

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 560-7-3
SUBSTANTIVE REGULATIONS**

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(1) **Definitions.** As used in this regulation, the terms “Georgia affiliated group” and “Georgia consolidated return” shall have the same meaning as in O.C.G.A. § 48-7-21.

(2) **Filing of Consolidated Returns.**

(a) **Election to File Consolidated.** For taxable years beginning on or after January 1, 2023, a Georgia affiliated group that files a consolidated income tax return for Federal income tax purposes does not need to petition the Commissioner for permission to file a consolidated return for Georgia income tax purposes. The members of this affiliated group that are subject to Georgia income tax under Chapter 7 of Title 48 of the O.C.G.A, even after the application of Public Law 86-272 (15 U.S.C. Sections 381-384) may elect to file a Georgia consolidated return on an originally filed income tax return by the due date of the return, including extensions. The election is irrevocable and binding on both the Georgia affiliated group and the Department for five years.

(b) **Treatment of Corporations which were Previously Permitted to File a Consolidated Return for Georgia Income Tax Purposes.** Any Georgia affiliated group, which was granted permission to file a consolidated return for taxable years beginning before January 1, 2023, can either elect to file a Georgia consolidated return pursuant to this regulation, continue to file a

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consolidated return pursuant to the terms of the prior grant of permission, or cease filing a consolidated return and file separately.

1. To continue to file a consolidated return pursuant to the terms of the prior grant of permission, mark either the “Consolidated GA Parent Return” checkbox or the “GA Consolidated Subsidiary” checkbox, whichever is applicable, on an originally filed return by the due date of the return, including extensions. If the “GA Consolidated Subsidiary” checkbox is marked, provide the federal employer identification number of the consolidated parent.

(i) Any Georgia affiliated group filing a consolidated return pursuant to the terms of the prior grant of permission is bound by the terms of the prior grant of permission.

(ii) Any Georgia affiliated group filing a consolidated return pursuant to the terms of the prior grant of permission is governed by the regulations of Chapter 560-7 as they exist before January 1, 2023 in the same manner as if the amendments set forth in this regulation had not been promulgated.

2. To terminate filing a consolidated return pursuant to the terms of the prior grant of permission and to elect to file a Georgia consolidated return for the irrevocable five-year period, the consolidated parent under the prior grant of permission shall mark the “Cease Filing Consolidated” checkbox and either the “Consolidated GA Parent Return” checkbox or the “GA Consolidated Subsidiary” checkbox, whichever is applicable. The other member(s) of the Georgia affiliated group shall mark either the “Consolidated GA Parent Return” checkbox or the “GA Consolidated Subsidiary” checkbox, whichever is applicable. If the “GA Consolidated Subsidiary” checkbox is marked, provide the federal employer identification number of the consolidated parent.

3. To terminate filing a consolidated return for Georgia income tax purposes, the consolidated parent shall mark the “Cease Filing Consolidated” checkbox but leave the “Consolidated GA Parent Return” checkbox blank. The other member(s) shall leave the “Cease Filing Consolidated” and the “GA Consolidated Subsidiary” checkboxes blank.

(c) Election to File Georgia Consolidated Return for Taxable Years Beginning on or After January 1, 2023.

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1. To elect to file a Georgia consolidated return, the consolidated parent shall mark the “Consolidated GA Parent Return” checkbox on the Georgia Form 600 and the other member(s) of the Georgia affiliated group shall mark the “GA Consolidated Subsidiary” checkbox and provide the federal employer identification number of the consolidated parent.

2. If a Georgia affiliated group wishes to file a Georgia consolidated return under a new consolidated parent after the group has made the election to file a Georgia consolidated return but before the election is automatically terminated, then the new consolidated parent of the Georgia affiliated group shall mark the “Consolidated GA Parent Return” checkbox on the Georgia Form 600 and attach a statement explaining that the group is filing under a new consolidated parent. The other member(s) of the group shall mark the “GA Consolidated Subsidiary” checkbox and provide the federal employer identification number of the new consolidated parent. The other member(s) are not required to attach such statement.

3. To terminate filing a Georgia consolidated return during the five-year election period due to changes in the Georgia affiliated group, the consolidated parent of the Georgia affiliated group shall mark the “Cease Filing Consolidated” checkbox on the Georgia Form 600 and attach a statement explaining the changes to the group. The other member(s) of the Georgia affiliated group shall not mark the “Cease Filing Consolidated” checkbox and are not required to attach such statement.

(i) The new Georgia affiliated group may make a new election to file a Georgia consolidated return under this paragraph on the Georgia consolidated return.

(3) **Making the Election.** The election to file a Georgia consolidated return under subparagraphs (2)(b)2., (2)(c)1., and (2)(c)3.(i) must be made on an originally filed return by the due date of the return, including extensions. Failure to make the election by such time will result in the filing of separate income tax returns for the applicable taxable year.

