures include postproduction expenditures in-
111 curred in this state that are directly used in qualified postproduction
112 activities, including without limitation the following: costs associ-
113 ated with photography and sound synchronization, expenditures (ex-
114 cluding license fees) incurred with Georgia companies for sound re-
115 cordings and musical compositions, lighting, and related services
116 and materials; editing and related services; rental of facilities and
117 equipment; leasing of vehicles; costs of food and lodging; digital or
118 tape editing, film processing, transfers of film to tape or digital for-
119 mat, sound mixing, computer graphics services, special effects ser-
120 vices, and animation services; total aggregate payroll; airfare, if pur-
121 chased through a Georgia travel agency or travel company; insur-
122 ance costs and bonding, if purchased through a Georgia insurance
123 agency; and other direct postproduction costs for the project in ac-
124 cordance with generally accepted entertainment industry practices.
125 This term includes postproduction expenditures for footage shot in-
126 side or outside of Georgia.

127

128 (a) Depreciation, amortization, or other expense on qualified
129 postproduction expenditures with a useful life of more than one
130 year. The costs of qualified postproduction expenditures with a use-
131 ful life of more than one year are considered “other direct costs of
132 the qualified postproduction activities in accordance with generally
133 accepted entertainment industry practices.” Such costs shall be

134 included in the computation of the postproduction film tax credit for
135 the taxable year based upon the depreciation, amortization, or other
136 expense included in the computation of Georgia taxable income of
137 the postproduction company for the applicable taxable year. Such
138 depreciation, amortization, or other expense shall be prorated based
139 upon the time the asset is used in qualified postproduction activities
140 in this state. Depreciation, amortization, or other expense on ex-
141 penditures incurred before the postproduction period shall not be in-
142 cluded in the computation of the postproduction film tax credit. In
143 order to claim depreciation, amortization, or other expense, the qual-
144 ified postproduction expenditure for the asset that generated the de-
145 preciation, amortization, or other expense, must have been incurred
146 in this state as provided in subparagraph (4)(b) of this regulation.

147
148 (b) Qualified postproduction expenditures incurred in this state.
149 In order to be considered to have been incurred in this state, the fol-
150 lowing rules shall apply:

151
152 1. Qualified postproduction expenditures, which are attributable
153 to the performance of services by individuals and companies di-
154 rectly at the postproduction site in Georgia who were not employees
155 of the postproduction company, shall be attributed to Georgia in the
156 same manner as salaries as provided in subparagraph (4)(c) of this
157 regulation.

158
159 2. Except as otherwise provided in this regulation, expenditures
160 for services which are not performed at the postproduction site (such
161 as insurance, service fees paid to a payroll company including work-
162 ers compensation if the service fees include such, editing and related
163 services, digital or tape editing, film processing, transfers of film to
164 tape or digital format, sound mixing, computer graphics services,
165 special effects services, animation services, etc.) will be allowed if
166 the vendor is a Georgia vendor and will be attributed to Georgia if

and only to the extent the service is rendered in Georgia. If the postproduction company is unable to track the cost of services rendered in Georgia, then some other reasonable method which approximates the cost of services rendered in Georgia may be used to determine the amount attributable to Georgia but such approximation will be subject to adjustment by the Department. In the event the services are subcontracted to a company that would not otherwise qualify and/or such subcontracted company renders the services outside Georgia, the expenditure for such services shall not be considered to have been incurred in this state.

3. Purchases and rentals of property. In order to include qualified postproduction expenditures for purchases and rentals of property, the property must have been used in Georgia and purchased or rented from a Georgia vendor. Purchase receipts, invoices, contracts, or other documentation shall be used to determine this.

4. Georgia Vendor. For purposes of this regulation, a Georgia vendor is a vendor that:

(i) Sells or rents property, which is regularly kept in their inventory, or provides a service not performed at the postproduction site, which is the subject of the qualified postproduction expenditure, in their ordinary course of business; and

(ii) Has a physical location in Georgia with at least one individual working at such location on a regular basis. Registering with the Georgia Secretary of State or appointing a registered agent in Georgia does not establish a physical location in Georgia.

However, a vendor that acts as a conduit to enable purchases and rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases and rentals.

(c) Salaries. Total aggregate payroll, as such term is used in this regulation, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employee's Form W-2 "Wage and Tax Statement". Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement". For purposes of this regulation, the term "employee" means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee. Guaranteed payments to partners do not qualify for the postproduction film tax credit and are not included in total aggregate payroll. Except as otherwise provided in this paragraph, if the postproduction company is unable to track the actual time spent by an employee in Georgia, the postproduction company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia but such approximation will be subject to adjustment by the Department. For all individuals who are paid a separate amount for postproduction, the amount that is incurred in Georgia shall be based on the amount paid for such period and prorated based on the actual time spent in Georgia by the employee in such period. If the postproduction company is unable to track the actual time spent by the individual in Georgia, the postproduction company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia for such period but such approximation will be subject to adjustment by the Department.

(d) Fringe Benefits. The following benefits are attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation:

- 233
- 234 1. SUI (state unemployment insurance);
- 235
- 236 2. FUI (federal unemployment insurance);
- 237
- 238 3. FICA (employer portion);
- 239
- 240 4. Pension and welfare if the amounts are paid as part of pension,
- 241 health, and welfare plans (these would not be required to be paid to
- 242 a Georgia vendor);
- 243
- 244 5. Health insurance premiums if these amounts are paid as part
- 245 of pension, health, and welfare plans (these would not be required
- 246 to be paid to a Georgia vendor);
- 247
- 248 (i) Other Fringe Benefits. The following fringe benefits are at-
- 249 tributed to Georgia as follows:
- 250
- 251 1. Meal per diems, as set forth by United States General Services
- 252 Administration, if incurred in Georgia; and
- 253
- 254 2. Hotel per diems, as set forth by United States General Services
- 255 Administration, if incurred in Georgia.
- 256
- 257 (e) Direct use. A postproduction company may only claim quali-
- 258 fied postproduction expenditures that are directly used in a qualified
- 259 postproduction activity. In determining whether a postproduction
- 260 expenditure is directly used in a qualified postproduction activity,
- 261 the Department of Revenue will consider the proximity of the ex-
- 262 penditure to the activity as well as the causal relationship between
- 263 the expenditure and the activity.
- 264
- 265 (5) **Credit Amount.** Except as provided in paragraph (6) of this

266 regulation, a postproduction company that meets or exceeds
267 \$500,000 in qualified postproduction expenditures in a taxable year
268 as provided in O.C.G.A. § 48-7-40.26A and this regulation, shall be
269 allowed a tax credit of 20 percent of the qualified postproduction
270 expenditures; and an additional tax credit of 10 percent of the qual-
271 ified postproduction expenditures shall be allowed if the qualified
272 production expenditures under O.C.G.A. § 48-7-40.26 and upon
273 which the qualified postproduction expenditures were incurred,
274 were filmed in this state; an additional 5 percent of the qualified
275 postproduction expenditures shall be allowed if the qualified post-
276 production expenditures were incurred in a tier 1 or tier 2 county as
277 designated by the Commissioner of Community Affairs un-
278 der O.C.G.A. § 48-7-40.

279
280 **(6) Credit amount for small postproduction companies.** A
281 postproduction company that has incurred at least \$100,000 but less
282 than \$500,000 in qualified postproduction expenditures and has a
283 total aggregate payroll in this state of at least \$100,000 but less than
284 \$500,000 in a taxable year shall be allowed a tax credit of 20 percent
285 of the qualified postproduction expenditures in a taxable year.

286
287 **(7) Credit Amount Limitation.** A postproduction company's
288 credit amount shall not exceed the amounts in paragraph (5) or (6)
289 of this regulation, and for any single tax year shall not exceed the
290 postproduction company's total aggregate payroll expended to em-
291 ployees working within this state for the taxable year that the post-
292 production company claims the postproduction film tax credit. Any
293 amount in excess of this credit limit shall not be eligible for ~~carry~~
294 ~~forward~~carryforward to succeeding years' tax liability, nor shall
295 such excess amount be eligible for use against the postproduction
296 company's quarterly or monthly payment under O.C.G.A. § 48-7-
297 103, nor shall such excess amount be assigned, sold, or transferred
298 to any other taxpayer.

(8) **Credit Cap (not applicable to small postproduction companies under paragraph (10) of this regulation).** For taxable years beginning on or after January 1, 2018 and before January 1, 2023, in no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26A for a postproduction company exceed \$10 million per tax year.

(a) The postproduction film tax credit shall not be available for taxable years beginning on or after January 1, 2023.

(b) If the aggregate amount of tax credits claimed, under paragraph (8) of this regulation, by postproduction companies during a year is less than the aggregate annual cap applicable to such year, the unclaimed portion of the aggregate annual cap shall be added to the aggregate annual cap applicable to the next succeeding year or years until it is fully claimed. Since a postproduction company can apply for preapproval and claim the credit until the end of the three year period provided in O.C.G.A. § 48-2-35, the Department will add the unclaimed portion after such three year period.

1. For example, for the 2018 preapproval year the preapproval and claiming can occur as late as September 15, 2023 (a corporation with a taxable year that begins on December 1, 2018 and ends on November 15, 2019 with an original return due date of September 15, 2020). The Department will add the unclaimed portion to the 2019 preapproval year as soon after that date as practical.

(9) **Maximum Credit Amount per Postproduction Company and Its Affiliates which are Postproduction Companies.** The maximum credit amount allowed under paragraph (8) of this regulation for any postproduction company and its affiliates which are postproduction companies shall not exceed 20 percent of the

332 aggregate amount of postproduction film tax credits available for
333 such taxable year under paragraph (8) of this regulation.

334
335 **(10) Credit Cap for small postproduction companies.** For tax-
336 able years beginning on or after January 1, 2018 and before January
337 1, 2023, in no event shall the aggregate amount of tax credits al-
338 lowed for postproduction companies that have incurred at least
339 \$100,000 but less than \$500,000 in qualified postproduction ex-
340 penditures and have a total aggregate payroll in this state of at least
341 \$100,000 but less than \$500,000 in a taxable year, exceed \$1 million
342 per taxable year. The credit cap under this paragraph is separate
343 from and shall not be included in the aggregate credit cap under par-
344 agraph (8) of this regulation.

345
346 (a) The postproduction film tax credit for small postproduction
347 companies shall not be available for taxable years beginning on or
348 after January 1, 2023.

349
350 **(11) Preapproval for Postproduction Companies (not appli-**
351 **cable to Small Postproduction Companies under Paragraph (12)**
352 **of this Regulation).** Any postproduction company seeking preap-
353 proval to claim tax credits under paragraph (8) of this regulation,
354 must submit the appropriate forms to the Department through the
355 Georgia Tax Center as provided in this subparagraph.

356
357 (a) Application. A postproduction company seeking preapproval
358 to claim the tax credits under paragraph (8) of this regulation must
359 electronically submit Form IT-PC-AP through the Georgia Tax Cen-
360 ter. A postproduction company that has submitted its Form IT-PC
361 for certification by the Department or that submits Form IT-PC on
362 the same day as Form IT-PC-AP is submitted may request preap-
363 proval from the Department before meeting the requirements of the
364 postproduction film tax credit. Such postproduction company must

estimate their credit amounts on Form IT-PC-AP. The amount of tax credit claimed by the postproduction company on the postproduction company's applicable Georgia income tax return must be based on the actual postproduction film tax credit earned under O.C.G.A. § 48-7-40.26A and this regulation and cannot exceed the amount preapproved. If the postproduction company is preapproved for an amount that exceeds the amount that is calculated using the actual numbers when the return is filed, the excess preapproved amount cannot be claimed by the postproduction company nor shall such excess preapproved amount be assigned, sold, or transferred to any other taxpayer or added to the paragraph (8) credit cap. If the postproduction company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity.

(b) Notification. The Department will notify each postproduction company of the tax credits preapproved or denied to such postproduction company.

(c) Allocation of Tax Credit. The Commissioner shall allow the tax credits on a first-come, first-served basis. The date the Form IT-PC-AP is electronically submitted shall be used to determine such first-come, first-served basis.

(d) Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in paragraph (8) of this regulation, then the tax credits shall be allocated among the postproduction companies who submitted Form IT-PC-AP on the day the maximum aggregate limit was exceeded on a pro rata basis based upon amounts otherwise allowed under O.C.G.A. § 48-7-40.26A, and this regulation. Only credit amounts on applications received on the day the aggregate credit cap

398 was exceeded will be allocated on a pro rata basis.
399

400 (e) Once the credit cap is reached for a taxable year, postproduc-
401 tion companies who meet the requirements of the postproduction
402 film tax credit during such taxable year shall no longer be eligible
403 for a credit under O.C.G.A. § 48-7-40.26A. If any Form IT-PC-AP
404 is received after the taxable year preapproval limit has been reached,
405 then it shall be denied and not be reconsidered for preapproval at
406 any later date.

407
408 (f) In the event it is determined that the postproduction company
409 has not met all the requirements of O.C.G.A. § 48-7-40.26A and this
410 regulation, then the amount of credits shall not be preapproved or
411 the preapproved credits shall be retroactively denied. With respect
412 to such denied credits, tax, interest, and penalties shall be due if the
413 credits have already been claimed.

414
415 **(12) Preapproval for Small Postproduction Companies.** Any
416 postproduction company seeking preapproval to claim tax credits
417 under paragraphs (10) of this regulation, must submit the appropri-
418 ate forms to the Department through the Georgia Tax Center as pro-
419 vided in this subparagraph.

420
421 (a) Application. A postproduction company seeking preapproval
422 to claim the tax credits under paragraph (10) of this regulation must
423 electronically submit Form IT-SPC-AP through the Georgia Tax
424 Center. A postproduction company that has submitted its Form IT-
425 PC for certification by the Department or that submits Form IT-PC
426 on the same day as Form IT-SPC-AP is submitted may request pre-
427 approval from the Department before meeting the requirements of
428 the postproduction film tax credit. Such postproduction company
429 must estimate their credit amounts on Form IT-SPC-AP. The
430 amount of tax credit claimed by the postproduction company on the

431 postproduction company's applicable Georgia income tax return
432 must be based on the actual postproduction film tax credit earned
433 under O.C.G.A. § 48-7-40.26A and this regulation and cannot ex-
434 ceed the amount preapproved. If the postproduction company is pre-
435 approved for an amount that exceeds the amount that is calculated
436 using the actual numbers when the return is filed, the excess preap-
437 proved amount cannot be claimed by the postproduction company
438 nor shall such excess preapproved amount be assigned, sold, or
439 transferred to any other taxpayer or added to the paragraph (10)
440 credit cap. If the postproduction company is a disregarded entity
441 then such information should be submitted in the name of the owner
442 of the disregarded entity.

443
444 (b) Notification. The Department will notify each postproduction
445 company of the tax credits preapproved or denied to such postpro-
446 duction company.

447
448 (c) Allocation of Tax Credit. The Commissioner shall allow the
449 tax credits on a first-come, first-served basis. The date the Form IT-
450 SPC-AP is electronically submitted shall be used to determine such
451 first-come, first-served basis.

452
453 (d) Applications received on the day the maximum credit amount
454 is reached. In the event that the credit amounts on applications re-
455 ceived by the Commissioner exceed the maximum aggregate limit
456 in paragraph (10) of this regulation, then the tax credits shall be al-
457 located among the postproduction companies who submitted Form
458 IT-SPC-AP on the day the maximum aggregate limit was exceeded
459 on a pro rata basis based upon amounts otherwise allowed un-
460 der O.C.G.A. § 48-7-40.26A, and this regulation. Only credit
461 amounts on applications received on the day the aggregate credit cap
462 was exceeded will be allocated on a pro rata basis.

463

(e) Once the credit cap is reached for a taxable year, postproduction companies who meet the requirements of the postproduction film tax credit during such taxable year shall no longer be eligible for a credit under O.C.G.A. § 48-7-40.26A. If any Form IT-SPC-AP is received after the taxable year preapproval limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(f) In the event it is determined that the small postproduction company has not met all the requirements of O.C.G.A. § 48-7-40.26A and this regulation, then the amount of credits shall not be preapproved or the preapproved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(13) Qualified Postproduction Expenditures Not Eligible for the Postproduction Film Tax Credit. Any qualified postproduction expenditures for which a production company claims the tax credit under O.C.G.A. § 48-7-40.26 are not eligible for the postproduction film tax credit under O.C.G.A. § 48-7-40.26A and this regulation.

(14) Claiming the Postproduction Film Tax Credit. A postproduction company claiming tax credits under paragraph (8) or (10) of this regulation must attach Form IT-PFC to its Georgia income tax return for each tax year in which the credit is claimed.

(a) **Withholding Tax.** The postproduction company may claim any excess postproduction film tax credit against its withholding tax liability or the withholding tax liability of its payroll service providers provided such withholding tax liability is with respect to the employees of the postproduction company and is attributable to withholding for such employees for withholding periods approved in

subparagraph (14)(a)3. of this regulation. The withholding tax benefit may only be applied against the withholding tax account used by the postproduction company or its payroll service provider for payroll purposes. In the event the postproduction company is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company or against the withholding tax liability of its payroll service providers provided such withholding tax liability is attributable to wages paid by its payroll service provider with respect to the individuals providing services to the single member limited liability company and is attributable to withholding for such employees for withholding periods approved in subparagraph (14)(a)3. of this regulation. Any postproduction company that qualifies to take all or a part of the postproduction film tax credit against withholding tax otherwise due the Department of Revenue, must notify the Commissioner, in the manner specified in subparagraph (14)(b)1., below, for any tax year for which they are making ~~make~~ an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such company ~~do so as a part of its notification to the Commissioner required under this subparagraph.~~ When this election is made, the excess postproduction film tax credit will not pass through to the shareholders, partners, or members of the postproduction company if the postproduction company or is a pass-through entity.

1. Notice of Intent. To claim any excess postproduction film tax credit not used on the income tax return against the postproduction company's withholding tax liability, the postproduction company must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period ~~(30) days~~ after the due date of the Georgia income tax return (including extensions) ~~or within thirty (30) days after the filing of a~~

530 ~~timely filed Georgia income tax return, whichever occurs first.~~ Fail-
531 ure to file this form as provided in this subparagraph will result in
532 disallowance of the withholding tax benefit. Such irrevocable elec-
533 tion may only be made one time with respect to each tax year for
534 which the credit is earned for such tax year, for all or part of the
535 excess tax credit remaining at the time of the election. However, in
536 the case of a credit which is earned in more than one taxable year,
537 the election to claim the withholding credit will be available for the
538 credit earned in such subsequent year.

539
540 2. Review Period. The Department of Revenue has one hundred
541 twenty (120) days from the date the applicable Form IT-WH under
542 subparagraph (14)(a)1. of this regulation is received to review the
543 credit and make a determination of the amount eligible to be used
544 against withholding tax.

545
546 3. Letter of Eligibility. Once the review is completed, a letter will
547 be sent to the postproduction company stating the postproduction
548 film tax credit amount which may be applied against withholding
549 and when the postproduction company or its payroll service pro-
550 vider may begin to claim the postproduction film tax credit against
551 withholding tax. The Department of Revenue shall treat this amount
552 as a credit against future withholding tax payments and will not re-
553 fund any previous withholding payments made by the postproduc-
554 tion company or its payroll service provider.

555
556 (b) Use of Other Tax Credits. Postproduction companies claim-
557 ing the postproduction film tax credit may not claim the job tax
558 credit, headquarters tax credit, or quality jobs tax credit for employ-
559 ees whose wages are used to calculate the postproduction film tax
560 credit.

561
562 (c) Assignment of Credit to Affiliates. Once the postproduction

company establishes the amount of the postproduction film tax credit by filing the tax return for the taxable year in which the credit was earned, the credit may then be assigned to the postproduction company's affiliates under the provisions of O.C.G.A. § 48-7-42. When a postproduction film tax credit is assigned to an affiliated entity, the affiliated entity may apply the credit solely against its own income tax liability. The affiliated entity may not sell or transfer the credit pursuant to paragraph (18) of this regulation and may not claim any excess postproduction film tax credit against its withholding tax. Any unused credit may be carried forward by such affiliated entity until the credit is used or it expires, whichever occurs first.

(15) ~~Carry Forward~~Carryforward. Any credit that is claimed but not used in a taxable year may be carried forward for ~~five~~the number of years authorized under O.C.G.A. § 48-7-40.26A from the close of the taxable year in which the qualified postproduction expenditures were made and the postproduction company established the amount of the postproduction film tax credit for that taxable year.

(a) Postproduction film tax credits may not be carried back and applied against a prior year's income tax liability.

(16) **Audits.** Any Department of Revenue audit triggered by a postproduction company's use or transfer of a postproduction film tax credit will require the postproduction company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the postproduction company that the audit is a postproduction film tax credit audit and thus subject to this clause prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this provision.

(17) **Pass-Through Entities.** When a postproduction company generating a postproduction film tax credit is a pass-through entity, and has no income tax liability of its own, the postproduction film tax credit will pass to its members, shareholders, or partners based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the postproduction company that incurred the qualifying postproduction expenditures to establish the amount of the postproduction film tax credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess postproduction film tax credit against their withholding tax liabilities or against the withholding tax liabilities of their payroll service providers. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2019. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2019 tax year.

(18) **Selling or Transferring the Postproduction Film Tax Credit.** The postproduction company may sell or transfer in whole or in part any postproduction film tax credit, previously claimed but not used by such postproduction company against its income tax, to another Georgia taxpayer subject to the following conditions:

(a) The taxpayer may only make a one-time sale or transfer of postproduction film tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee and more than one sale date. The sale may occur in a year or years after the postproduction film tax credit is earned but must occur before

the expiration of the ~~carry-forward~~carryforward period of such credit. For example, a postproduction company earns a \$500,000 credit in year 1. In year 2 the postproduction company sells \$200,000 of the credit to taxpayer 2 and \$50,000 to taxpayer 3. In year 3 the postproduction company sells the remaining \$250,000 of the credit to taxpayer 4. However, taxpayer 2, taxpayer 3, and taxpayer 4 are not allowed to resell the credit since the credit can only be sold one-time.

(b) The postproduction film tax credit may be transferred before the tax return is filed by the postproduction company provided the postproduction film tax credit has been earned. Preapproval for the credit by itself does not qualify as earning the credit. The amount transferred cannot exceed the amount of the credit which will be claimed and not used on the income tax return of the postproduction company.

(c) The postproduction company must file Form IT-TRANS "Notice of Tax Credit Transfer" with both the Department of Economic Development and Department of Revenue within 30 days after each transfer or sale of the postproduction film tax credit. Form IT-TRANS must be submitted electronically to the Department of Revenue through the Georgia Tax Center or alternatively as provided in subparagraph (18)(c)1. of this regulation. The Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. If the postproduction company is a disregarded entity then Form IT-TRANS should be filed in the name of the owner of the disregarded entity but the Form IT-PFC should be in the name of the disregarded entity.

1. The web-based portal on the Georgia Tax Center. The postproduction company may provide selective information to a representative for the purpose of allowing the representative to submit Form

IT-TRANS on their behalf on the Georgia Tax Center outside of a login. The provision of such information shall authorize the representative to submit such Form IT-TRANS. The representative must provide all information required by the web-based portal on the Georgia Tax Center to submit Form IT-TRANS.

(d) The postproduction company must provide all required postproduction film tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the postproduction film tax credit being disallowed until the postproduction company complies with such requirements.

(e) The ~~carry forward~~carryforward period of the postproduction film tax credit for the transferee will be the same as it was for the postproduction company. This credit may be carried forward for ~~five~~the number of years authorized under O.C.G.A. § 48-7-40.26A from the end of the tax year in which the qualifying postproduction expenditures were incurred. For example: The postproduction company sells a postproduction film tax credit on September 15, 2019. This credit is based on qualifying expenditures from the calendar 2018 tax year and can be carried forward five years. The credit may be claimed by the transferee on the 2018, 2019, 2020, 2021, 2022, or 2023 return and the ~~carry forward~~carryforward period for this credit will expire on December 31, 2023. This ~~carry forward~~carryforward treatment applies regardless of whether it is being claimed by the postproduction company or the transferee.

(f) A transferee shall have only such rights to claim and use the postproduction film tax credit that were available to the postproduction company at the time of the transfer excluding the withholding tax benefit which is not available to the transferee. Thus, a transferee shall not have the right to subsequently transfer such credit since that right has been utilized by the transferor.

(19) **How to Sell or Transfer the Tax Credit.**

(a) Direct Sale. The postproduction company may sell or transfer the postproduction film tax credit directly to a Georgia taxpayer (or multiple Georgia taxpayers as provided in subparagraph (18)(a) of this regulation). A pass-through entity may make an election to sell or transfer the unused postproduction film tax credit earned in a taxable year at the entity level. If the pass-through entity makes the election to sell the postproduction film tax credit at the entity level, the credit does not pass through to the shareholders, members, or partners. In all cases, the effect of the sale of the credit on the income of the seller and buyer of the credit will be the same as provided in the Internal Revenue Code.

(b) Pass-Through Entity. The postproduction company may be structured as a pass-through entity. If a pass-through entity does not make an election to sell or transfer the tax credit at the entity level as provided in subparagraph (19)(a) of this regulation, the tax credit will pass through to the shareholders, partners or members of the entity based on their year ending profit/loss percentage. The shareholders, members, or partners may then sell their respective postproduction film tax credit to a Georgia taxpayer.

(c) Transferee Pass-Through Entity. The postproduction company, or its shareholders, members or partners, may sell or transfer the tax credit to a pass-through entity. The pass-through entity shall elect on behalf of its shareholders, members or partners which year the credit shall be passed through to its shareholders, members or partners (either its tax year in which the income tax year of the postproduction company, which claims the postproduction film tax credit ends; or during any later tax year before the ~~five-year carry forward~~ carryforward period associated with the tax credit ends as

provided in subparagraph (19)(d) of this regulation). If the pass-through entity has no income tax liability of its own, the pass-through entity may then pass the credit through to its shareholders, members, or partners based on the pass-through entity's year ending profit/loss percentage for such elected year. For example, if a calendar year partnership is buying the credit earned by a postproduction company in the calendar 2019 tax year and elects to use the credit for such year, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2019 tax year in which the credit was established. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the postproduction film tax credit.

(d) The credits are available for use by the transferee, provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected pursuant to O.C.G.A. § 48-2-35:

1. In the transferee's tax year in which the income tax year of the postproduction company, which claims the postproduction film tax credit ends; or

2. During any later tax year before the ~~five-year carry forward~~ carryforward period associated with the tax credit ends.

(i) Example: A postproduction company reaches the \$500,000 in qualified postproduction expenditures in a taxable year, receives preapproval, and claims the postproduction film tax credit in calendar 2019 tax year. There is a five-year carryforward period associated with the credit. The postproduction company sells the postproduction film tax credit to a calendar year Georgia taxpayer in calendar year 2020. The transferee Georgia taxpayer may claim the purchased postproduction film tax credit on either their 2019 return

(transferee's tax year in which the income tax year of the postproduction company ends) or their 2020, 2021, 2022, 2023, or 2024 return (during any later tax year before the five-year ~~carry forward~~ carryforward period associated with the tax credit ends).

(ii) Example: A postproduction company reaches the \$500,000 base investment threshold and claims the postproduction film tax credit in its fiscal year end June 30, 2019. There is a five-year carryforward period associated with the credit. The postproduction company sells the postproduction film tax credit to a calendar year Georgia taxpayer in calendar year 2020. The transferee Georgia taxpayer may claim the purchased postproduction film tax credit on either their 2019 return (transferee's tax year in which the income tax year of the postproduction company ends) or their 2020, 2021, 2022, 2023, or 2024 return (during any later tax year before the five-year ~~carry forward~~ carryforward period associated with the tax credit ends).

(20) Required Reporting. For taxable years beginning on or after January 1, 2018, and before January 1, 2023, the postproduction company shall electronically report to the Department of Revenue through the Georgia Tax Center on Form IT-PC-RPT the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year. Such report shall be filed on the date the postproduction company files its Georgia income tax return. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours a week; and that pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

Returns and Collections

Chapter 560-7-8

794 (a) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-
795 61, for such taxable years, the commissioner shall report yearly to
796 the House Committee on Ways and Means and the Senate Finance
797 Committee. The report shall include the name, tax year beginning,
798 and monthly average number of full-time employees for each post-
799 production company. The first report shall be submitted by June 30,
800 2018, and each year thereafter by June 30.

801
802 (21) **Effective Date.** This regulation shall be applicable to taxable
803 years beginning on or after January 1, ~~2018~~2025. Taxable years be-
804 ginning before January 1, 2025 will be governed by the regulations
805 of Chapter 560-7 as they existed before January 1, 2025 in the same
806 manner as if the amendments thereto set forth in this regulation had
807 not been promulgated.

808
809 Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.26A.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.60 Qualified Education Donation Tax Credit

The purpose of proposed Rule 560-7-8-.60 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 and Senate Bill 233 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (3) provides the credit amounts.
- Paragraph (4) provides the aggregate credit cap.
- Paragraph (6) specifies the letter of confirmation.
- Paragraph (8) provides the carryforward of the credit.
- Paragraph (12) provides the sunset date of the credit.
- Paragraph (13) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.60 Qualified Education Donation Tax Credit

560-7-8-.60 Qualified Education Donation Tax Credit

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of the tax credit under O.C.G.A. § 48-7-29.21.

(2) **Definitions.** As used in this regulation, the terms “qualified education donation” and “recipient” shall have the same meaning as in O.C.G.A. § 48-7-29.21.

(3) **Credit Amount.** The amount of qualified education donation tax credit allowed a taxpayer shall be as follows:

(a) For an individual taxpayer, the credit amount shall not exceed ~~\$1,000~~2,500, or the actual amount donated, whichever is less.

(b) For an individual taxpayer filing married filing separate, the credit amount shall not exceed ~~\$1,250~~2,500, or the actual amount donated, whichever is less.

35
36 (c) For individual taxpayers filing married filing joint, the credit
37 amount shall not exceed ~~\$2,500~~5,000, or the actual amount donated,
38 whichever is less.

39
40 (d) For an individual taxpayer who is a member of a limited
41 liability company duly formed under state law, a shareholder of a
42 Subchapter 'S' corporation, or a partner in a partnership, the credit
43 is limited to the lesser of the actual amount donated or
44 ~~\$10,000~~25,000 per tax year, whichever is less; provided, however,
45 that the tax credits shall only be allowed for the Georgia income on
46 which such tax was actually paid by such member of a limited
47 liability company, shareholder of a Subchapter 'S' corporation, or
48 partner in a partnership. In determining such Georgia income, the
49 shareholder, partner, or member shall exclude any income that was
50 subtracted on their Georgia return because the entity paid tax at the
51 pass-through entity level in Georgia as provided in Regulation 560-
52 7-3-.03. If the individual taxpayer is a member, partner, or
53 shareholder in more than one pass-through entity, the total credit
54 allowed cannot exceed ~~\$10,000~~25,000; the individual taxpayer
55 decides which pass-through entities to include when computing
56 Georgia income for purposes of the qualified education donation tax
57 credit. All Georgia income, loss, and expense from the taxpayer
58 selected pass-through entities will be combined to determine
59 Georgia income for purposes of the qualified education donation tax
60 credit. Such combined Georgia income shall be multiplied by the
61 applicable marginal tax rate to determine the tax that was actually
62 paid. If the taxpayer is filing a joint return, the taxpayer's spouse
63 may also claim a credit for their ownership interests and shall
64 separately be eligible for a credit as provided in this subparagraph.
65 If the taxpayer(s) chooses to be preapproved pursuant to this
66 subparagraph, for all purposes of claiming the credit they shall be
67 subject to the provisions of this subparagraph and shall not be

entitled to claim any other amounts provided in O.C.G.A. § 48-7-29.21 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 20% member of a limited liability company, XYZ Company, which is taxed as a partnership. Taxpayer requests preapproval for the qualified education donation tax credit for calendar year ~~2022~~2024 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1, Taxpayer estimates that the taxpayer's Georgia income from A, Inc. is ~~\$120,000~~240,000, and that Taxpayer's share of Georgia income from BC Company is ~~\$60,000~~225,000. Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified education donation tax credit; therefore the Department preapproves Taxpayer for ~~\$10,000~~25,000 qualified education donation tax credit (since ~~\$10,000~~25,000 is less than ~~\$10,350~~25,064 (5.755.39% of ~~\$180,000~~465,000)), the applicable marginal tax rate for ~~2022~~2024 is ~~5.755.39~~%. Taxpayer makes a ~~\$10,000~~25,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of ~~2022~~2024. When Taxpayer files Taxpayer's ~~2022~~2024 Georgia income tax return, Taxpayer received a salary from A, Inc. of ~~\$50,000~~80,000 and A, Inc.'s actual Georgia income is ~~\$60,000~~120,000; Taxpayer's actual share of Georgia income from BC Company is ~~\$20,000~~100,000 and Taxpayer received a guaranteed payment from BC Company of ~~\$15,000~~55,000; Taxpayer's actual share of Georgia income from XYZ Company is ~~\$5,000~~45,000 (the Taxpayer can choose to include this company

even though it was not considered at the time of preapproval), Taxpayer can only claim ~~\$8,625,560~~ \$8,625,560 qualified education donation tax credit (which is ~~5.755.39%~~ 5.755.39% of the ~~\$150,000~~ \$400,000 actual income from Taxpayer's selected pass-through entities), and the extra ~~\$1,375,440~~ cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the ~~\$8,625,560~~ \$8,625,560 qualified education donation tax credit claimed but not used on the taxpayer's ~~2022~~ 2024 Georgia income tax return shall be allowed to be carried forward to apply to the 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 75 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability, or the actual amount donated, whichever is less. A fiduciary cannot pass through the credit to its beneficiaries.

1. Example: Taxpayer, a corporation, requests preapproval for the qualified education donation tax credit for calendar year ~~2022~~ 2024 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1 Taxpayer's intended contribution for ~~2022~~ 2024 is \$100,000; and Taxpayer's estimated income tax liability for the ~~2022~~ 2024 tax year is \$100,000; therefore the Department preapproves Taxpayer for \$75,000 qualified education donation tax credit for calendar year ~~2022~~ 2024. Taxpayer makes a \$75,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of ~~2022~~ 2024. When Taxpayer files their ~~2022~~ 2024 Georgia income tax return, Taxpayer's income tax liability for tax year ~~2022~~ 2024 is \$80,000, Taxpayer can only claim \$60,000 of

134 qualified education donation tax credit (\$60,000 is 75% of their
135 actual Georgia income tax liability for tax year ~~2022~~2024), and the
136 extra \$15,000 cannot be claimed by Taxpayer and cannot be carried
137 forward. Any amount of the \$60,000 qualified education donation
138 tax credit claimed but not used on the taxpayer's ~~2022~~2024 Georgia
139 income tax return shall be allowed to be carried forward to apply to
140 the taxpayer's succeeding five years' tax liability.

141
142 2. Example: Taxpayer, a S Corporation electing to pay tax at the
143 entity level, requests preapproval for the qualified education
144 donation tax credit for calendar year ~~2022~~2024 by electronically
145 submitting Form IT-QED-TP1 through the Georgia Tax Center. On
146 Form IT-QED-TP1 Taxpayer's intended contribution for ~~2022~~2024
147 is \$100,000; and Taxpayer's estimated income tax liability for the
148 ~~2022~~2024 tax year is \$100,000; therefore the Department
149 preapproves Taxpayer for \$75,000 qualified education donation tax
150 credit for calendar year ~~2022~~2024. Taxpayer makes a \$75,000
151 donation to the recipient within 60 days of receiving preapproval
152 from the Department and before the end of ~~2022~~2024. When
153 Taxpayer files their ~~2022~~2024 Georgia income tax return,
154 Taxpayer's income tax liability for tax year ~~2022~~2024 is \$80,000,
155 Taxpayer can only claim \$60,000 of qualified education donation
156 tax credit (\$60,000 is 75% of their actual Georgia income tax
157 liability for tax year ~~2022~~2024), and the extra \$15,000 cannot be
158 claimed by Taxpayer and cannot be carried forward. Any amount of
159 the \$60,000 qualified education donation tax credit claimed but not
160 used on the taxpayer's ~~2022~~2024 Georgia income tax return shall be
161 allowed to be carried forward to apply to the taxpayer's succeeding
162 five years' tax liability but shall not be allowed to be passed through
163 to and used by the shareholders.

164
165 (f) Except as provided in subparagraph (3)(e) of this regulation,
166 when the taxpayer is a pass-through entity which has no income tax

liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the year and the limitations of subparagraph (3)(d) of this regulation. The donation is made by the pass-through entity but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the recipient so that the preapproval, claiming and reporting forms can be filed in the name of its members, shareholders, or partners.

(4) **Credit Cap.** In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-29.21 exceed \$5 million perfor calendar years ending on or before December 31, 2023. For calendar years beginning on or after January 1, 2024, the aggregate amount of tax credits allowed shall not exceed \$15 million.

(5) **Mandatory Electronic Preapproval Application.** A taxpayer seeking preapproval to claim the tax credits under paragraph (3) of this regulation must electronically submit Form IT-QED-TP1 through the Georgia Tax Center. The Department will not preapprove any qualified education donation tax credit where Form IT-QED-TP1 is submitted or filed in any other manner.

(a) The qualified education donation tax credit shall be allowed on a first-come, first-served basis. The date the Form IT-QED-TP1 is electronically submitted shall be used to determine such first-come, first-served basis.

(b) The Department will notify each taxpayer and the recipient of the contribution amount, the tax credit certificate number, and the tax credits preapproved and allocated to such taxpayer within thirty

200 days from the date the Form IT-QED-TP1 was received.

201

202 (c) On the day any Form IT-QED-TP1 is received for a calendar
203 year that causes the calendar year limit in paragraph (4) of this
204 regulation to be reached, then the remaining tax credits shall be
205 allocated among the applicants who filed the Form IT-QED-TP1 on
206 the day the calendar year limit was exceeded on a pro rata basis
207 based upon the amounts otherwise allowed by O.C.G.A. § 48-7-
208 29.21 and this regulation. Only credit amounts on Form IT-QED-
209 TP1(s) received on the day the calendar year limit was exceeded
210 shall be allocated on a pro rata basis.

211

212 (d) The contribution must be made by the taxpayer within sixty
213 days of the date of the preapproval notice received from the
214 Department and within the calendar year in which it was
215 preapproved.

216

217 (e) In the event it is determined that the contributor has not met
218 all the requirements of O.C.G.A. § 48-7-29.21 and this regulation,
219 then the amount of the qualified education donation tax credit shall
220 not be preapproved or, if already claimed, the preapproved qualified
221 education donation tax credit shall be disallowed. With respect to
222 such disallowed credit, tax and interest shall be due.

223

224 (f) Once the calendar year limit is reached for a calendar year,
225 taxpayers shall no longer be eligible for a credit under O.C.G.A. §
226 48-7-29.21, for such calendar year. If any Form IT-QED-TP1 is
227 received after the calendar year limit has been reached, then it shall
228 be denied and not be reconsidered for preapproval at any later date.

229

230 (6) **Letter of Confirmation.** Form IT-QED-FUND1 shall be
231 provided by the recipient to the taxpayer to confirm the contribution
232 within ~~45~~30 days of the contribution.

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

(8) ~~Carry Forward~~**Carryforward.** Any credit which 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 for the~~ number of years authorized under O.C.G.A. § 48-7-29.21. However, any amount in excess of the credit amount limits in paragraph (3) of this regulation shall not be eligible for ~~carry forward~~**carryforward** to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(9) **Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § 48-7-29.21(h) provides that no qualified education donation tax credit shall be allowed under O.C.G.A. § 48-7-29.21, with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code. If the taxpayer is allowed the state income tax deduction in place of the charitable contribution 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 education donation tax credit is allowed under O.C.G.A. § 48-7-29.21.