(a) **Composition of the Georgia Consolidated Group.** A Georgia consolidated group shall, for each year a consolidated return is filed, consist of all of the members of an affiliated group of corporations that file a consolidated return for Federal income tax purposes that are subject to Georgia income tax under Chapter 7 of Title 48 of the O.C.G.A., even after the application of Public Law 86-272 (15 U.S.C. Sections 381-384); provided, however, that corporations that are immune

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from Georgia income tax under Federal law shall not be included in the proposed Georgia consolidated group.

(4) **Five Year Binding Election.** If a Georgia affiliated group has elected to file a Georgia consolidated return for any taxable year, Georgia consolidated returns must be filed for the taxable year in which the election is made and for the four succeeding taxable years, except in the following circumstance:

(a) The Georgia affiliated group ceases to file a consolidated return for federal income tax purposes, whereupon the group must also cease filing a Georgia consolidated return. If this subparagraph applies, the consolidated parent shall mark the “Cease Filing Consolidated” checkbox on the Georgia Form 600 and attach a statement explaining that the group ceased to file a consolidated return for federal income purposes. The other member(s) of the Georgia affiliated group shall not mark the “Cease Filing Consolidated” checkbox and are not required to attach such statement.

(5) **Separate Company Computation of Taxable Income or Loss.** Corporations that file a Georgia consolidated return are required to consolidate separate company income or loss on a post-apportionment basis. This shall be accomplished by the following process:

(a) Each corporation within the Georgia affiliated group will prepare a separate company Georgia Form 600.

(b) The corporation will reflect its name and federal employer identification number in the heading of the return.

(c) The corporation will begin on line 1 of Schedule 1 with its separate company federal taxable income or loss and will make the appropriate additions to or subtractions from taxable income on lines 2 and 4 of that Schedule. For purposes of this regulation, the separate company federal taxable income or loss shall be the taxable income or loss of the member included in the consolidated federal return but without the modifications listed in Internal Revenue Service Regulation 1.1502-12.

(d) If the corporation qualifies to apportion, it will complete Schedule 6 and Schedule 7 to

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determine the amount of separate company Georgia taxable income or loss to be reflected on line 7 of Schedule 1.

(e) If the corporation has a Georgia separate return limitation year loss, or "GSRLY" (see subparagraph (8)(e) of this regulation), that loss would be reflected on either line 6 of Schedule 1, or line 8 of Schedule 7 of Form 600.

(f) Intercompany transactions are not eliminated in this process of determining a corporation's separate company Georgia taxable income or loss. However, the Commissioner reserves the right to examine intercompany transactions, and to make appropriate adjustments, to ensure that taxpayers clearly reflect income attributable to controlled transactions or to prevent the avoidance of taxes with respect to such transactions.

(g) The separate company income or loss of each corporation in the Georgia affiliated group, as reflected on the separate company Form 600's, would then be consolidated on the Georgia consolidated return Form 600 and reflected on line 5 of Schedule 1 of that Form.

(h) Any consolidated Georgia net operating loss would be deducted on Schedule 1 line 6 to arrive at the Georgia affiliated group's Georgia taxable income or loss on line 7.

(i) Schedule 3 of the Group Form 600 would be completed to reflect a computation of tax due or overpayment for the group.

(6) Separate Company Computation of Net Worth Tax and Payment. Each member of the Georgia affiliated group is required to calculate the net worth tax by completing Schedules 2 and 8 on Form 600 on a separate company basis. The net worth tax for all members of a Georgia affiliated group must be reported and paid on the Form 600 of the consolidated parent using the appropriate schedule entitled "Members To Be Included in the Georgia Consolidated Group".

(7) Earning, Claiming and Assigning of Tax Credits. Any tax credits which may be claimed against the Georgia corporate income tax must be calculated and claimed on a separate company basis. When the code specifies that the amount of the credit taken in any one taxable year be limited to an amount not greater than 50 percent (or another percentage) of the taxpayer's state income tax liability, such limit shall be computed on a separate company basis. For credit limitation purposes,

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net operating loss carryovers must be accounted for on a separate company basis. Assignment of Georgia income tax credits under the terms of O.C.G.A. § 48-7-42 is available within a consolidated Georgia return. All credits utilized against the tax liability of the Georgia affiliated group must be assigned to the consolidated parent, unless generated by the parent. Credits may only be assigned in the year generated and assignments must be made by the due date of the return, including extensions. Carryforward credits are not assignable.