(a) If a taxpayer's itemized deductions are limited federally (and therefore 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 education donation tax 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 donation tax credit 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 $((\$2,500) \times (\$3,000 / \$4,000))$.

(10) Designation of Contributions. The tax credit shall not be allowed if the taxpayer directly or indirectly designates the taxpayer's qualified education donation for the direct benefit of any particular school, or program, which the taxpayer's child or children

299 attend.

300

301 **(11) Report by the Nonprofit Corporation Incorporated by**
302 **the Georgia Foundation for Public Education.** The nonprofit
303 corporation incorporated by the Georgia Foundation for Public
304 Education shall electronically submit Form IT-QED-FUND2 to the
305 Department through the Georgia Tax Center by January 12 each
306 year. The report, Form IT-QED-FUND2, shall be prepared on a
307 calendar year basis and shall include the following:

308

309 (a) The total number and dollar value of individual contributions
310 and qualified education donation tax credits preapproved. Individual
311 contributions include contributions made by those filing income tax
312 returns as single, head of household, married filing separate, and
313 married filing joint;

314

315 (b) The total number and dollar value of corporate, fiduciary, S
316 corporation, and partnership contributions and qualified education
317 donation tax credits preapproved;

318

319 (c) The total number and dollar value of grants awarded to public
320 schools;

321

322 (d) A list of donors (which includes the donor's name, address,
323 and identification number), including the dollar value of each
324 donation, the dollar value of each preapproved qualified education
325 donation tax credit, and each Department issued tax credit certificate
326 number; and

327

328 (e) Any other information required by the Commissioner.

329

330 The Department shall post on its website the information
331 received from the nonprofit corporation incorporated by the Georgia

Returns and Collections

Chapter 560-7-8

332 Foundation for Public Education under subparagraph 11(a) through
333 11(c) of this regulation.

334

335 (12) **Sunset Date.** O.C.G.A. § 48-7-29.21, the qualified
336 education donation tax credit, shall be repealed on December 31,
337 ~~2026~~2029.

338

339 (13) **Effective Date.** This regulation shall be applicable to years
340 beginning on or after January 1, ~~2023~~2024. Years beginning before
341 January 1, ~~2023~~2024 will be governed by the regulations of Chapter
342 560-7 as they existed before January 1, ~~2023~~2024 in the same
343 manner as if the amendments thereto set forth in this regulation had
344 not been promulgated.

345

346 Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.21.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.61 Musical Tax Credit

The purpose of proposed Rule 560-7-8-.61 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (3) provides the definitions.
- Paragraph (10) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (11) provides the carryforward of the credit.
- Paragraph (14) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.61 Musical Tax Credit

560-7-8-.61 Musical Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-40.33.

(2) **Coordination of Agencies.** The Department of Economic Development is the state agency responsible for certifying which projects qualify for the tax credit under O.C.G.A. § 48-7-40.33.

(3) **Definitions.**

(a) As used in this regulation, the terms “musical or theatrical performance”, “production company”, “qualified production activities”, “qualified production expenditures”, “recorded musical performance”, “resident”, “spending threshold”, “state certified production”, and “total aggregate payroll” have the same meaning as in O.C.G.A. § 48-7-40.33.

(b) The term “production site” means:

1. For a musical or theatrical performance, the site or sites where the production is developed, prepared, planned, rehearsed, or performed.

2. For a recorded musical performance, the site or sites where the production is prepared, planned, or recorded.

(4) Qualified Production Expenditures. Qualified production expenditures include production expenditures incurred in this state on direct account of qualified production activities, including without limitation the following: set construction and operation; wardrobe, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures (excluding license fees) incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; total aggregate payroll; talent and producer fees; technical fees; crew fees; per diem costs paid to employees; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices; and payments to a loan-out company.

(a) Depreciation, amortization, or other expense on qualified production expenditures with a useful life of more than one year. The costs of qualified production expenditures with a useful life of more than one year are considered “other direct costs of the qualified production activities in accordance with generally accepted entertainment industry practices.” Such costs shall be included in the

68 computation of the musical tax credit for the taxable year based upon
69 the depreciation, amortization, or other expense included in the
70 computation of Georgia taxable income of the production company
71 for the applicable taxable year. Such depreciation, amortization, or
72 other expense shall be prorated based upon the time the asset is used
73 in qualified production activities in this state. Depreciation, amorti-
74 zation, or other expense on expenditures incurred before the produc-
75 tion period shall not be included in the computation of the musical
76 tax credit. In order to claim depreciation, amortization, or other ex-
77 pense, the qualified production expenditure for the asset that gener-
78 ated the depreciation, amortization, or other expense, must have
79 been incurred in this state as provided in subparagraph (4)(b) of this
80 regulation.

81
82 (b) Qualified production expenditures incurred in this state. In
83 order to be considered to have been incurred in this state, the fol-
84 lowing rules shall apply:

85
86 1. Qualified production expenditures, which are attributable to
87 the performance of services by individuals and companies directly
88 at the production site in Georgia who were not employees of the
89 production company, shall be attributed to Georgia in the same man-
90 ner as salaries as provided in subparagraph (4)(c) of this regulation.

91
92 2. Except as otherwise provided in this regulation, expenditures
93 for services which are not performed at the production site (such as
94 insurance, service fees paid to a payroll company including workers
95 compensation if the service fees include such, editing and related
96 services, digital or tape editing, film processing, transfers of film to
97 tape or digital format, sound mixing, computer graphics services,
98 special effects services, animation services, etc.) will be allowed if
99 the vendor is a Georgia vendor and will be attributed to Georgia if
100 and only to the extent the service is rendered in Georgia. If the

101 production company is unable to track the cost of services rendered
102 in Georgia, then some other reasonable method which approximates
103 the cost of services rendered in Georgia may be used to determine
104 the amount attributable to Georgia but such approximation will be
105 subject to adjustment by the Department. In the event the services
106 are subcontracted to a company that would not otherwise qualify
107 and/or such subcontracted company renders the services outside
108 Georgia, the expenditure for such services shall not be considered to
109 have been incurred in this state.

110
111 3. Purchases and rentals of property. In order to include qualified
112 production expenditures for purchases and rentals of property, the
113 property must have been used in Georgia and purchased or rented
114 from a Georgia vendor. Purchase receipts, invoices, contracts, or
115 other documentation shall be used to determine this.

116
117 4. Georgia Vendor. For purposes of this regulation, a Georgia
118 vendor is a vendor that:

119
120 (i) Sells or rents property, which is regularly kept in their inven-
121 tory, or provides a service not performed at the production site,
122 which is the subject of the qualified production expenditure, in their
123 ordinary course of business; and

124
125 (ii) Has a physical location in Georgia with at least one individual
126 working at such location on a regular basis. Registering with the
127 Georgia Secretary of State or appointing a registered agent in Geor-
128 gia does not establish a physical location in Georgia.

129
130 However, a vendor that acts as a conduit to enable purchases and
131 rentals to qualify that would not otherwise qualify shall not be con-
132 sidered a Georgia vendor with respect to such purchases and rentals.

133

(c) Salaries. Total aggregate payroll, as such term is used in this regulation, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employee's Form W-2 "Wage and Tax Statement". Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement". For purposes of this regulation, the term "employee" means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee. Guaranteed payments to partners do not qualify for the musical tax credit and are not included in total aggregate payroll. Except as otherwise provided in this paragraph, if the production company is unable to track the actual time spent by an employee in Georgia, the production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia but such approximation will be subject to adjustment by the Department. For all individuals who are paid a separate amount for production, the amount that is incurred in Georgia shall be based on the amount paid for such period and prorated based on the actual time spent in Georgia by the employee in such period. If the production company is unable to track the actual time spent by the individual in Georgia, the production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia for such period but such approximation will be subject to adjustment by the Department.

(d) Fringe Benefits. The following benefits are attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation:

- 167 1. SUI (state unemployment insurance);
168
169 2. FUI (federal unemployment insurance);
170
171 3. FICA (employer portion);
172
173 4. Pension and welfare if the amounts are paid as part of pension,
174 health, and welfare plans (these would not be required to be paid to
175 a Georgia vendor);
176
177 5. Health insurance premiums if these amounts are paid as part
178 of pension, health, and welfare plans (these would not be required
179 to be paid to a Georgia vendor);
180
181 (i) Other Fringe Benefits. The following fringe benefits are at-
182 tributed to Georgia as follows:
183
184 1. Meal per diems, as set forth by United States General Services
185 Administration, if incurred in Georgia; and
186
187 2. Hotel per diems, as set forth by United States General Services
188 Administration, if incurred in Georgia.
189
190 (e) Direct account. A production company may only claim qual-
191 ified production expenditures on direct account of a qualified pro-
192 duction activity. In determining whether a production expenditure is
193 on direct account of a qualified production activity, the Department
194 of Revenue will consider the proximity of the expenditure to the ac-
195 tivity as well as the causal relationship between the expenditure and
196 the activity; and the applicable rules of the Department of Economic
197 Development and any determination made by the Department of
198 Economic Development regarding whether a qualified production
199 expenditure is on direct account of a qualified production activity.

(5) **Credit Amount.** A production company that meets or exceeds \$500,000 in qualified production expenditures in a taxable year for a musical or theatrical performance; or \$250,000 in qualified production expenditures in a taxable year for a recorded musical performance which is incorporated into or synchronized with a movie, television, or interactive entertainment production; or \$100,000 in qualified production expenditures in a taxable year for any other recorded musical performance, as provided in O.C.G.A. § 48-7-40.33 and this regulation, shall be allowed a tax credit of 15 percent of the qualified production expenditures; and an additional 5 percent shall be allowed for qualified production expenditures incurred in a tier 1 or tier 2 county as designated by the Commissioner of Community Affairs under O.C.G.A. § 48-7-40.

(6) **Credit Cap for Production Companies and Affiliates.** In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies and their affiliates which are production companies exceed the following amounts:

(a) For taxable years beginning on or after January 1, 2018 and before January 1, 2019, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies shall not exceed \$5 million. The maximum credit amount allowed for any production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable year;

(b) For taxable years beginning on or after January 1, 2019 and before January 1, 2020, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies shall not exceed \$10 million. The maximum credit amount allowed for any

production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable year;

(c) For taxable years beginning on or after January 1, 2020 and before January 1, 2023, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies shall not exceed \$15 million per taxable year. The maximum credit amount allowed for any production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable years; and

(d) The musical tax credit shall not be available for taxable years beginning on or after January 1, 2023.

(7) **Preapproval.** Before requesting preapproval from the Department, the production company must apply for pre-certification from the Department of Economic Development to ensure that the project meets the requirements of O.C.G.A. § 48-7-40.33. Any production company seeking preapproval to claim tax credits under paragraphs (6) of this regulation, must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this paragraph.

(a) **Application.** A production company seeking preapproval to claim the tax credits under paragraph (6) of this regulation must electronically submit Form IT-MC-AP and their pre-certification from the Georgia Department of Economic Development through the Georgia Tax Center. A production company may request preapproval from the Department before meeting the requirements of the musical tax credit. Such production company must estimate their credit amounts on Form IT-MC-AP. The amount of tax credit claimed by the production company on the production company's

266 applicable Georgia income tax return must be based on the actual
267 musical tax credit earned under O.C.G.A. § 48-7-40.33 and this reg-
268 ulation and cannot exceed the amount preapproved. If the produc-
269 tion company is preapproved for an amount that exceeds the amount
270 that is calculated using the actual numbers when the return is filed,
271 the excess preapproved amount cannot be claimed by the production
272 company nor shall such excess preapproved amount be assigned to
273 any other taxpayer or added to the credit cap under paragraph (6) of
274 this regulation. If the production company is a disregarded entity
275 then such information should be submitted in the name of the owner
276 of the disregarded entity.

277
278 (b) Notification. The Department will notify each production
279 company of the tax credits preapproved or denied to such production
280 company.

281
282 (c) Allocation of Tax Credit. The Commissioner shall allow the
283 tax credits on a first-come, first-served basis. The date the Form IT-
284 MC-AP is electronically submitted shall be used to determine such
285 first-come, first-served basis.

286
287 (d) Applications received on the day the maximum credit amount
288 is reached. In the event that the credit amounts on applications re-
289 ceived by the Commissioner exceed the maximum aggregate limit
290 in paragraph (6) of this regulation, then the tax credits shall be allo-
291 cated among the production companies who submitted Form IT-
292 MC-AP on the day the maximum aggregate limit was exceeded on
293 a pro rata basis based upon amounts otherwise allowed un-
294 der O.C.G.A. § 48-7-40.33, and this regulation. Only credit amounts
295 on applications received on the day the aggregate credit cap was ex-
296 ceeded will be allocated on a pro rata basis.

297
298 (e) Once the credit cap is reached for a taxable year, production

companies who meet the requirements of the musical tax credit during such taxable year shall no longer be eligible for a credit under O.C.G.A. § 48-7-40.33. If any Form IT-MC-AP is received after the taxable year preapproval limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(f) In the event it is determined that the production company has not met all the requirements of O.C.G.A. § 48-7-40.33 and this regulation, then the amount of credits shall not be preapproved or the preapproved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(8) Musical or Theatrical Performance or Recorded Musical Performance with Qualified Production Expenditures in More Than One Year. A musical or theatrical performance or recorded musical performance which occurs over two or more years shall be considered a single project. The production company should request preapproval for the year the applicable spending threshold is met, and if necessary must request preapproval for any later year with qualified production expenditures.

(a) Example 1: A production company has \$700,000 in qualified production expenditures during two years (they spend \$300,000 in year 1 and \$400,000 in year 2) producing one musical or theatrical performance. The production company may aggregate their qualified production expenditures over the two years for this single project to achieve the \$500,000 spending threshold. The production company must request preapproval in year 2 for \$700,000 (the year the \$500,000 spending threshold is met), and if preapproved, claim the credit on their applicable year 2 Georgia income tax return.

(b) Example 2: A production company has \$800,000 in qualified

332 production expenditures during two years (they spend \$600,000 in
333 year 1 and \$200,000 in year 2) producing one musical or theatrical
334 performance. The production company may aggregate their quali-
335 fied production expenditures over the two years for this single pro-
336 ject to achieve the \$500,000 spending threshold. The production
337 company must request preapproval in year 1 for \$600,000 (the year
338 the \$500,000 spending threshold is met) and in year 2 the production
339 company must request preapproval for \$200,000 of production ex-
340 penditures (the later year). If preapproved for year 1, the production
341 company must claim the \$600,000 on their applicable year 1 Geor-
342 gia income tax return and if preapproved for year 2 the production
343 company must claim \$200,000 on their applicable year 2 Georgia
344 income tax return.

345
346 **(9) Qualified Production Expenditures Not Eligible for the**
347 **Musical Tax Credit.** Any qualified production expenditures for
348 which a production company claims the tax credit under O.C.G.A.
349 § 48-7-40.26 are not eligible for the musical tax credit un-
350 der O.C.G.A. § 48-7-40.33 and this regulation.

351
352 **(10) Claiming the Musical Tax Credit.** A production company
353 claiming tax credits under paragraph (6) of this regulation must at-
354 tach Form IT-MC, and their final certification from the Georgia De-
355 partment of Economic Development to its Georgia income tax re-
356 turn for each tax year in which the credit is claimed.

357
358 **(a) Withholding Tax.** The production company may claim any
359 excess musical tax credit against its withholding tax liability or the
360 withholding tax liability of its payroll service providers provided
361 such withholding tax liability is with respect to the employees of the
362 production company and is attributable to withholding for such em-
363 ployees for withholding periods approved in subparagraph (10)(a)3.
364 of this regulation. The withholding tax benefit may only be applied

365 against the withholding tax account used by the production company
366 or its payroll service provider for payroll purposes. In the event the
367 production company is a single member limited liability company
368 that is disregarded for income tax purposes, the withholding tax ben-
369 efit may only be applied against the withholding tax liability that is
370 attributable to wages paid by the single member limited liability
371 company or against the withholding tax liability of its payroll ser-
372 vice providers provided such withholding tax liability is attributable
373 to wages paid by its payroll service provider with respect to the in-
374 dividuals providing services to the single member limited liability
375 company and is attributable to withholding for such employees for
376 withholding periods approved in subparagraph (10)(a)3. of this reg-
377 ulation. Any production company that qualifies to take all or a part
378 of the musical tax credit against withholding tax otherwise due the
379 Department of Revenue, must notify the Commissioner, in the man-
380 ner specified in subparagraph (10)(a)1., below, for any tax year for
381 which they are making make an irrevocable election to take all or a
382 part of the credit against the quarterly or monthly withholding tax
383 payment for such company do so as a part of its notification to the
384 Commissioner required under this subparagraph. When this election
385 is made, the excess musical tax credit will not pass through to the
386 shareholders, partners, or members of the production company if the
387 production company is a pass-through entity.

388
389 1. Notice of Intent. To claim any excess musical tax credit not
390 used on the income tax return against the production company's
391 withholding tax liability, the production company must file Revenue
392 Form IT-WH *Notice of Intent* through the Georgia Tax Center
393 within the three-year statute of limitations period (30) days after the
394 due date of the Georgia income tax return (including extensions) ~~or~~
395 ~~within thirty (30) days after the filing of a timely filed Georgia in-~~
396 ~~come tax return, whichever occurs first.~~ Failure to file this form as
397 provided in this subparagraph will result in disallowance of the

398 withholding tax benefit. Such irrevocable election may only be
399 made one time with respect to each tax year for which the credit is
400 earned for such tax year, for all or part of the excess tax credit re-
401 maining at the time of the election. However, in the case of a credit
402 which is earned in more than one taxable year, the election to claim
403 the withholding credit will be available for the credit earned in such
404 subsequent year.

405
406 2. Review Period. The Department of Revenue has one hundred
407 twenty (120) days from the date the applicable Form IT-WH under
408 subparagraph (10)(a)1. of this regulation is received to review the
409 credit and make a determination of the amount eligible to be used
410 against withholding tax.

411
412 3. Letter of Eligibility. Once the review is completed, a letter will
413 be sent to the production company stating the musical tax credit
414 amount which may be applied against withholding and when the
415 production company or its payroll service provider may begin to
416 claim the musical tax credit against withholding tax. The Depart-
417 ment of Revenue shall treat this amount as a credit against future
418 withholding tax payments and will not refund any previous with-
419 holding payments made by the production company or its payroll
420 service provider.

421
422 (b) Use of Other Tax Credits. Production companies claiming the
423 musical tax credit may not claim the job tax credit, headquarters tax
424 credit, or quality jobs tax credit for employees whose wages are used
425 to calculate the musical tax credit.

426
427 (c) Assignment of Credit to Affiliates. Once the production com-
428 pany establishes the amount of the musical tax credit by filing the
429 tax return for the taxable year in which the credit was earned, the
430 credit may then be assigned to the production company's affiliates

under the provisions of O.C.G.A. § 48-7-42. When a musical tax credit is assigned to an affiliated entity, the affiliated entity may apply the credit solely against its own income tax liability. The affiliated entity may not claim any excess musical tax credit against its withholding tax. Any unused credit may be carried forward by such affiliated entity until the credit is used or it expires, whichever occurs first.

(11) ~~Carry Forward~~Carryforward. Any credit that is claimed but not used in a taxable year may be carried forward for five years from the close of the taxable year in which the qualified production expenditures were made and the production company established the amount of the musical tax credit for that taxable year.

(a) Musical tax credits may not be carried back and applied against a prior year's income tax liability.

(12) **Audits.** Any Department of Revenue audit triggered by a production company's use of a musical tax credit will require the production company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the production company that the audit is a musical tax credit audit and thus subject to this clause prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this provision.

(13) **Pass-Through Entities.** When a production company generating a musical tax credit is a pass-through entity, and has no income tax liability of its own, the musical tax credit will pass to its members, shareholders, or partners based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the production company that incurred the qualifying production expenditures to establish the amount of the musical tax

credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess musical tax credit against their withholding tax liabilities or against the withholding tax liabilities of their payroll service providers. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2019. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2019 tax year.

(14) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, ~~2018~~2025. Taxable years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.33(reserved).

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.62 Rural Zone Tax Credits

The purpose of proposed Rule 560-7-8-.62 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 and Senate Bill 496 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (5) explains the rural zone property tax credit.
- Paragraph (8) provides the carryforward of the credit.
- Paragraph (11) provides the sunset date of the credit.
- Paragraph (12) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.62 Rural Zone Tax Credits

560-7-8-.62 Rural Zone Tax Credits

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credits under O.C.G.A. § 48-7-40.32.

(2) **Coordination of Agencies.** Under O.C.G.A. § 48-7-40.32, the Department of Community Affairs and the Department of Economic Development are the state agencies responsible for designating zones for the tax credits and the Department of Community Affairs is the state agency responsible for certifying taxpayers for the tax credits.

(3) **Definitions.** The terms “certified entity”, “certified investor”, “eligible business”, “full-time equivalent”, “local government”, “maintained job”, “qualified rehabilitation expenditure”, “rural zone”, “year one”, and “years one through five” as used in this regulation are defined in the Department of Community Affairs Regulation 110-34-1-.02.

35
36 **(4) Rural Zone Jobs Tax Credit.** A certified entity that creates
37 at least two new full-time equivalent jobs in a rural zone shall be
38 allowed a tax credit in the amount of \$2,000 for each new full-time
39 equivalent job in year one. Such certified entity shall receive rural
40 zone jobs tax credit in years two through five for each new full-time
41 equivalent job created in year one, provided the new full-time
42 equivalent jobs are maintained in each year, and provided the
43 certified entity maintains at least two new full-time equivalent jobs.
44

45 (a) Additional New Full-Time Equivalent Jobs Created in Years
46 Two Through Five. For each additional new full-time equivalent job
47 created in years two through five, a certified entity shall receive rural
48 zone jobs tax credit, provided the new full-time equivalent jobs are
49 maintained. Additional new full-time equivalent jobs means those
50 new full-time equivalent jobs created in years two through five that
51 increase the monthly full-time employment average for that year
52 above the monthly full-time employment average for year one. The
53 average full-time monthly employment for a year will be determined
54 by the procedure in Department of Community Affairs
55 Regulation 110-34-1-.06.
56

57 (i) The credits for additional new full-time equivalent jobs may
58 only be taken if the certified entity already qualifies for the rural
59 zone jobs tax credit in year one.
60

61 (b) Subsequent Year One. The certified entity may begin a
62 subsequent year one and years two through five as provided in
63 Department of Community Affairs Regulation 110-34-1-.06.
64

65 (c) Per Certified Entity Credit Limitation. The credit amount
66 allowed under paragraph(4) of this regulation shall be further
67 limited for each certified entity and shall not exceed \$40,000.00 per

68 taxable year.

69

70 (d) Number of Full-Time Equivalent Jobs. The number of new
71 full-time equivalent jobs shall be determined by comparing the
72 monthly average of full-time equivalent jobs subject to Georgia
73 income tax withholding for a given taxable year with the
74 corresponding period of the prior taxable year; provided a certified
75 entity that begins operations during the taxable year may be certified
76 by the Department of Community Affairs to base initial eligibility
77 on a period of less than 12 months.

78

79 (e) Computation of Rural Zone Jobs Tax Credit Based on Twelve
80 Month Periods Only. Except as provided in subparagraph (4)(d) of
81 this regulation, a certified entity must compute increases and
82 decreases in full-time equivalent jobs on the basis of twelve month
83 periods only, even when the certified entity has taxable years that
84 are not equal to twelve months. This may cause the rural zone jobs
85 tax credit calculation period to be different from the tax year of the
86 certified entity.

87

88 (5) **Rural Zone Property Tax Credit.** A certified investor that
89 acquires and develops property in a rural zone shall be allowed a tax
90 credit if an eligible business that claims the tax credit under
91 paragraph (4) of this regulation is located in the investment property;
92 or if an eligible business is located in the investment property and
93 that eligible business maintains a minimum of two full-time
94 equivalent jobs for each year the rural zone property tax credit is
95 claimed.

96

97 (a) Credit Amount. The credit amount for the rural zone property
98 tax credit is 25 percent of the purchase price and shall not exceed
99 \$125,000; provided that the entire credit shall not be taken in the
100 year in which the property is placed in commercial service but shall,

101 for taxable years ending on or before December 31, 2024, be
102 prorated equally in five installments over five taxable years,
103 beginning with the taxable year in which the property is placed in
104 service. For taxable years beginning on or after January 1, 2025, the
105 entire credit shall not be taken in the year in which the property is
106 placed in commercial service but shall be prorated equally in three
107 installments over three taxable years, beginning with the taxable
108 year in which the property is placed in service.
109

110 (b) Certified Investor May Preserve the Rural Zone Property Tax
111 Credit. A certified investor shall be allowed to claim the rural zone
112 property tax credit for up to seven years from the date of initial
113 eligibility in the event the commercial requirement under paragraph
114 (5) of this regulation is not satisfied in consecutive years.
115

116 (6) **Rural Zone Qualified Rehabilitation Expenditures Tax**
117 **Credit.** A certified entity or certified investor that meets the
118 minimum historic preservation standards provided by the
119 Department of Community Affairs, that has qualified rehabilitation
120 expenditures, shall receive the rural zone qualified rehabilitation
121 expenditures tax credit for three years beginning with the year the
122 property is placed in service. The certified entity or certified investor
123 shall maintain a minimum of two full-time equivalent jobs for each
124 year the tax credit is claimed; or with respect to a certified investor,
125 if an eligible business is located in the investment property, such
126 eligible business must maintain a minimum of two full-time
127 equivalent jobs for each year the tax credit is claimed.
128

129 (a) Credit Amount. The credit amount for the rural zone qualified
130 expenditures tax credit is 30 percent of the qualified rehabilitation
131 expenditures and shall not exceed \$150,000 per project; provided
132 that the entire credit shall not be taken in the year in which the
133 property is placed in service but shall be prorated equally in three

installments over three taxable years, beginning with the taxable year in which the property is placed in service.

(7) **Claiming the Rural Zone Tax Credit(s).** For a certified entity or certified investor to claim the rural zone jobs tax credit, rural zone property tax credit or the rural zone qualified rehabilitation expenditures tax credit, the certified entity or certified investor must submit Form IT-RZ and their Department of Community Affairs certification(s), and any other information that the Commissioner may request, with the certified entity's or certified investor's Georgia income tax return each year the credit is claimed.

(8) ~~Carry Forward~~Carryforward. In no event shall the rural zone tax credit for a taxable year exceed the certified entity's or certified investor's income tax liability. Any unused credit in a taxable year may be carried forward for ~~ten~~the number of years authorized under O.C.G.A. § 48-7-40.32 from the close of the taxable year in which the credit was claimed.

(9) **Pass-Through Entities.** When the certified entity or certified investor is a pass-through entity, and has no income tax liability of its own, the tax credit will pass to its individual members, shareholders, or partners based on their year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the pass-through entity to establish the amount of the credit available for pass through. The credit will then pass through to its individual shareholders, members, or partners to be applied against the tax liability on their income tax returns. The credits are available for use as a credit by the individual shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2019. The partnership passes the

credit to a calendar year partner. The credit is available for use by the individual partner beginning with the calendar 2019 tax year.

(10) **Coordination with Other Tax Credits.** A certified entity or certified investor that claims the rural zone tax credit for a project shall not be allowed to use the same qualified rehabilitation expenditures to generate and claim any additional state income tax credits, including, but not limited to, the historic rehabilitation tax credit. Jobs created by, arising from, or connected in any way with a project claimed under the rural zone jobs tax credit are not eligible to be used toward other job related tax credits.

(11) **Sunset Date.** O.C.G.A. § 48-7-40.32, the rural zone tax credits, shall be repealed on December 31, ~~2027~~2032.

(12) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, ~~2018~~2024. Taxable years beginning before January 1, 2024 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2024 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40.32.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.64 Railroad Track Maintenance Tax Credit

The purpose of proposed Rule 560-7-8-.64 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (9) provides the carryforward of the credit.
- Paragraph (11) provides the rules relating to selling or transferring the credit.
- Paragraph (12) explains the process of selling or transferring the credit.
- Paragraph (15) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.64 Railroad Track Maintenance Tax Credit

560-7-8-.64 Railroad Track Maintenance Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the income tax credit under O.C.G.A. § 48-7-40.34.

(2) **Definitions.**

(a) The term “Class III railroad” means a rail carrier classified as a Class III railroad by the United States Surface Transportation Board in accordance with Section 1-1 of 49 C.F.R. 1201, as it existed on January 1, 2018.

(b) The term “qualified railroad track maintenance expenditures” means gross expenditures for maintaining railroad track located in Georgia, including roadbed, bridges, and related track structures located in Georgia, owned or leased as of January 1, 2018, by a Class III railroad. Such term shall also include improvement of such railroad track, roadbed, bridges, and related track structures.

35
36 (3) **Credit Amount.** For tax years beginning on or after January
37 1, 2019, and ending on or before December 31, 2026, a Class III
38 railroad shall be allowed a tax credit in the amount of 50 percent of
39 the qualified railroad track maintenance expenditures paid or
40 incurred by such Class III railroad during the taxable year.

41
42 (4) **Credit Amount Limitation.** The credit amount allowed
43 under paragraph (3) of this regulation shall be further limited for
44 each Class III railroad and shall not exceed \$3,500 multiplied by
45 each mile of railroad track owned or leased in Georgia as of the close
46 of the taxable year by such Class III railroad. Double track is treated
47 as multiple lines of railroad track, rather than as a single line of
48 railroad track. Thus, one mile of single track is one mile, but one
49 mile of double track is two miles.

50
51 (5) **Per Mile Limitation.** The credit allowed under O.C.G.A. §
52 48-7-40.34 and this regulation shall only be allowed once for each
53 mile of railroad track in each taxable year.

54
55 (6) **Reduction of basis.** If a credit is allowed under O.C.G.A. §
56 48-7-40.34 and this regulation with respect to any railroad track, the
57 basis of such railroad track shall be reduced by the amount of the
58 credit allowed. Such reduction shall be treated in the same manner
59 as provided by Section 45G of the Internal Revenue Code of 1986.

60
61 (7) **Preapproval.** A taxpayer seeking preapproval to claim the
62 tax credit under O.C.G.A. § 48-7-40.34 must electronically submit
63 Form IT-RTM-AP through the Georgia Tax Center along with
64 documentation that substantiates the miles of railroad track owned
65 or leased by the taxpayer in Georgia, and any other information that
66 the Commissioner may request. The Department will not
67 preapprove any taxpayer where Form IT-RTM-AP is submitted or

68 filed in any other manner. If the taxpayer is a disregarded entity then
69 Form IT-RTM-AP should be electronically submitted in the name
70 of the owner of the disregarded entity. If Form IT-RTM-AP is
71 submitted before the credit is earned or before the end of the
72 taxpayer's tax year, the taxpayer must estimate their credit amounts
73 on Form IT-RTM-AP. The amount of tax credit claimed on the
74 taxpayer's applicable Georgia income tax return must be based on
75 the actual amount of qualified railroad track maintenance
76 expenditures. If the taxpayer is preapproved for an amount that
77 exceeds the amount that is calculated using the actual amount of the
78 qualified railroad track maintenance expenditures when the return is
79 filed, the excess preapproved amount cannot be claimed by the
80 taxpayer, nor shall the excess preapproved amount be claimed by,
81 reallocated to, assigned to, or transferred or sold to any other
82 taxpayer.

83
84 (a) Notification. The Department will notify each taxpayer of the
85 tax credits preapproved to such taxpayer, within thirty (30) days
86 from the date the completed Form IT-RTM-AP was submitted
87 through the Georgia Tax Center.

88
89 (8) **Claiming the Credit.** To claim the railroad track
90 maintenance tax credit, the taxpayer must submit Form IT-RTM,
91 and any other information that the Commissioner may request, with
92 the taxpayer's Georgia income tax return each year the tax credit is
93 claimed. A software program's Form IT-RTM that is electronically
94 filed with the Georgia income tax return in the manner specified by
95 the Department satisfies this requirement.

96
97 (9) ~~No Carry forward~~**Carryforward.** ~~No unused railroad track~~
98 ~~maintenance tax credit shall be allowed the taxpayer or the~~
99 ~~transferee against succeeding years' tax liability~~ Any credit which
100 is claimed but not used in a taxable year shall be allowed to be

101 carried forward for the number of years authorized under O.C.G.A.
102 § 48-7-40.34.

103

104 (10) **Pass-Through Entities.** When the taxpayer is a pass-
105 through entity, and has no income tax liability of its own, the tax
106 credits will pass to its members, shareholders, or partners based on
107 the year ending profit/loss percentage and the limitations of this
108 regulation. The credit forms will initially be filed with the tax return
109 of the taxpayer to establish the amount of the credit available for
110 pass through. The credit will then pass through to its shareholders,
111 members, or partners to be applied against the tax liability on their
112 income tax returns. The credits are available for use as a credit by
113 the shareholders, members, or partners for their tax year in which
114 the income tax year of the pass-through entity ends. For example: A
115 partnership earns the credit for its tax year ending January 31, 2020.
116 The partnership passes the credit to a calendar year partner. The
117 credit is available for use by the individual partner beginning with
118 the calendar 2020 tax year.

119

120 (11) **Selling or Transferring the Railroad Track Maintenance**
121 **Tax Credit.** The taxpayer may sell or transfer in whole or in part
122 any railroad track maintenance tax credit previously claimed but not
123 used by such taxpayer against its income tax, to another Georgia
124 taxpayer subject to the following conditions:

125

126 (a) The taxpayer may only make a one-time sale or transfer of
127 railroad track maintenance tax credits earned in each taxable year.
128 However, the sale or transfer may involve more than one transferee.
129 For example, taxpayer 1 earns and claims \$100,000 credit in year 1.
130 In year 2 they sell \$75,000 of the credit to taxpayer 2. ~~In year~~ In year
131 3, they are allowed to sell the remaining \$25,000 of the credit to
132 taxpayer 3. However, both taxpayer 2 and taxpayer 3 are not allowed
133 to resell the credit since the credit can only be sold one-time.

(b) The railroad track maintenance tax credit may be transferred before the tax return is filed by the taxpayer provided the taxpayer has received preapproval from the Department as provided in paragraph (7) of this regulation.

(c) The taxpayer must file Form IT-TRANS "Notice of Tax Credit Transfer" with the Department of Revenue within 30 days of the transfer or sale of the railroad track maintenance tax credit. Form IT-TRANS must be submitted electronically to the Department of Revenue through the Georgia Tax Center or alternatively as provided in subparagraph (11)(c)1. of this regulation. With respect to such taxpayer, the Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. If the taxpayer is a disregarded entity then Form IT-TRANS should be filed in the name of the owner of the disregarded entity.

1. The web-based portal on the Georgia Tax Center. The taxpayer may provide selective information to a representative for the purpose of allowing the representative to submit Form IT-TRANS on their behalf on the Georgia Tax Center outside of a login. The provision of such information shall authorize the representative to submit such Form IT-TRANS. The representative must provide all information required by the web-based portal on the Georgia Tax Center to submit Form IT-TRANS.

(d) The taxpayer must provide all required railroad track maintenance tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the railroad track maintenance tax credit being disallowed until the taxpayer complies with such requirements.

(e) The ~~carry forward~~ carryforward period of the railroad track

167 maintenance tax credit for the transferee will be the same as it was
168 for the taxpayer. ~~No unused railroad track maintenance tax credit~~
169 ~~shall be allowed to be carried forward~~ This credit may be carried
170 forward for the number of years authorized under O.C.G.A. § 48-7-
171 40.34.

172
173 1. Example. Taxpayer sells the railroad track maintenance tax
174 credit on June 15, ~~2020~~ 2026. This credit is for qualified railroad
175 track maintenance expenditures preapproved by the Department for
176 ~~2019~~ 2025, paid or incurred in ~~2019~~ 2025 and claimed by the
177 taxpayer on their ~~2019~~ 2025 income tax return. The transferee is a
178 calendar year taxpayer. The credit may be claimed by the transferee
179 on the ~~calendar 2019 tax year~~ 2025, 2026, 2027, 2028 return and the
180 carryforward period for this credit will expire on December 31,
181 2028. The credit cannot be carried forward by the taxpayer or the
182 transferee. The credit can only be utilized in tax year 2019. This
183 carryforward treatment applies regardless of whether it is being
184 claimed by Taxpayer or the transferee.

185
186 (f) A transferee shall only have such rights to claim and use the
187 railroad track maintenance tax credit that were available to the
188 taxpayer at the time of the transfer. Thus, a transferee shall not have
189 the right to subsequently transfer such credit since that right has been
190 utilized by the transferor.

191
192 (g) In the event of recapture, reduction, disallowance, or other
193 failure related to the railroad track maintenance tax credit, the
194 Department may pursue the taxpayer or the transferee.

195
196 **(12) How to Sell or Transfer the Railroad Track Maintenance**
197 **Tax Credit.** The taxpayer may sell or transfer the railroad track
198 maintenance tax credit directly to a Georgia taxpayer (or multiple
199 Georgia taxpayers as provided in subparagraph (11)(a) of this

regulation). A pass-through entity may make an election to sell the railroad track maintenance tax credit preapproved in a taxable year at the entity level. If the pass-through entity makes the election to sell the railroad track maintenance tax credit at the entity level, the credit does not pass through to the shareholders, members, or partners. In all cases, the effect of the sale of the credit on the income of the seller and buyer of the credit will be the same as provided in the Internal Revenue Code.

(a) Pass-Through Entity. The taxpayer may be structured as a pass-through entity. If a pass-through entity does not make the election to sell or transfer the tax credit at the entity level as provided in paragraph (12) of this regulation, the tax credit will pass through to the shareholders, partners, or members of the entity based on their year ending profit/loss percentage. The shareholders, members, or partners may then sell their respective railroad track maintenance tax credit to a Georgia taxpayer.

(b) Transferee Pass-Through Entity. The taxpayer or its shareholders, members, or partners, may sell or transfer the tax credit to a pass-through entity. If the pass-through entity has no income tax liability of its own, the pass-through entity may then pass the credit through to its shareholders, members, or partners based on the pass-through entity's year ending profit/loss percentage for the year. For example, if a calendar year partnership is buying the credit preapproved by the Department for 20192025, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 20192025 tax year of the partnership. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the railroad track maintenance tax credit. ~~The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-~~

through entity ends. For example, a taxpayer received preapproval from the Department for 2019, incurred qualified railroad track maintenance expenditures in 2019, and sells the credit to a pass-through entity. The pass-through entity is entitled to use the credits on its calendar year 2019 tax return. The pass-through entity has two partners. The first partner is a calendar year partner. This credit can only be utilized on the calendar tax year 2019 return and cannot be carried forward by the partner. The second partner is a corporation with fiscal year ending June 30, 2020. This credit can only be utilized on the fiscal year ending June 30, 2020, return and cannot be carried forward by the partner.

(c) The credits are available for use by the transferee, provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected under O.C.G.A. § 48-2-35;

1. In the transferee's tax year in which the income tax year of the taxpayer which claims the railroad track maintenance tax credit associated with the credit being sold, ends; or

2. During any later tax year before the carryforward period associated with the tax credit ends.

1.(i) Example. Taxpayer sells the railroad track maintenance tax credit on October 15, 2019~~2025~~. This credit is for qualified railroad track maintenance expenditures preapproved by the Department for 2019~~2025~~, incurred in 2019~~2025~~ and claimed by the taxpayer on their 2019~~2025~~ income tax return. The transferee is a calendar year taxpayer. The credit may be claimed by the transferee on the calendar 2019 tax year~~2025~~, 2026, 2027, or 2028 return. This credit cannot be carried forward by the taxpayer or the transferee. The credit can only be utilized in tax year 2019 but can be claimed on an

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266 ~~amended tax year 2019 return within the time period provided in~~
267 ~~subparagraph (c) of this paragraph.~~

268

269 (13) **Report.** On or before September 1, 2020, 2021, 2022, 2023,
270 2024, 2025, 2026, and 2027 the Department shall issue a report to
271 the chairpersons of the Senate Finance Committee and the House
272 Committee on Ways and Means, which shall include the following
273 statistics for the preceding taxable year:

274

275 (a) The total number of taxpayers that claimed a credit; and

276

277 (b) The number and total value of all credits earned and all credits
278 applied during such tax year.

279

280 (14) **Sunset Date.** O.C.G.A. § 48-7-40.34, the railroad track
281 maintenance tax credit, shall be repealed on January 1, 2027.

282

283 (15) **Effective Date.** This regulation shall be applicable to
284 taxable years beginning on or after January 1, ~~2019~~2025. Taxable
285 years beginning before January 1, 2025 will be governed by the
286 regulations of Chapter 560-7 as they existed before January 1, 2025
287 in the same manner as if the amendments thereto set forth in this
288 regulation had not been promulgated.

289

290 Authority: O.C.G.A. §§ 48-2-12, 48-7-40.34.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.66 Personal Protective Equipment Manufacturer Jobs Tax Credit

The purpose of proposed Rule 560-7-8-.66 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (1) provides the purpose of the rule.
- Paragraph (7) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (8) provides the carryforward period of the credit.
- Paragraph (11) provides the effective date of the regulation.

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

**CHAPTER 560-7
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**SUBJECT 560-7-8
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560-7-8-.66 Personal Protective Equipment Manufacturer Jobs Tax Credit

**560-7-8-.66 Personal Protective Equipment Manufacturer Jobs
Tax Credit**

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § ~~48-7-40.1~~ ~~A48-7-40.1A~~.

(2) **Definitions.**

(a) "Establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed.

(b) "Hand sanitizer" means any hand antiseptic, hand rub, soap, or agent applied to the hands for the purpose of removing common pathogens, including, but not limited to, hand cleaners and sanitizers provided for under 7 C.F.R. Section 3201.18.

(c) "Personal protective equipment" or "PPE" means any

35 protective clothing, helmets, gloves, face shields, goggles, face-
36 masks, hand sanitizer, and respirators or other equipment designed
37 to protect the wearer from injury or to prevent the spread of infec-
38 tion, disease, virus, or other illness. Such term shall include equip-
39 ment identified under 29 C.F.R. Section 1910, Subpart I.

40
41 (d) "Personal protective equipment manufacturer" or "PPE man-
42 ufacturer" means any business enterprise which is engaged in the
43 manufacturing of PPE in this state. Such term shall also include any
44 business enterprise which, in response to COVID-19, began manu-
45 facturing PPE in this state. Such term shall not include retail busi-
46 nesses that sell PPE. Such term shall not include a manufacturer that
47 manufactures the material used in the personal protective equipment
48 but not the personal protective equipment itself. Such term shall not
49 include a manufacturer that manufactures the equipment used to
50 manufacture the personal protective equipment.

51
52 (3) **Credit Amount.** A personal protective equipment manufac-
53 turer that qualifies for the jobs tax credit under O.C.G.A. § 48-7-
54 40 or 48-7-40.1 and the applicable jobs tax credit regulations and
55 claims the jobs tax credit as provided in Revenue Regulation 560-7-
56 8-.36 shall be allowed an additional \$1,250 personal protective
57 equipment manufacturer jobs tax credit for those qualifying jobs to
58 the extent they are engaged in the qualifying activity of manufactur-
59 ing personal protective equipment in Georgia during the taxable
60 year.

61
62 (4) **Maximum Amount of Credit.** The personal protective
63 equipment manufacturer jobs tax credit may be used to offset 100%
64 of the personal protective equipment manufacturer's Georgia in-
65 come tax liability derived from operations within this state.

66
67 (5) **Eligibility.** A personal protective equipment manufacturer

68 shall be eligible for the additional personal protective equipment
69 manufacturer jobs tax credit under paragraph (3) of this regulation
70 at an individual establishment of the business. If more than one busi-
71 ness activity is conducted at the establishment, then only those jobs
72 engaged in the qualifying activity of manufacturing personal protec-
73 tive equipment in Georgia shall be eligible for the additional per-
74 sonal protective equipment manufacturer jobs tax credit.

75
76 (a) The determination of whether a job is considered engaged in
77 the qualifying activity of manufacturing personal protective equip-
78 ment in Georgia shall be determined on a monthly basis. In order to
79 qualify for the PPE tax credit, such job must first qualify for and be
80 claimed for the jobs tax credit under O.C.G.A. § 48-7-40 or 48-7-
81 40.1. The personal protective equipment manufacturer must com-
82 pute a monthly average number of jobs engaged in the qualifying
83 activity of manufacturing personal protective equipment in Georgia.
84 Any job that is included in the jobs tax credit calculation (either a
85 new or maintained job), where 50 percent or more of the time is
86 spent on the qualifying activity of manufacturing personal protective
87 equipment in Georgia, shall be eligible to be included in the total for
88 such month, but in no case can such number exceed the number of
89 jobs that are included in the jobs tax credit computation for such
90 month. A job should be excluded from the monthly computation for
91 any month that it does not meet the 50 percent requirement. Once
92 the monthly average is computed, the number that is allowed cannot
93 exceed the number of jobs that are allowed for the jobs tax credit for
94 such year.

95
96 (b) For example. A taxpayer started their business in 2019 and
97 manufactures personal protective equipment in Georgia and also has
98 another business in Georgia. The taxpayer qualified for and claimed
99 the jobs tax credit for jobs at both businesses. Not all the jobs in-
100 cluded in the jobs tax credit are involved in the manufacture of

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101 personal protective equipment. The taxpayer has the following job
102 numbers in 2020:

103

Month in 2020	Eligible for the Jobs Tax Credit	Allowed for the PPE Credit
January	50	25
February	52	27
March	55	30
April	60	35
May	71	46
June	68	43
July	55	30
August	52	27
September	55	30
October	66	41
November	44	19
December	60	35
Monthly Average - Num- ber of jobs eligible for the jobs tax credit and allowed for the PPE credit	57	32

104

105 (c) Only jobs that are involved in the qualifying activity of man-
106 ufacturing personal protective equipment in Georgia are allowed to
107 be included when claiming the personal protective equipment man-
108 ufacturer jobs tax credit. This shall include managers, sales jobs, and
109 support jobs that are involved in the qualifying activity of manufac-
110 turing personal protective equipment in Georgia provided such per-
111 sons meet the other requirements including the 50% requirement.

112

113 (6) **Conditions and Limitations.** The personal protective

114 equipment manufacturer jobs tax credit shall be allowed subject to
115 the conditions and limitations under O.C.G.A. §§ 48-7-40 or 48-7-
116 40.1 and the applicable jobs tax credit regulations. The personal pro-
117 tective equipment manufacturer jobs tax credit shall be disallowed
118 during any year that the taxpayer does not qualify as a personal pro-
119 tective equipment manufacturer but the PPE manufacturer may
120 requalify in a later year if they meet the requirements.

121
122 (a) Personal protective equipment manufacturers that make the
123 election provided in O.C.G.A. §§ 48-7-40(m) or 48-7-40.1(k) to use
124 their 2019 jobs tax credit numbers for their 2020 or 2021 jobs tax
125 credit, cannot use their 2019 jobs tax credit numbers to determine
126 the personal protective equipment manufacturer jobs tax credit for
127 2020 or 2021. Only personal protective equipment manufacturing
128 jobs actually created or maintained in each respective year can be
129 claimed.

130
131 **(7) Claiming the Credit.** For a personal equipment manufac-
132 turer to claim the personal protective equipment manufacturer jobs
133 tax credit, the personal protective equipment manufacturer must
134 submit Form IT-CA with the personal protective equipment manu-
135 facturer's Georgia income tax return each year the credit is claimed.
136 A software program's Form IT-CA that is electronically filed with
137 the Georgia income tax return in the manner specified by the De-
138 partment satisfies this requirement.

139
140 (a) Withholding tax. A personal protective equipment manufac-
141 turer may claim any excess personal protective equipment manufac-
142 turer jobs tax credit against its withholding tax liability. Except in
143 the case of a timely assignment under O.C.G.A. § 48-7-42, the with-
144 holding tax benefit may only be applied against the withholding tax
145 account used by the personal protective equipment manufacturer for
146 payroll purposes. In the event the personal protective equipment

manufacturer that earned the credit is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company, but note that such benefit may also be assigned pursuant to O.C.G.A. § 48-7-42. A personal protective equipment manufacturer must notify the commissioner ~~each year of its, in the manner specified in subparagraph (7)(a)1., below, for any tax year for which they are making an~~ irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payments for such personal protective equipment manufacturer. When this election is made by a pass-through entity, the excess personal protective equipment manufacturer jobs tax credit will not pass through to the shareholders, partners, or members of the personal protective equipment manufacturer if the personal protective equipment manufacturer is a pass-through entity.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the personal protective equipment manufacturer's withholding tax liability, the personal protective equipment manufacturer must file Revenue Form IT-WH through the Georgia Tax Center within the three-year statute of limitations period ~~thirty (30) days after the due date of the Georgia income tax return (including extensions) or within thirty (30) days after the filing of a timely filed Georgia income tax return, whichever occurs first.~~ Failure to file this form as provided in this subparagraph will result in disallowance of the withholding tax benefit. Such irrevocable election may only be made one time with respect to each tax year for which the credit is earned for such tax year, for all or part of the excess tax credit remaining at the time of the election. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

180
181 2. Review Period. The Department of Revenue has one hundred
182 twenty (120) days from the date the applicable Form IT-WH under
183 subparagraph (7)(a)1. of this regulation is received to review the
184 credit and make a determination of the amount eligible to be used
185 against withholding tax.

186
187 3. Letter of Eligibility. Once the review is completed, a letter will
188 be sent to the personal protective equipment manufacturer stating
189 the tax credit amount which may be applied against withholding and
190 when the personal protective equipment manufacturer may begin to
191 claim the tax credit against withholding tax. The Department of
192 Revenue shall treat this amount as a credit against future withhold-
193 ing tax payments and will not refund any previous withholding pay-
194 ments.

195
196 (8) ~~Carry Forward~~**Carryforward**. Any personal protective
197 equipment manufacturer jobs tax credit which is claimed but not
198 used in a taxable year may be carried forward for ~~10~~the number of
199 years authorized under O.C.G.A. § 48-7-40.1A from the close of the
200 taxable year in which the qualifying personal protective equipment
201 manufacturer jobs were created. ~~For example, personal protective~~
202 ~~equipment manufacturer jobs tax credits created by an employment~~
203 ~~increase in year one, but not used in year one, may be carried for-~~
204 ~~ward to years two through eleven.~~

205
206 (9) **Pass-Through Entities**. When the personal protective equip-
207 ment manufacturer is a pass-through entity, and has no income tax
208 liability of its own, the tax credit will pass to its individual members,
209 shareholders, or partners based on their year ending profit/loss per-
210 centage. The credit forms will initially be filed with the tax return of
211 the pass-through entity to establish the amount of the credit available
212 for pass through. The credit will then pass through to its individual

shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess personal protective equipment manufacturer jobs tax credit against their withholding tax liabilities. The credits are available for use as a credit by the individual shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2021. The partnership passes the credit to a calendar year partner. The credit is available for use by the individual partner beginning with the calendar 2021 tax year.

(10) **Sunset Date.** No personal protective equipment manufacturer jobs tax credit shall be claimed and allowed for any jobs created on or after January 1, 2025; provided, however, jobs created before such date are eligible for the remaining installments provided the requirements of O.C.G.A. §§ 48-7-40, 48-7-40.1, and 48-7-40.1A and the related regulations are met.

(11) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, ~~2020~~2025. Taxable years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.1A.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.67 Life Sciences Manufacturing Job Tax Credit

The purpose of proposed Rule 560-7-8-.67 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (1) provides the purpose of the rule.
- Paragraph (2) provides the definitions.
- Paragraph (7) provides the restriction on claiming the personal protective equipment manufacturer jobs tax credit for the same jobs.
- Paragraph (8) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (9) provides the carryforward period of the credit.
- Paragraph (11) provides the effective date of the regulation.

**RULES
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**SUBJECT 560-7-8
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560-7-8-.67 Life Sciences Manufacturing Job Tax Credit

560-7-8-.67 Life Sciences Manufacturing Job Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § ~~48-7-40.1~~ B48-7-40.1B.

(2) **Definitions.**

(a) As used in this regulation, the terms “establishment”, “medical equipment and supplies manufacturer”, and “pharmaceutical and medicine manufacturer” shall have the same meaning as in O.C.G.A. § ~~48-7-40.1~~ B48-7-40.1B.

(b) “Life Sciences Manufacturing Job Tax Credit” is the credit established under O.C.G.A. § ~~48-7-40.1~~ B48-7-40.1B that is allowed to a medical equipment and supplies manufacturer and pharmaceutical and medicine manufacturer.

(3) **Credit Amount.** A medical equipment and supplies

35 manufacturer or a pharmaceutical and medicine manufacturer, that
36 qualifies for the job tax credit under O.C.G.A. § 48-7-40 or 48-7-
37 40.1 and the applicable job tax credit regulations thereunder, shall
38 be allowed an additional \$1,250 life sciences manufacturing job tax
39 credit for jobs created on or after July 1, 2021 that are engaged in
40 the qualifying activity of manufacturing medical equipment or sup-
41 plies or manufacturing pharmaceuticals or medicine in Georgia dur-
42 ing the taxable year.

43
44 (4) **Maximum Amount of Credit.** The life sciences manufactur-
45 ing job tax credit may be used to offset 100% of the medical equip-
46 ment and supplies manufacturer's and pharmaceutical and medicine
47 manufacturer's Georgia income tax liability derived from operations
48 within this state.

49
50 (5) **Eligibility.** A medical equipment and supplies manufacturer
51 and pharmaceutical and medicine manufacturer shall be eligible for
52 the life sciences manufacturing job tax credit under paragraph (3) of
53 this regulation at an individual establishment of the business. If
54 more than one business activity is conducted at the establishment,
55 then only those jobs engaged in the qualifying activity of manufac-
56 turing medical equipment or supplies or manufacturing pharmaceu-
57 ticals or medicine in Georgia shall be eligible for the life sciences
58 manufacturing job tax credit.

59
60 (a) The determination of whether a job is considered engaged in
61 the qualifying activity of manufacturing medical equipment or sup-
62 plies or manufacturing pharmaceuticals or medicine in Georgia shall
63 be determined on a monthly basis. In order to qualify for the life
64 sciences manufacturing job tax credit, such job must first qualify for
65 and be claimed for the job tax credit under O.C.G.A. § 48-7-
66 40 or 48-7-40.1. The medical equipment and supplies manufacturer
67 or the pharmaceutical and medicine manufacturer must compute a

monthly average number of jobs engaged in the qualifying activity of manufacturing medical equipment and supplies or manufacturing pharmaceuticals or medicine in Georgia. Any job created on or after July 1, 2021 that is included in the job tax credit calculation, where 50 percent or more of the time is spent in a month on the qualifying activity of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in Georgia, shall be eligible to be included in the total for such month, but in no case can such number exceed the number of jobs that are included in the job tax credit computation for such month. A job must be excluded from the monthly computation for any month that it does not meet the 50 percent requirement. Once the monthly average is computed, the number that is allowed cannot exceed the number of jobs that are allowed for the job tax credit for such year.

(b) For example. A taxpayer started its business in 2022 and such business manufactures medical equipment and supplies in Georgia and the taxpayer also has another business in Georgia. The taxpayer qualified for and claimed the job tax credit for jobs at both businesses. However, not all the jobs included in the job tax credit are involved in the manufacture of medical equipment and supplies. The taxpayer has the following job numbers in 2022:

Month in 2022	Eligible for the Jobs Tax Credit	Allowed for the life sciences manufactur- ing job tax credit
January	50	25
February	52	27
March	55	30
April	60	35
May	71	46
June	68	43

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July	55	30
August	52	27
September	55	30
October	66	41
November	44	19
December	60	35
Monthly Average - Number of jobs eligible for the job tax credit and allowed for the life sciences manufacturing job tax credit	57	32

91

92 (c) Only jobs that are involved in the qualifying activity of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in Georgia are allowed to be included when
93 claiming the life sciences manufacturing job tax credit. This shall
94 include managers, sales jobs, and support jobs that are involved in
95 the qualifying activity of manufacturing medical equipment and
96 supplies or manufacturing pharmaceuticals or medicine in Georgia
97 provided such persons meet the other requirements including the
98 50% monthly requirement.
99
100

101

102 (6) **Conditions and Limitations.** The life sciences manufacturing job tax credit shall be allowed subject to the conditions and limitations under O.C.G.A. §§ 48-7-40 or 48-7-40.1 and the applicable
103 job tax credit regulations. The life sciences manufacturing job tax
104 credit shall be disallowed during any year that the taxpayer does not
105 qualify as a medical equipment and supplies manufacturer or a pharmaceutical and medicine manufacturer but the medical equipment
106 and supplies manufacturer or the pharmaceutical and medicine manufacturer may requalify in a later year if they meet the requirements.
107
108
109
110

(a) Medical equipment and supplies manufacturers and pharmaceutical and medicine manufacturers that make the election provided in O.C.G.A. §§ 48-7-40(m) or 48-7-40.1(k) to use their 2019 job tax credit numbers for their 2021 job tax credit, cannot use their 2019 job tax credit numbers to determine the life sciences manufacturing job tax credit for 2021.

(b) Only medical equipment and supplies manufacturing or pharmaceutical and medicine manufacturing jobs actually created on or after July 1, 2021 can be claimed. As such any job included in the job tax credit computation that was created before July 1, 2021 shall not be eligible for the life sciences manufacturing job tax credit. To determine the number of jobs created on or after July 1, 2021 for any year that includes July 1, 2021, the number of jobs created on or after July 1, 2021 shall be computed by subtracting the average for the months before July 1, 2021 from the average for the year.

1. For example. A taxpayer was in business before July 1, 2021 and has a business that manufactures medical equipment and supplies in Georgia and also has another business in Georgia. The taxpayer qualified for and claimed the job tax credit for jobs at both businesses. However, not all the jobs included in the job tax credit are involved in the manufacture of medical equipment and supplies. The number of jobs created on or after July 1, 2021 that are eligible for the life sciences manufacturing job tax credit is computed as follows:

Month in 2021	Eligible for the Jobs Tax Credit	Allowed for the life sciences manufacturing job tax credit
January	30	25
February	32	27

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March	35	30
April	40	35
May	51	46
June	58	43
Average for Jan to June	41	34
July	75	50
August	60	50
September	99	65
October	75	60
November	60	58
December	75	73
Monthly Average for En- tire Year	58	47
Monthly average for en- tire year less Average for Jan to June and al- lowed for the life sci- ences manufacturing job tax credit		13

2. For a fiscal year that begins on or after January 1, 2021 and which includes July 1, 2021, the same computation should be performed to determine the number of jobs created on or after July 1, 2021 but there will be different months before and different months after July 1, 2021.

147 **(7) Cannot claim the Personal Protective Equipment Manu-**
148 **facturer Jobs Tax Credit for the Same Jobs.** Taxpayers may not
149 claim the life sciences manufacturing job tax credit for any job for
150 which the taxpayer claims the tax credit provided under Code Sec-
151 tion ~~48-7-40.1 A~~48-7-40.1A. Jobs for which the personal protective
152 equipment manufacturer jobs tax credit is claimed under Code Sec-
153 tion ~~48-7-40.1 A~~48-7-40.1A shall be excluded from all calculations
154 for the life sciences manufacturing job tax credit under this regula-
155 tion. Also, in no case can the number of jobs claimed under Code
156 Section ~~48-7-40.1 A~~48-7-40.1A and Code Section ~~48-7-40.1 B~~48-
157 ~~7-40.1B~~ together exceed the number of jobs that are included in the
158 job tax credit computation.

159
160 **(8) Claiming the Credit.** For a medical equipment and supplies
161 manufacturer or pharmaceutical and medicine manufacturer to
162 claim the life sciences manufacturing job tax credit, the medical
163 equipment and supplies manufacturer or pharmaceutical and medi-
164 cine manufacturer must submit Form IT-CA with the medical equip-
165 ment and supplies manufacturer or pharmaceutical and medicine
166 manufacturer's Georgia income tax return each year the credit is
167 claimed. A software program's Form IT-CA that is electronically
168 filed with the Georgia income tax return in the manner specified by
169 the Department satisfies this requirement.

170
171 **(a) Withholding tax.** A medical equipment and supplies manu-
172 facturer or pharmaceutical and medicine manufacturer may claim
173 any excess life sciences manufacturing job tax credit against its
174 withholding tax liability. Except in the case of a timely assignment
175 under O.C.G.A. § 48-7-42, the withholding tax benefit may only be
176 applied against the withholding tax account used by the medical
177 equipment and supplies manufacturer or the pharmaceutical and
178 medicine manufacturer for payroll purposes. In the event the medi-
179 cal equipment and supplies manufacturer or the pharmaceutical and

180 medicine manufacturer that earned the credit is a single member lim-
181 ited liability company that is disregarded for income tax purposes,
182 the withholding tax benefit may only be applied against the with-
183 holding tax liability that is attributable to wages paid by the single
184 member limited liability company, but note that such benefit may
185 also be assigned pursuant to O.C.G.A. § 48-7-42. A medical equip-
186 ment and supplies manufacturer or a pharmaceutical and medicine
187 manufacturer must notify the commissioner ~~each year of its, in the~~
188 manner specified in subparagraph (8)(a)1., below, for any tax year
189 for which they are making an irrevocable election to take all or a
190 part of the credit against the quarterly or monthly withholding tax
191 payments for such medical equipment and supplies manufacturer or
192 pharmaceutical and medicine manufacturer. When this election is
193 made by a pass-through entity, the excess life sciences manufactur-
194 ing job tax credit will not pass through to the shareholders, partners,
195 or members of the medical equipment and supplies manufacturer or
196 the pharmaceutical and medicine manufacturer if the medical equip-
197 ment and supplies manufacturer or the pharmaceutical and medicine
198 manufacturer is a pass-through entity.

199
200 1. Notice of Intent. To claim any excess tax credit not used on the
201 income tax return against the medical equipment and supplies man-
202 ufacturer's or the pharmaceutical and medicine manufacturer's
203 withholding tax liability, the medical equipment and supplies man-
204 ufacturer or the pharmaceutical and medicine manufacturer must file
205 Revenue Form IT-WH through the Georgia Tax Center within the
206 three-year statute of limitations period ~~thirty (30) days~~ after the due
207 date of the Georgia income tax return (including extensions) ~~or~~
208 ~~within thirty (30) days after the filing of a timely filed Georgia in-~~
209 ~~come tax return, whichever occurs first.~~ Failure to file this form as
210 provided in this subparagraph will result in disallowance of the with-
211 holding tax benefit. Such irrevocable election may only be made one
212 time with respect to each tax year for which the credit is earned for

213 such tax year, for all or part of the excess tax credit remaining at the
214 time of the election. However, in the case of a credit which is earned
215 in more than one taxable year, the election to claim the withholding
216 credit will be available for the credit earned in such subsequent year.

217
218 2. Review Period. The Department of Revenue has one hundred
219 twenty (120) days from the date the applicable Form IT-WH under
220 subparagraph (8)(a)1. of this regulation is received to review the
221 credit and make a determination of the amount eligible to be used
222 against withholding tax.

223
224 3. Letter of Eligibility. Once the review is completed, a letter will
225 be sent to the medical equipment and supplies manufacturer or the
226 pharmaceutical and medicine manufacturer stating the tax credit
227 amount which may be applied against withholding and when the
228 medical equipment and supplies manufacturer or the pharmaceutical
229 and medicine manufacturer may begin to claim the tax credit against
230 withholding tax. The Department of Revenue shall treat this amount
231 as a credit against future withholding tax payments and will not re-
232 fund any previous withholding payments.

233
234 **(9) ~~Carry Forward~~Carryforward.** Any life sciences manufac-
235 turing job tax credit which is claimed but not used in a taxable year
236 may be carried forward for ~~10~~the number of years authorized under
237 O.C.G.A. § 48-7-40.1B from the close of the taxable year in which
238 the life sciences manufacturing job tax credit jobs were created. ~~For~~
239 ~~example, life sciences manufacturing job tax credit created by an~~
240 ~~employment increase in year one, but not used in year one, may be~~
241 ~~carried forward to years two through eleven.~~

242
243 **(10) Pass-Through Entities.** When the medical equipment and
244 supplies manufacturer or the pharmaceutical and medicine manufac-
245 turer is a pass-through entity, and has no income tax liability of its

own, the tax credit will pass to its individual members, shareholders, or partners based on their year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the pass-through entity to establish the amount of the credit available for pass through. The credit will then pass through to its individual shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess life sciences manufacturing job tax credit against their withholding tax liabilities. The credits are available for use as a credit by the individual shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2022. The partnership passes the credit to a calendar year partner. The credit is available for use by the individual partner beginning with the 2022 calendar tax year.

(11) Effective Date. This regulation shall be ~~effective on July 1, 2021 and shall be~~ applicable to taxable years beginning on or after January 1, ~~2021~~2025. Taxable years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40.1B.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 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 bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (6) provides the credit amount.
- Paragraph (12) provides the letter of confirmation.
- Paragraph (15) provides the carryforward of the credit.
- Paragraph (22) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 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 Revenue Service, including Form 990, Form 990-EZ, and Form 990-N.

(c) “Contributions Report” means the report detailing the contributions received that must be prepared on a calendar-year basis and submitted to the Department.

(4) **Certification of Qualified Foster Child Support Organization.** The foster child support organization must apply for certification as a qualified foster child support organization using the web-based application process maintained by the Division of Family and Children Services of the Georgia Department of Human Services on its website at: <https://dfcs.georgia.gov/>

(a) The Division of Family and Children Services of the Georgia Department of Human Services will notify the foster child support organization of the approval or denial of certification.

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

(6) **Credit Amount.** From January 1 to June 30 of each calendar year, the amount of qualified foster child donation credit allowed to a taxpayer shall be as follows:

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

67
68 (b) For an individual taxpayer filing a married-filing-separate
69 return, the credit amount shall not exceed the actual amount of
70 qualified contributions made or \$2,500, whichever is less.

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

75
76 1. Example: Taxpayers, a married couple filing jointly, request
77 preapproval for the qualified foster child donation credit for
78 calendar year ~~2023~~2025 by electronically submitting Form IT-
79 QFCD-TP1 through the Georgia Tax Center. On Form IT-QFCD-
80 TP1, Taxpayers' intended ~~2023~~2025 contribution is \$4,000;
81 therefore, the Department preapproves Taxpayers for a qualified
82 foster child donation credit of \$4,000. Taxpayers make a \$3,000
83 donation to the foster child support organization within 60 days of
84 receiving preapproval from the Department and before the end of
85 ~~2023~~2025 (this is the only amount of qualified contributions made
86 by Taxpayers to a qualified foster child support organization in
87 ~~2023~~2025). When Taxpayers file their ~~2023~~2025 Georgia income
88 tax return, they can only claim a qualified foster child donation
89 credit of \$3,000 (which is the actual amount of qualified
90 contributions made), and the extra \$1,000 that was preapproved but
91 not contributed cannot be claimed by Taxpayers and cannot be
92 carried forward. Any amount of the \$3,000 qualified foster child
93 donation credit claimed but not used on Taxpayers' ~~2023~~2025
94 Georgia income tax return shall be allowed to be carried forward to
95 apply to their succeeding ~~five~~three years' tax liability.

96
97 (d) For an individual taxpayer who is a member of a limited
98 liability company duly formed under state law (including a member
99 who owns a single-member limited liability company that is

disregarded for income tax purposes), a shareholder of a S corporation, or a partner in a partnership, the credit is limited to the actual 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~~2025 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~~\$40,000. 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~~\$5,190 (~~5.755.19%~~ of ~~\$90,000~~\$100,000) and the applicable marginal tax rate for ~~2023~~2025 is ~~5.755.19%~~). 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~~2025. When Taxpayer files the ~~2023~~2025 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~~\$3,633 (which is ~~5.755.19%~~ of the \$70,000 actual income from Taxpayer's selected pass-through entities), and the extra ~~\$975~~\$1,367 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the ~~\$4,025~~\$3,633 qualified foster child donation credit claimed but not used on Taxpayer's ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to Taxpayer's succeeding ~~five~~three 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~~ 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 beneficiaries. S corporations and partnerships that elect to pay taxes at the entity level may make an irrevocable election to pass all or part of the credit through to their members, partners, or shareholders by completing the "credit allocation to owners" schedule on an original or amended Form 600S or Form 700.

1. Example: Taxpayer, a corporation, requests preapproval for the qualified foster child donation credit for calendar year ~~2023~~2025 by electronically submitting Form IT-QFCD-TP1 through the Georgia Tax Center. On Form IT-QFCD-TP1, Taxpayer's intended ~~2023~~2025 contribution is \$15,000, and Taxpayer's estimated ~~2023~~2025 income tax liability is \$150,000. Therefore, the Department preapproves Taxpayer for a qualified foster child donation credit of \$15,000 for ~~2023~~2025. Taxpayer makes a \$15,000 donation to the foster child support organization within 60 days of receiving preapproval from the Department and before the end of ~~2023~~2025. When Taxpayer files its ~~2023~~2025 Georgia income tax return, Taxpayer's ~~2023~~2025 income tax liability is \$80,000. Taxpayer can only claim a qualified foster child donation credit of \$8,000 (\$8,000 is 10% of the actual ~~2023~~2025 Georgia income tax liability), and the extra \$7,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$8,000 qualified foster child donation credit claimed but not used on Taxpayer's ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to its succeeding ~~five~~three years' tax liability.

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

199 donation credit for calendar year ~~2023~~2025 by electronically
200 submitting Form IT-QFCD-TP1 through the Georgia Tax Center.
201 On Form IT-QFCD-TP1, Taxpayer's intended ~~2023~~2025
202 contribution is \$15,000, and Taxpayer's estimated ~~2023~~2025
203 income tax liability is \$150,000. Therefore, the Department
204 preapproves Taxpayer for a qualified foster child donation credit of
205 \$15,000 for ~~2023~~2025. Taxpayer makes a \$15,000 donation to the
206 foster child support organization within 60 days of receiving
207 preapproval from the Department and before the end of ~~2023~~2025.
208 When Taxpayer files its ~~2023~~2025 Georgia income tax return,
209 Taxpayer's ~~2023~~2025 income tax liability is \$80,000. Taxpayer can
210 only claim a qualified foster child donation credit of \$8,000 (\$8,000
211 is 10% of its actual Georgia income tax liability for tax year
212 ~~2023~~2025), and the extra \$7,000 cannot be claimed by Taxpayer and
213 cannot be carried forward. Any amount of the \$8,000 qualified
214 foster child donation credit claimed but not used on Taxpayer's
215 ~~2023~~2025 Georgia income tax return shall be allowed to be carried
216 forward to apply to the taxpayer's succeeding ~~five~~three years' tax
217 liability but shall not be allowed to be passed through to and used
218 by the shareholders unless an election is made to pass the credit
219 through to the shareholders.

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

the foster child support organization so that the preapproval, claiming, and reporting forms can be filed in the name of its members, shareholders, or partners.

(g) From July 1 to December 31 of each calendar year of the credit, the amount of qualified foster child donation credit allowed to a taxpayer shall be as follows:

1. For an individual taxpayer or head of household, the credit amount shall not exceed the actual amount of qualified contributions made.

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

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

4. For an individual taxpayer who is a member of a limited liability company duly formed under state law (including a member who owns a single-member limited liability company that is disregarded for income tax purposes), a shareholder of a S corporation, or a partner in a partnership, the credit is limited to the actual amount of qualified contributions made per tax year; 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

265 in Regulation 560-7-3-.03. From July 1 to December 31, the option
266 to indicate pass-through entity ownership is not available on the
267 Georgia Tax Center since the credit is not limited for individual
268 taxpayers during this time period. Regardless, such members may
269 choose to apply the pass-through entity provisions when claiming
270 the credit, or such provisions will be applied if subparagraph (6)(g)6.
271 of this regulation applies.

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

285
286 6. Except as provided in subparagraph (6)(g)5. of this regulation,
287 when the taxpayer is a pass-through entity that has no income tax
288 liability of its own, the tax credits will be considered earned by its
289 members, shareholders, or partners based on their profit/loss
290 percentage at the end of the year and the limitations of subparagraph
291 (6)(g)4. of this regulation. The expenditure is made by the pass-
292 through entity, but all credit forms (preapproval, claiming, and
293 reporting) will be filed in the name of its members, shareholders, or
294 partners. The credit can only be applied against the shareholders’,
295 members’, or partners’ tax liabilities on their income tax returns.
296 The pass-through entity shall provide all necessary information to
297 the foster child support organization so that the preapproval,

298 claiming, and reporting forms can be filed in the name of its
299 members, shareholders, or partners.

300

301 (h) A taxpayer may apply to make a donation to multiple foster
302 child support organizations, apply to make multiple donations to the
303 same foster child support organization, or apply to make a donation
304 both before and after July 1; provided, however, that each donation
305 must be applied for separately.

306

307 (7) **Form 990.** Each qualified foster child support organization
308 must submit a copy of its most recent Form 990 to the Department
309 through the Georgia Tax Center by May 15. If the qualified foster
310 child support organization filed the Form 990-N, then it must submit
311 a copy of the filing confirmation or the listing by the United States
312 Internal Revenue Service of the Form 990-N filing to the
313 Department. If the qualified foster child support organization is not
314 required by federal law to file a Form 990, then the organization
315 must submit the Form 990 Proxy Spreadsheet found on the
316 Department's website through the Georgia Tax Center by May 15.

317

318 (8) **Contributions Report.**

319

320 (a) The contributions report detailing the contributions received
321 for the prior calendar year shall be submitted by each qualified foster
322 child support organization by May 15. Form IT-QFCD-FUND2
323 shall be the form used to submit the report. The report shall be
324 submitted electronically through the Georgia Tax Center.

325

326 (b) The contributions report shall be prepared on a calendar-year
327 basis, regardless of the fiscal year of the qualified foster child
328 support organization.

329

330 (c) The contributions report shall include the following:

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1. The total number and dollar value of individual contributions and qualified foster child donation credits preapproved. Individual contributions shall include contributions made by those filing income tax returns as single, head of household, married filing separately, and married filing jointly;

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

3. The total number and dollar value of all qualified expenditures made;

4. A list of contributors, including the dollar value of each contribution and the dollar value of each preapproved tax credit; and

5. Any other information required by the Commissioner.

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

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

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

(c) The aggregate amount of tax credits remaining and available for preapproval for each year;

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

(e) The Form 990 and contributions report received from each qualified foster child support organization, except for the information in subparagraph (c)4. of paragraph (8).

(10) Confidential Taxpayer Information. Except for the information published under paragraph (9), all information or reports relative to O.C.G.A. § 48-7-29.24 and this regulation that were provided by qualified foster child support organizations to the Department shall be confidential taxpayer information, governed by O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61, whether such information relates to the contributing taxpayer or the qualified foster child support organization.

(11) Mandatory Electronic Preapproval of the Contribution.

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

(b) The taxpayer should not submit Form IT-QFCD-TP1 to the Department until the taxpayer's recipient foster child support organization is listed on the Department's website. If the taxpayer's recipient foster child support organization is not listed on the website at the time that the Department attempts to verify the organization's listing, the Department shall deny the preapproval request. If, at a later date, the taxpayer's recipient foster child support organization becomes listed, the taxpayer will have to

397 submit a new Form IT-QFCD-TP1 to the Department.
398

399 (c) The electronic Form IT-QFCD-TP1 shall include the
400 following information:

401

402 1. The name of the qualified foster child support organization
403 listed on the Department's website to which the contribution will be
404 made;

405

406 2. The taxpayer identification number of the qualified foster child
407 support organization to which the contribution will be made;

408

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

411

412 4. The type of taxpayer;

413

414 5. If the taxpayer is an individual, the filing status;

415

416 6. If the taxpayer is an individual filing a joint return, the name
417 and taxpayer identification number of the joint filer;

418

419 7. The intended contribution amount;

420

421 8. If the taxpayer is a corporation, fiduciary, electing S
422 corporation, or electing partnership, 10% of the estimated income
423 tax liability the corporation, fiduciary, electing S corporation, or
424 electing partnership expects for the tax year of the corporation,
425 fiduciary, S corporation, or partnership in which the contribution
426 will be made;

427

428 9. Tax year end of the taxpayer;

429

430 10. Calendar year in which the contribution will be made;

431

432 11. Any other information the Commissioner may require; and

433

434 12. Certification that all information contained on the Form IT-
435 QFCD-TP1 is true to his/her best knowledge and belief and is
436 submitted for the purpose of obtaining preapproval from the
437 Commissioner.

438

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

443

444 (e) The Department will notify each taxpayer and the taxpayer's
445 selected qualified foster child support organization of the tax credits
446 preapproved, denied, or prorated to such taxpayer within 30 days
447 from the date the Form IT-QFCD-TP1 was received.

448

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

458

459 (g) The contribution must be made by the taxpayer within 60 days
460 of the date of the preapproval notice received from the Department
461 and within the calendar year in which it was preapproved.

462

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

(i) If the Commissioner preapproved a donation for a tax credit prior to the date the qualified foster child support organization is removed from the Department's list pursuant to O.C.G.A. § 48-7-29.24(j) and paragraph (21) of this regulation, notwithstanding any laws to the contrary, the Department shall not take any adverse action against preapproved donors, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with O.C.G.A. § 48-7-29.24(e) and this paragraph.

(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. § 48-7-29.24 for such calendar year. If any Form IT-QFCD-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.

(12) **Letter of Confirmation.** Form IT-QFCD-FUND1 shall be provided by the foster child support organization to the taxpayer to confirm the contribution within ~~45~~30 days of the contribution.

(13) **Claiming the Credit.** A taxpayer claiming the qualified foster child donation credit, unless indicated otherwise by the Commissioner, must submit Form IT-QFCD-TP2 with the taxpayer's Georgia tax return when the qualified foster child donation credit is claimed. An electronically filed Georgia income

tax return that includes the software's electronic Form IT-QFCD-TP2 satisfies this requirement.

(14) **E-filing Attachment Requirements.** If a taxpayer claiming the credit electronically files their tax return, the Form IT-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~~**Carryforward.** 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 for the number of years authorized under O.C.G.A. § 48-7-29.24. However, any amount in excess of the credit amount limits in paragraph (6) of this regulation shall not be eligible for ~~carry forward~~carryforward 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 sources;

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

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

(18) Designation of Contributions. The tax credit shall not be allowed if the taxpayer directly or indirectly designates the taxpayer's qualified contributions to any particular purpose or for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer.

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

(20) Soliciting Contributions. In soliciting contributions, a foster child support organization shall not represent that in exchange for contributing to the foster child support organization, a taxpayer shall receive a direct or particular benefit.

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

595

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

600

601 (b) If the qualified foster child support organization fails to
602 correct all deficiencies within 90 days of receipt of notice from the
603 Department, such qualified foster child support organization shall:

604

605 1. Have its status as a qualified foster child support organization
606 revoked and be immediately removed from the Department's list of
607 approved qualified foster child support organizations;

608

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

614

615 3. Be required to cease all operations as a qualified foster child
616 support organization and transfer all contribution funds that are not
617 yet expended to a properly operating qualified foster child support
618 organization within 30 calendar days of receipt of notice from the
619 Department of removal from the approved list.

620

621 (c) Notwithstanding subparagraphs (a) and (b), any qualified
622 foster child support organization that fails to comply with the
623 requirements under O.C.G.A. §§ 48-7-29.24(i)(3) and paragraph
624 (20) of this regulation shall have its status as a qualified foster child
625 support organization revoked and shall not be renewed as a qualified
626 foster child support organization for at least two years from the date
627 of the revocation.

Chapter 560-7-8

Returns and Collections

628

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1. The foster child support organization shall be removed from the Department's list of approved qualified foster child support organizations, and the Department shall not preapprove any contributions to such foster child support organization.

(22) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, 20232025. Taxable years beginning before January 1, 2025 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2025 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

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

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.69 Qualified Law Enforcement Donation Credit

The purpose of proposed Rule 560-7-8-.69 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (4) explains the process of changing the law enforcement designation.
- Paragraph (7) provides the credit amount.
- Paragraph (9) provides the requirements of the contributions report.
- Paragraph (13) provides the letter of confirmation.
- Paragraph (16) provides the carryforward of the credit.
- Paragraph (17) specifies the add back of any federal deductions on the state return if the taxpayer claims the credit for state taxes.
- Paragraph (23) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.69 Qualified Law Enforcement Donation Credit

560-7-8-.69 Qualified Law Enforcement 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. § 48-7-29.25.

(2) **Definitions.**

(a) The terms “qualified contributions”, “qualified expenditures”, and “local law enforcement unit” shall have the same meaning as in O.C.G.A. § 48-7-29.25.

(b) “Law enforcement foundation” means any domestic nonprofit corporation with the sole function of supporting one local law enforcement unit through a formal relationship recognized by such local law enforcement unit and which maintains nonprofit status under Section 501(c)(3) of the Internal Revenue Code and tax-exempt status under O.C.G.A. § 48-7-25. A law enforcement foundation may conduct additional activities that support

35 firefighters and first responders but cannot use qualified
36 contributions for such additional activities.

37

38 (c) "Letter of authorization" means the letter from a local law
39 enforcement unit that designates a law enforcement foundation as
40 its sole and exclusive law enforcement foundation and that is signed
41 by the chief of police, law enforcement head, or sheriff of the local
42 law enforcement unit.

43

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

48

49 (e) "Contributions Report" means the report detailing the
50 contributions received that must be prepared on a calendar-year
51 basis and submitted to the Department.

52

53 **(3) Certification of Qualified Law Enforcement Foundation.**

54 The law enforcement foundation must apply for certification as a
55 qualified law enforcement foundation and submit Form IT-LEF to
56 the Department through the Georgia Tax Center. The Department
57 will not process any Form IT-LEF that is submitted or filed in any
58 other manner.

59

60 (a) Application. The law enforcement foundation must
61 electronically attest on Form IT-LEF to the Department through the
62 Georgia Tax Center that:

63

64 1. An authorized person is submitting Form IT-LEF on behalf of
65 the law enforcement foundation;

66

67 2. A single local law enforcement unit has designated the

68 applicant as its sole and exclusive qualified law enforcement
69 foundation;

70

71 3. The law enforcement foundation agrees to fully comply with
72 the terms and conditions under O.C.G.A. § 48-7-29.25; and

73

74 4. The law enforcement foundation understands that to
75 knowingly prepare or present a document that is false, fictitious, or
76 fraudulent in any matter within the jurisdiction of the Department is
77 a felony under O.C.G.A. § 16-10-20.

78

79 (b) Letter of Authorization. The law enforcement foundation
80 must submit the letter of authorization along with Form IT-LEF to
81 the Department through the Georgia Tax Center. The letter of
82 authorization must state:

83

84 1. The name of the local law enforcement unit;

85

86 2. The type of agency, office, or department of the local law
87 enforcement unit;

88

89 3. The address of the local law enforcement unit;

90

91 4. The federal employer identification number of the local law
92 enforcement unit;

93

94 5. The name of the law enforcement foundation that is designated
95 by the local law enforcement unit to be its sole and exclusive law
96 enforcement foundation;

97

98 6. The federal employer identification number of the law
99 enforcement foundation that is designated by the local law
100 enforcement unit to be its sole and exclusive law enforcement

101 foundation;

102

103 7. The address of the law enforcement foundation that is
104 designated by the local law enforcement unit to be its sole and
105 exclusive law enforcement foundation;

106

107 8. The name of the previous law enforcement foundation that was
108 designated by the local law enforcement unit to be its sole and
109 exclusive law enforcement foundation (if applicable); and

110

111 9. The federal employer identification number of the previous
112 law enforcement foundation that was designated by the local law
113 enforcement unit to be its sole and exclusive law enforcement
114 foundation (if applicable).

115

116 (c) Letter of Determination Recognizing Nonprofit Status under
117 Section 501(c)(3) of the Internal Revenue Code. The law
118 enforcement foundation must submit a copy of the letter of
119 determination recognizing nonprofit status under Section 501(c)(3)
120 of the Internal Revenue Code along with Form IT-LEF to the
121 Department through the Georgia Tax Center.

122

123 1. If the law enforcement foundation has a pending application
124 for nonprofit status filed with the Internal Revenue Service, it must
125 submit copies of official correspondence from the Internal Revenue
126 Service relating to the pending application, such as receipt
127 acknowledgement letters or requests for additional information
128 letters, along with Form IT-LEF to the Department through the
129 Georgia Tax Center.

130

131 2. When the pending application is later processed by the Internal
132 Revenue Service, the law enforcement foundation is not required to
133 later submit a copy of the letter of determination recognizing

134 nonprofit status under Section 501(c)(3) of the Internal Revenue
135 Code to the Department.

136
137 3. If the law enforcement foundation has a pending protest after
138 receiving a proposed adverse determination letter denying nonprofit
139 status under Section 501(c)(3) of the Internal Revenue Code, the
140 foundation must submit copies of official correspondence from the
141 Internal Revenue Service Appeals Office, such as an
142 acknowledgment and conference letter, along with Form IT-LEF to
143 the Department through the Georgia Tax Center.

144
145 4. If the law enforcement foundation has a pending action for
146 declaratory judgment after receiving a final adverse determination
147 letter denying nonprofit status under Section 501(c)(3) of the
148 Internal Revenue Code, the foundation must submit copies of court
149 documents relating to the pending action, such as a notice of receipt
150 of petition or a court order, along with Form IT-LEF to the
151 Department through the Georgia Tax Center.

152
153 (d) The Department shall have rolling applications and
154 certifications for qualified law enforcement foundations.

155
156 (e) Notice. The Department will notify the law enforcement
157 foundation of the approval or denial of certification within thirty
158 (30) days from the date the Form IT-LEF was submitted through the
159 Georgia Tax Center.

160
161 (4) **Law Enforcement Foundation Designation Change.** If a
162 qualified law enforcement foundation that was designated by a local
163 law enforcement unit as the sole and exclusive foundation for the
164 local law enforcement unit is no longer designated as such, then the
165 qualified law enforcement foundation or the local law enforcement
166 unit shall notify the Department in writing. The law enforcement

167 foundation shall be removed from the Department's list of approved
168 qualified law enforcement foundations, and ~~the Department~~
169 Department shall not preapprove any future contributions to such
170 law enforcement foundation. If a new law enforcement foundation
171 is designated by the local law enforcement unit as the new sole and
172 exclusive foundation for the local law enforcement unit, then the
173 new law enforcement foundation shall apply for certification as a
174 qualified law enforcement foundation.

175
176 (5) **Credit Cap.** In no event shall the aggregate amount of tax
177 credits allowed under O.C.G.A. § 48-7-29.25 exceed \$75 million per
178 calendar year for years beginning on or after January 1, 2023 and
179 ending on or before December 31, 2027, unless otherwise provided
180 by law.

181
182 (6) **Individual Law Enforcement Foundation Limitation.** For
183 each calendar year of the credit, no more than \$3 million of credit
184 shall be preapproved for qualified contributions to any individual
185 law enforcement foundation. On the day and time any Form IT-
186 QLED-TP1 is received during a calendar year that causes the
187 individual law enforcement foundation limitation in this paragraph
188 to be reached, then any subsequent credit preapproval applications
189 for qualified contributions to such individual law enforcement
190 foundation shall be denied. There shall be no proration based on the
191 date an application is received. The Department shall notify such
192 individual law enforcement foundation if the \$3 million limitation
193 is reached.

194
195 (a) If a taxpayer is denied preapproval for this tax credit by the
196 Department due to the individual law enforcement foundation
197 limitation in this paragraph, the taxpayer may reapply for
198 preapproval and list a law enforcement foundation from the
199 Department's list of approved law enforcement foundations that has

not reached the individual law enforcement foundation limitation. For purposes of priority, in the event the credit cap is reached, the taxpayer's date of reapplication will govern.

(b) No provision in O.C.G.A. § 48-7-29.25 or in this regulation shall be construed to limit the ability of a local law enforcement unit to receive gifts, grants, and other benefits from any source allowed by law; provided, however, that no local law enforcement unit shall accept or receive more than \$3 million in contributions made under O.C.G.A. § 48-7-29.25 and this regulation in any calendar year.

(7) Credit Amount. Subject to the aggregate limit provided in paragraph (5) and the individual law enforcement foundation limitation provided in paragraph (6), for calendar years beginning on January 1, 2023, and ending on or before December 31, 2027, the amount of qualified law enforcement donation credit allowed to a taxpayer shall be as follows:

(a) For an individual taxpayer or head of household, the credit amount shall not exceed the actual amount of qualified contributions made or \$5,000, whichever is less.

(b) For an individual taxpayer filing a married-filing-separate return, the credit amount shall not exceed the actual amount of qualified contributions made or \$5,000, whichever is less.

(c) For individual taxpayers filing a married-filing-joint return, the credit amount shall not exceed the actual amount of qualified contributions made or \$10,000, whichever is less.

1. Example: Taxpayers, a married couple filing jointly, request preapproval for the qualified law enforcement donation credit for calendar year ~~2023~~2025 by electronically submitting Form IT-

QLED-TP1 through the Georgia Tax Center. On Form IT-QLED-TP1, Taxpayers' intended ~~2023~~2025 contribution is \$7,100; therefore, the Department preapproves Taxpayers for a qualified law enforcement donation credit of \$7,100. Taxpayers make a \$3,000 donation to the qualified law enforcement foundation within 60 days of receiving preapproval from the Department and before the end of ~~2023~~2025 (this is the only amount of qualified contributions made by Taxpayers to a qualified law enforcement foundation in ~~2023~~2025). When Taxpayers file their ~~2023~~2025 Georgia income tax return, they can only claim a qualified law enforcement donation credit of \$3,000 (which is the actual amount of qualified contributions made), and the extra \$4,100 that was preapproved but not contributed cannot be claimed by Taxpayers and cannot be carried forward. Any amount of the \$3,000 qualified law enforcement donation credit claimed but not used on Taxpayers' ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to their succeeding ~~five~~three years' tax liability.

(d) For an individual taxpayer who is a member of a limited liability company duly formed under state law (including a member who owns a single-member limited liability company that is disregarded for income tax purposes), a shareholder of a S corporation, or a partner in a partnership, the credit is limited to the actual amount of qualified contributions made or \$10,000 per 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 \$10,000; the individual taxpayer decides which pass-through entities to include when computing Georgia income for purposes of the qualified law enforcement 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 law enforcement 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 the spouse's 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 law enforcement donation credit for calendar year ~~2023~~2025 by submitting Form IT-QLED-TP1. On Form IT-QLED-TP1, Taxpayer estimates that the Georgia income from A, Inc. is \$120,000 and that the share of Georgia income from BC Company is ~~\$60,000~~80,000. Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified law enforcement donation credit; therefore, the Department preapproves Taxpayer for a qualified law enforcement donation credit of \$10,000 (since \$10,000 is less than ~~\$10,350~~10,380 (~~5.755.19%~~ of ~~\$180,000~~200,000) and the applicable marginal tax rate for ~~2023~~2025 is ~~5.755.19%~~). Taxpayer makes a \$10,000 donation to the law enforcement foundation within 60 days

of receiving preapproval from the Department and before the end of ~~2023~~2025. When Taxpayer files the ~~2023~~2025 Georgia income tax return, Taxpayer received a salary from A, Inc. of \$50,000, and A, Inc.'s actual Georgia income is \$60,000. Taxpayer's actual share of Georgia income from BC Company is \$20,000, and Taxpayer received a guaranteed payment from BC Company of \$15,000. Taxpayer's actual share of Georgia income from XYZ Company is \$5,000 (Taxpayer can choose to include this company even though it was not considered at the time of preapproval). Taxpayer can only claim a qualified law enforcement donation credit of ~~\$8,625~~7,785 (which is ~~5.755~~19% of the \$150,000 actual income from Taxpayer's selected pass-through entities), and the extra ~~\$1,375~~2,215 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the ~~\$8,625~~7,785 qualified law enforcement donation credit claimed but not used on Taxpayer's ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to Taxpayer's succeeding ~~five~~three years' tax liability.

(e) For a corporation, fiduciary, 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 75 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 beneficiaries. S corporations and partnerships that elect to pay taxes at the entity level may make an irrevocable election to pass all or part of the credit through to their members, partners, or shareholders by completing the "credit allocation to owners" schedule on an original or amended Form 600S or Form 700.

1. Example: Taxpayer, a corporation, requests preapproval for

the qualified law enforcement donation credit for calendar year ~~2023~~2025 by electronically submitting Form IT-QLED-TP1 through the Georgia Tax Center. On Form IT-QLED-TP1, Taxpayer's intended ~~2023~~2025 contribution is \$75,000, and Taxpayer's estimated ~~2023~~2025 income tax liability is \$100,000. Therefore, the Department preapproves Taxpayer for a qualified law enforcement donation credit of \$75,000 for ~~2023~~2025. Taxpayer makes a \$75,000 donation to the law enforcement foundation within 60 days of receiving preapproval from the Department and before the end of ~~2023~~2025. When Taxpayer files its ~~2023~~2025 Georgia income tax return, Taxpayer's ~~2023~~2025 income tax liability is \$80,000. Taxpayer can only claim a qualified law enforcement donation credit of \$60,000 (\$60,000 is 75% of the actual ~~2023~~2025 Georgia income tax liability), and the extra \$15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$60,000 qualified law enforcement donation credit claimed but not used on Taxpayer's ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to its succeeding ~~five~~three years' tax liability.

2. Example: Taxpayer, a S corporation electing to pay tax at the entity level, requests preapproval for the qualified law enforcement donation credit for calendar year ~~2023~~2025 by electronically submitting Form IT-QLED-TP1 through the Georgia Tax Center. On Form IT-QLED-TP1. Taxpayer's intended ~~2023~~2025 contribution is \$75,000, and Taxpayer's estimated ~~2023~~2025 income tax liability is \$100,000. Therefore, the Department preapproves Taxpayer for a qualified law enforcement donation credit of \$75,000 for ~~2023~~2025. Taxpayer makes a \$75,000 donation to the law enforcement foundation within 60 days of receiving preapproval from the Department and before the end of ~~2023~~2025. When Taxpayer files its ~~2023~~2025 Georgia income tax return, Taxpayer's ~~2023~~2025 income tax liability is \$80,000. Taxpayer can

only claim a qualified law enforcement donation credit of \$60,000 (\$60,000 is 75% of the actual ~~2023~~2025 Georgia income tax liability), and the extra \$15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$60,000 qualified law enforcement donation credit claimed but not used on Taxpayer's ~~2023~~2025 Georgia income tax return shall be allowed to be carried forward to apply to its succeeding five years' tax liability but shall not be allowed to be passed through to and used by the shareholders unless an election is made to pass the credit through to the shareholders.

(f) Except as provided in subparagraph (7)(e) of this regulation, when the taxpayer is a pass-through entity that has no income tax liability of its own, the tax credits will be considered earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the year and the limitations of subparagraph (7)(d) of this regulation. The expenditure is made by the pass-through entity, but all credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners. The credit can only be applied against the shareholders', members', or partners' tax liabilities on their income tax returns. The pass-through entity shall provide all necessary information to the law enforcement foundation so that the preapproval, claiming, and reporting forms can be filed in the name of its members, shareholders, or partners.

(g) A taxpayer may apply to make a donation to multiple law enforcement foundations or may apply to make multiple donations to the same law enforcement foundation; provided, however, that each donation must be applied for separately.

(8) **Form 990.** Each qualified law enforcement foundation must submit a copy of its most recent Form 990 to the Department by

May 15. If the qualified law enforcement foundation filed the Form 990-N, then it must submit a copy of the filing confirmation or the listing by the Internal Revenue Service of the Form 990-N filing to the Department. If the qualified law enforcement foundation is not required by federal law to file a Form 990, then the foundation must submit the Form 990 Proxy Spreadsheet found on the Department's website through the Georgia Tax Center by May 15.

(9) Contributions Report.

(a) The contributions report detailing the contributions received for the prior calendar year shall be submitted by each qualified law enforcement foundation by May 15. Form IT-QLED-LEF2 shall be the form used to submit the report. The report shall be submitted electronically through the Georgia Tax Center.

(b) The report shall be prepared on a calendar-year basis, regardless of the fiscal year of the qualified law enforcement foundation.

(c) The report shall include the following:

1. The total number and dollar value of individual contributions and qualified law enforcement donation credits preapproved. Individual contributions shall include contributions made by those filing income tax returns as single, head of household, married filing separately, and married filing jointly;

2. The total number and dollar value of corporation, trust, S corporation, and partnership contributions and qualified law enforcement donation credits preapproved;

3. The total number and dollar value of all qualified expenditures

431 made;

432

433 4. A list of contributors, including the dollar value of
434 ~~each contribution~~each contribution and the dollar value of each
435 preapproved tax credit; and

436

437 5. Any other information required by the Commissioner.

438

439 (10) **Website Posting by the Department.** The following shall
440 be posted on the Department's website:

441

442 (a) The application and requirements to be certified as a qualified
443 law enforcement foundation:

444

445 (b) The list of all qualified law enforcement foundations and their
446 affiliate local law enforcement units;

447

448 (c) The aggregate amount of tax credits remaining and available
449 for preapproval for each year;

450

451 (d) The method for taxpayers seeking preapproval status for
452 contributions through the Georgia Tax Center; and

453

454 (e) The Form 990 and contributions report received from each
455 qualified law enforcement foundation, except for the information in
456 subparagraph (c)4. of paragraph (9).

457

458 (11) **Confidential Taxpayer Information.** Except for the
459 information published under paragraph (10), all information or
460 reports relative to O.C.G.A. § 48-7-29.25 and this regulation that
461 were provided by qualified law enforcement foundations to the
462 Department shall be confidential taxpayer information, governed by
463 O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61, whether such

information relates to the contributing taxpayer or the qualified law enforcement foundation.

(12) Mandatory Electronic Preapproval of the Contribution.

(a) The taxpayer must electronically submit Form IT-QLED-TP1 through the Georgia Tax Center to request preapproval of the qualified law enforcement donation credit from the Department. The Department will not preapprove any qualified law enforcement donation credit where the Form IT-QLED-TP1 is submitted or filed in any other manner. Each qualified law enforcement foundation shall be registered with the Department to facilitate the preapproval process for Form IT-QLED-TP1.

(b) The taxpayer should not submit Form IT-QLED-TP1 to the Department until the taxpayer's recipient law enforcement foundation is listed on the Department's website. If the taxpayer's recipient law enforcement foundation is not listed on the website at the time that the Department attempts to verify the organization's listing, the Department shall deny the preapproval request. If, at a later date, the taxpayer's recipient law enforcement foundation becomes listed, it will be necessary for the taxpayer to submit a new Form IT-QLED-TP1 to the Department.

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

1. The name of the qualified law enforcement foundation listed on the Department's website to which the contribution will be made;

2. The taxpayer identification number of the qualified law enforcement foundation to which the contribution will be made;

- 497 3. The name, address, and taxpayer identification number of the
498 taxpayer;
499
- 500 4. The type of taxpayer;
501
- 502 5. If the taxpayer is an individual, the filing status;
503
- 504 6. If the taxpayer is an individual filing a joint return, the name
505 and taxpayer identification number of the joint filer;
506
- 507 7. The intended contribution amount;
508
- 509 8. If the contributor is a corporation, fiduciary, electing S
510 corporation, or electing partnership, 75% of the estimated income
511 tax liability the corporation, fiduciary, electing S corporation, or
512 electing partnership expects for the tax year of the corporation,
513 fiduciary, S corporation, or partnership in which the contribution
514 will be made;
515
- 516 9. Tax year end of the taxpayer;
517
- 518 10. Calendar year in which the contribution will be made;
519
- 520 11. Any other information the Commissioner may require;
521
- 522 12. Certification that all information contained on the Form IT-
523 QLED-TP1 is true to his/her best knowledge and belief and is
524 submitted for the purpose of obtaining preapproval from the
525 Commissioner.
526
- 527 (d) The qualified law enforcement donation credit shall be
528 allowed on a first-come, first-served basis. The date and time the
529 Form IT-QLED-TP1 is electronically submitted shall be used to

530 determine such first-come, first-served basis.

531

532 (e) The Department will notify each taxpayer and the taxpayer's
533 selected qualified law enforcement foundation of the tax credits
534 preapproved, denied, or prorated to such taxpayer within 30 days
535 from the date the Form IT-QLED-TP1 was received.

536

537 (f) On the day any Form IT-QLED-TP1 is received for a calendar
538 year that causes the calendar-year limit in paragraph (5) of this
539 regulation to be reached, the remaining tax credits shall be allocated
540 among the applicants who submitted the Form IT-QLED-TP1 on the
541 day the calendar-year limit was exceeded on a pro rata basis based
542 upon the amounts otherwise allowed by O.C.G.A. § 48-7-29.25 and
543 this regulation. Only credit amounts on Form IT-QLED-TP1(s)
544 received on the day the calendar-year limit was exceeded shall be
545 allocated on a pro rata basis.

546

547 (g) The contribution must be made by the taxpayer within 60 days
548 of the date of the preapproval notice received from the Department
549 and within the calendar year in which it was preapproved.

550

551 (h) In the event it is determined that a taxpayer has not met all
552 the requirements of O.C.G.A. § 48-7-29.25, then the qualified law
553 enforcement donation credit shall not be preapproved or the
554 preapproved qualified law enforcement donation credit shall be
555 retroactively denied. With respect to such denied credit, any
556 applicable tax, interest, and penalties shall be due if the qualified
557 law enforcement donation credit has already been claimed.

558

559 (i) If the Commissioner preapproved a donation for a tax credit
560 prior to the date the qualified law enforcement foundation is
561 removed from the Department's list pursuant to O.C.G.A. § 48-7-
562 29.25(j) and paragraph (22) of this regulation, notwithstanding any

563 laws to the contrary, the Department shall not take any adverse
564 action against preapproved donors, and all such donations shall
565 remain as preapproved tax credits subject only to the donor's
566 compliance with O.C.G.A. § 48-7-29.25(e) and this paragraph.

567
568 (j) Once the calendar-year limit is reached for a calendar year,
569 taxpayers shall no longer be eligible for a credit pursuant to
570 O.C.G.A. § 48-7-29.25 for such calendar year. If any Form IT-
571 QLED-TP1 is received after the calendar-year limit has been
572 reached, then it shall be denied and not be reconsidered for
573 preapproval at any later date.

574
575 (13) **Letter of Confirmation.** Form IT-QLED-LEF1 shall be
576 provided by the law enforcement foundation to the taxpayer to
577 confirm the contribution within ~~45~~30 days of the contribution.

578
579 (14) **Claiming the Credit.** A taxpayer claiming the qualified law
580 enforcement donation credit, unless indicated otherwise by the
581 Commissioner, must submit Form IT-QLED-TP2 with the
582 taxpayer's Georgia tax return when the qualified law enforcement
583 donation credit is claimed. An electronically filed Georgia income
584 tax return that includes the software's electronic Form IT-QLED-
585 TP2 satisfies this requirement.

586
587 (15) **E-filing Attachment Requirements.** If a taxpayer claiming
588 the credit electronically files their tax return, the Form IT-QLED-
589 LEF1 shall be required to be attached to the return only if the
590 Internal Revenue Service allows such attachments when the data is
591 transmitted to the Department. In the event the taxpayer files an
592 electronic return and such information is not attached because the
593 Internal Revenue Service does not, at the time of such electronic
594 filing, allow electronic attachments to the Georgia return, such
595 information shall be maintained by the taxpayer and made available

596 upon request by the Commissioner.

597

598 (16) ~~Carry Forward~~**Carryforward**. Any credit that is claimed
599 but not used in a taxable year shall be allowed to be carried forward
600 ~~to apply to the taxpayer's succeeding five years' tax liability for the~~
601 number of years authorized under O.C.G.A. § 48-7-29.25. However,
602 any amount in excess of the credit amount limits in paragraph (7) of
603 this regulation shall not be eligible for carryforward to the
604 taxpayer's succeeding years' tax liability, nor shall such excess
605 amount be claimed by or reallocated to any other taxpayer.

606

607 (17) **Taxpayer Must Add Back Portion of Federal Deduction**
608 **on State Return if Taxpayer Takes State Credit.** O.C.G.A. § 48-
609 7-29.25(k) provides that no qualified law enforcement donation
610 credit shall be allowed under O.C.G.A. § 48-7-29.25 with respect to
611 any amount deducted from taxable net income by the taxpayer. If
612 the taxpayer is allowed the state income tax deduction as allowed by
613 the Internal Revenue Service, for purposes of this paragraph, such
614 deduction shall be considered a charitable contribution to the extent
615 such deduction is allowed federally. Accordingly, the taxpayer must
616 add back to Georgia taxable income that part of any federal
617 deduction taken on a federal return for which a Georgia qualified
618 law enforcement donation credit is allowed under O.C.G.A. § 48-7-
619 29.25.

620

621 (a) If a taxpayer's itemized deductions are limited federally (and
622 therefore limited for Georgia purposes) because their Federal
623 Adjusted Gross Income exceeds a certain amount, the taxpayer is
624 only required to add back to Georgia taxable income that portion of
625 the federal charitable deduction that was deducted. The federal
626 charitable deduction that must be added back to Georgia taxable
627 income shall be the amount of the federal charitable contribution
628 relating to the qualified law enforcement donation credit multiplied

by the following ratio: The numerator is the amount of the ~~itemized~~ 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 law enforcement 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 $((\$2,500) \times (\$3,000 / \$4,000))$.

(18) Website Posting by Qualified Law Enforcement Foundation. By April 1st of each year, each qualified law enforcement foundation shall post on its website in a prominent place a copy of its affiliated local law enforcement unit's prior year's annual budget containing the total amount of funds received from the local law enforcement unit's local governing body. If a qualified law enforcement foundation does not maintain a public website, such information shall be otherwise made available by the foundation to the public upon request.

(19) Designation of Contributions. The tax credit shall not be allowed if the taxpayer directly or indirectly designates the taxpayer's qualified contributions to any particular purpose or for

662 the direct benefit of any particular individual.

663

664 (20) **Direct Contracts.** The tax credit shall not be allowed for
665 contributions made to a qualified law enforcement foundation if the
666 taxpayer directly or indirectly operates, owns, or is a subsidiary of
667 an association, organization, or other entity that contracts directly
668 with such qualified law enforcement foundation or its affiliated local
669 law enforcement unit.

670

671 (21) **Soliciting Contributions.** In soliciting contributions, a law
672 enforcement foundation shall not represent or direct a local law
673 enforcement unit to represent that, in exchange for contributing to
674 the law enforcement foundation, a taxpayer shall receive a direct or
675 particular benefit.

676

677 (22) **Failure to Comply and Revocation of Qualified Status.**

678

679 (a) Any qualified law enforcement foundation that fails to
680 comply with the requirements under O.C.G.A. § 48-7-29.25 shall be
681 given written notice of its failure and have 90 days from receipt of
682 such notice to correct all deficiencies.

683

684 (b) If the qualified law enforcement foundation fails to correct all
685 deficiencies within 90 days of receipt of notice from the
686 Department, such qualified law enforcement foundation shall:

687

688 1. Have its status as a qualified law enforcement foundation
689 revoked and be immediately removed from the Department's list of
690 approved qualified law enforcement foundations;

691

692 2. Have all applications for preapproval of tax credits under
693 O.C.G.A. § 48-7-29.25 rejected by the Department on or after the
694 date that the Department removes the qualified law enforcement

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Returns and Collections

695 foundation from its list of approved qualified law enforcement
696 foundations; and

697

698 3. Be required to cease all operations as a qualified law
699 enforcement foundation and transfer all contribution funds that are
700 not yet expended to a properly operating qualified law enforcement
701 foundation within 30 days of receipt of notice from the Department
702 of removal from the approved list.

703

704 (c) Notwithstanding subparagraphs (a) and (b), any qualified law
705 enforcement foundation that fails to comply with the requirements
706 under O.C.G.A. § 48-7-29.25(i)(3) and paragraph (21) of this
707 regulation shall have its status as a qualified law enforcement
708 foundation revoked and shall not be renewed as a qualified law
709 enforcement foundation for at least two years from the date of the
710 revocation.

711

712 1. The law enforcement foundation shall be removed from the
713 Department's list of approved qualified law enforcement
714 foundations, and the Department shall not preapprove any
715 contributions to such law enforcement foundation.

716

717 (23) **Effective Date.** This regulation shall be applicable to taxable
718 years beginning on or after January 1, 2023~~2025~~. Taxable years
719 beginning before January 1, 2025 will be governed by the
720 regulations of Chapter 560-7 as they existed before January 1, 2025
721 in the same manner as if the amendments thereto set forth in this
722 regulation had not been promulgated.

723

724 Authority: O.C.G.A. §§ 48-2-12, 48-7-29.25.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.70 Rural Health Care Professional Credit

The purpose of proposed Rule 560-7-8-.70 is to provide guidance concerning the implementation and administration of the rural health care professional credit under O.C.G.A. § 48-7-29.26. This credit was added by House Bill 82 from the 2023-2024 Session of the General Assembly. Rule 560-7-8-.70 is being adopted to clarify certain provisions in O.C.G.A. § 48-7-29.26.

- Paragraph (1) provides the purpose of the regulation.
- Paragraph (2) provides the definitions.
- Paragraph (3) provides the credit amount.
- Paragraph (4) specifies the limitations of the credit.
- Paragraph (5) provides the aggregate credit cap.
- Paragraph (6) explains the preapproval process for the credit.
- Paragraph (7) explains how to claim the credit.
- Paragraph (8) provides the list of rural counties.
- Paragraph (9) provides the sunset date.
- Paragraph (10) provides the effective date of the regulation.

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

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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560-7-8-.70 Rural Health Care Professional Credit

560-7-8-.70 Rural Health Care Professional Credit

(1) Purpose. This regulation provides guidance concerning the implementation and administration of the rural health care professional credit under O.C.G.A. § 48-7-29.26.

(2) Definitions. As used in this regulation:

(a) As used in this regulation, the terms “dentist”, “physician”, “rural county”, and “rural health care professional” have the same meaning as in O.C.G.A. § 48-7-29.26.

(b) “Credit certificate number” means the certificate number issued by the Department to an individual taxpayer approved for the rural health care professional credit and used by such taxpayer to claim the credit on the income tax return.

(c) “Final year” means the taxable year during which the dentist

34 or physician no longer qualifies as a rural health care professional
35 or the fifth taxable year that the dentist or physician is allowed the
36 credit under O.C.G.A. § 48-7-29.26.

37
38 (d) “Rural physician credit” means the credit provided under
39 O.C.G.A. § 48-7-29.

40
41 **(3) Credit Amount.**

42
43 (a) A dentist or physician qualifying as a rural health care
44 professional after May 15, 2024, shall be allowed a credit against
45 the tax imposed by O.C.G.A. § 48-7-20 in the amount of \$5,000 for
46 each 12-month period of employment as a rural health care
47 professional. The credit may be claimed each year for up to five
48 taxable years as long as the dentist or physician continues to qualify
49 as a rural health care professional.

50
51 1. The credit amount as provided in subparagraph (3)(a) shall be
52 prorated on a monthly basis using 30-day periods for the first year
53 of qualification as a rural health care professional.

54
55 (i) Example. A dentist first qualifies as a rural health care
56 professional on June 13, 2024 and continues to work as a rural health
57 care professional through December 31, 2024. The dentist worked
58 as a rural health care professional for 202 days for the first year of
59 qualification as a rural health care professional. The dentist is
60 eligible for a prorated credit amount of \$2,500 based on six (6)
61 months of employment as a rural health care professional.

62
63 2. The credit amount as provided in subparagraph (3)(a) shall be
64 prorated on a monthly basis using 30-day periods for the final year
65 of qualification as a rural health care professional.

66

(i) Example. A dentist first qualifies as a rural health care professional on June 13, 2024 and continues to work as a rural health care professional until the dentist stops working as a rural health care professional on August 10, 2028. The dentist worked as a rural health care professional for 222 days for the final year of qualification as a rural health care professional. The dentist is eligible for the credit amounts for each year as follows:

<u>2024 = \$2,500</u>
<u>2025 = \$5,000</u>
<u>2026 = \$5,000</u>
<u>2027 = \$5,000</u>
<u>2028 = \$2,917</u>

(4) Credit Limitations.

(a) A dentist or physician who qualifies as a rural health care professional on or before May 15, 2024 shall not be eligible for the rural health care professional credit unless after May 15, 2024, the dentist or physician returns to practice in a rural county after having practiced in a county other than a rural county for at least three years.

1. A physician practices and resides in a rural county on February 1, 2024. The physician then starts practicing in a county other than a rural county on April 1, 2024. On April 2, 2027, the physician start practicing in a rural county again. The physician is eligible for the rural health care professional credit in 2027.

(b) No individual taxpayer shall be allowed both the rural health care professional credit and the rural physician credit in the same taxable year.

(c) Each individual taxpayer shall be limited to a total of five

100 taxable years of the rural health care professional credit and the rural
101 physician credit combined.

102

103 (d) In no event shall the amount of the tax credit exceed the
104 taxpayer's income tax liability, and any unused tax credit shall not
105 be allowed to be carried forward to apply to the taxpayer's
106 succeeding years' tax liability. No such tax credit shall be allowed
107 the taxpayer against prior years' tax liability.

108

109 (5) Credit Cap. In no event shall the aggregate amount of tax
110 credits allowed for rural health care professionals exceed \$2 million
111 per taxable year.

112

113 (6) Preapproval for the Credit. All taxpayers must be
114 preapproved to claim the rural health care professional credit and
115 must submit the appropriate forms to the Department through the
116 Georgia Tax Center as provided in this paragraph.

117

118 (a) For each taxable year for which a taxpayer seeks to claim the
119 rural health care professional credit, the taxpayer must electronically
120 submit the preapproval application through the Georgia Tax Center
121 to request preapproval of the rural health care professional credit
122 from the Department of Revenue. The Department will not
123 preapprove any rural health care professional credit where the
124 preapproval application is submitted or filed in any other manner.

125

126 (b) The preapproval application shall be submitted in the year
127 following the taxable year for which the rural health care
128 professional credit is sought.

129

130 1. Example. A taxpayer worked as a rural health care professional
131 in 2024. The taxpayer will submit a preapproval application in 2025
132 to be preapproved for the 2024 rural health care professional credit.

133
134 (c) Each individual taxpayer must submit a preapproval
135 application for his or her employment as a rural health care
136 professional regardless of whether he or she files separately or
137 jointly with another taxpayer.

138
139 (d) The preapproval application shall include the following
140 information:

141
142 1. The name, address and taxpayer identification number of the
143 taxpayer;

144
145 2. The county where the taxpayer worked as a rural health care
146 professional;

147
148 3. The first day of employment as a rural health care professional;

149
150 4. The months of employment as a rural health care professional
151 in the taxable year;

152
153 5. Whether the taxpayer worked as a rural physician or claimed
154 the rural physician credit before May 15, 2024;

155
156 6. If applicable, the number of years the rural physician credit
157 was claimed;

158
159 7. Whether the taxpayer worked in a non-rural county on or after
160 May 15, 2024;

161
162 8. If applicable, the non-rural county where the taxpayer worked
163 and the first and last day that the taxpayer worked in that non-rural
164 county

166 9. Any other information the Commissioner of the Department of
167 Revenue may require; and

168
169 10. Certification that all information contained on the
170 preapproval application is true to his or her best knowledge and
171 belief and is submitted for the purpose of obtaining preapproval
172 from the Commissioner.

173
174 (e) The rural health care professional credit shall be allowed on a
175 first-come, first-served basis. The date the preapproval application
176 is electronically submitted shall be used to determine such first-
177 come, first-served basis.

178
179 (f) The Department will notify each individual taxpayer of the tax
180 credits preapproved and allocated to such taxpayer, along with the
181 credit certificate number, within thirty (30) days from the date the
182 preapproval application was received.

183
184 (g) On the day any preapproval application is received for a
185 taxable year that causes the aggregate credit cap in paragraph (5) of
186 this regulation to be reached, the remaining tax credits shall be
187 allocated among the applicants who submitted the preapproval
188 application on the day the aggregate credit cap was exceeded on a
189 pro rata basis based upon the amounts otherwise allowed by
190 O.C.G.A. § 48-7-29.26 and this regulation. Only credit amounts on
191 the preapproval application(s) received on the day the aggregate
192 credit cap was exceeded shall be allocated on a pro rata basis.

193
194 (h) In the event it is determined that the individual taxpayer has
195 not met all the requirements of O.C.G.A. § 48-7-29.26, then the
196 amount of the rural health care professional credit shall not be
197 preapproved or the preapproved rural health care professional credit
198 shall be retroactively denied. With respect to such denied credit, tax,

199 interest, and penalties shall be due if the rural health care
200 professional credit has already been claimed.

201

202 (i) Once the aggregate credit cap is reached for a taxable year,
203 taxpayers shall no longer be eligible for a credit pursuant to
204 O.C.G.A. § 48-7-29.26 for such taxable year. If any preapproval
205 application is received after the aggregate credit cap has been
206 reached, then it shall be denied and not be reconsidered for
207 preapproval at any later date.

208

209 (7) **Claiming the Credit.** A taxpayer claiming the rural health
210 care professional credit, unless indicated otherwise by the
211 Commissioner, must claim the credit on Schedule 2 of the Georgia
212 Form 500, Individual Income Tax Return. Each individual taxpayer
213 must use the credit code 154 and include the credit certificate
214 number for the credit. If both taxpayers are claiming the credit on a
215 married filing joint return, then both credit certificate numbers must
216 be included on the return.

217

218 (8) **List of Rural Counties.** The rural counties for purposes of
219 the rural health care professional credit are listed on the following
220 webpage: [https://dor.georgia.gov/listing-rural-counties-purposes-](https://dor.georgia.gov/listing-rural-counties-purposes-rural-physician-credit)
221 rural-physician-credit.

222

223 (9) **Sunset Date.** O.C.G.A. § 48-7-29.26, the rural health care
224 professional credit, shall be repealed on December 31, 2029.

225

226 (10) **Effective Date.** This regulation shall be applicable to
227 taxable years beginning on or after January 1, 2024.

228

229 Authority: O.C.G.A. §§ 48-2-12, 48-7-29.26.