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Credit Example:*

<u>Numbers Per Separate Company Calculation</u>	<u>Georgia Parent Co</u>	<u>Sub Co A</u>	<u>Sub Co B</u>	<u>Sub Co C</u>
Georgia Taxable Income	50,000	(16,000)	140,000	60,000
Georgia Tax Liability (5.75%)	2,875	-	8,050	3,450
Georgia Income Tax Credits Generated in Current Year: Retraining Tax Credit (limited to 50% of income tax liability)	-	6,000	-	2,500
Georgia Tax Credits Carried Forward: Investment Tax Credit (limited to 50% of income tax liability)	7,250	-	-	-
Retraining Credits Assigned: *				
From Sub Co A	1,500	(6,000)	4,500	-
From Sub Co C	-	-	-	-
Retraining Credit Limitation	1,437.50	-	4,025	1,725
Investment Credit Limitation	1,437.50	-	-	-
Total Tax Credits Utilized in Current Tax Year	<u>2,875</u>	<u>-</u>	<u>4,025</u>	<u>1,725</u>
Remaining Tax Liability**	-	-	4,025	1,725
Tax Credits to be Carried Forward:				
Investment Tax Credit	5,812.50	-	-	-
Retraining Tax Credit	<u>62.50</u>	<u>-</u>	<u>475</u>	<u>775</u>

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Consolidated Tax Calculation:

Taxable Income:

Georgia Parent	50,000
Sub Co A	(16,000)
Sub Co B	140,000
Sub Co C	<u>60,000</u>
Consolidated Taxable Income	<u>234,000</u>

Tax Calculation:

Consolidated Taxable Income	234,000
Georgia Tax Liability @ 5.75%	13,455
Combined Tax Credits Utilized***	<u>8,625</u>
Balance of Georgia Tax	<u>4,830</u>

* Credits assignments must be made on the separate company tax returns, with a detailed summary provided on a schedule attached to the consolidated tax return. The schedule shall list the credit type, the credit amount generated by the member, the credit amount utilized in the taxable year by the parent, and the credit carryforward amount.

** The remaining tax liability is due to the limitations applied to the credits. Georgia Parent Co was able to utilize its carryforward Investment Tax Credit up to 50% of its separate company tax liability and also to utilize the assigned Retraining Tax Credit from Sub Co A for the remaining 50% of its tax liability, with the unused portion available to Georgia Parent Co as a carryforward credit. The remaining balance of the Retraining Tax credit generated by Sub Co A is then assigned to Sub Co B, with the unused portion available to Sub Co B as a carryforward credit. Sub Co C is able to utilize its Retraining Tax Credit up to 50% of its income tax liability, with the remaining balance kept as a carryforward credit against future liability. Please note that credits may only be assigned in the year generated and assignments must be made by the due date of the return (including extensions). Thus, carryforward credits are not assignable.

*** In no case may the combined tax credits utilized offset more than 100% of the consolidated tax liability. Such excess shall be carried forward by the appropriate separate companies provided it is otherwise eligible for carryforward.

(8) **Consolidated Return Net Operating Loss Deduction.** A consolidated Georgia net operating loss carryforward or carryback (if such carryback is allowed pursuant to the normal rules

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of paragraph (10.1) of subsection (b) of O.C.G.A. § 48-7-21) shall be allowed as a deduction on the Georgia consolidated return of an affiliated group under the following rules:

(a) The Georgia consolidated net operating loss for a taxable year shall include the separate company federal taxable income or loss of each member corporation, with the adjustments provided for in subsection (b) of O.C.G.A. § 48-7-21 and O.C.G.A. § 48-7-28.2 and allocated and apportioned as provided in O.C.G.A. § 48-7-31. In calculating the separate company income or loss of each member corporation, no deduction will be taken for either federal or Georgia net operating losses from other years;

(b) "Georgia separate return year" as used in this regulation means a tax year of a corporation for which it files a separate return with Georgia or for which it joins in the filing of a Georgia consolidated return by another Georgia affiliated group;

(c) "Georgia separate return limitation year", or "GSRLY", as used in this regulation means any Georgia separate return year of a corporation or of a predecessor of a corporation;

(d) A consolidated Georgia Net Operating Loss deduction shall consist of any consolidated net operating loss (per subparagraph (a)) of the group that is carried forward or carried back (if applicable) to a consolidated year, plus any net operating loss incurred by members of the group in Georgia separate return years which may be carried over to that year. However, a net operating loss incurred by a member corporation in a Georgia separate return limitation year shall be subject to the limitation set forth in subparagraph (e);

(e)

1. Net operating losses arising in tax years beginning before January 1, 2018 and carried to a consolidated return year from a Georgia separate return limitation year (GSRLY) may be used to reduce the group's income only to the extent of the income contributed by the GSRLY member. This computation shall be performed first, and then any consolidated loss of the group shall be applied against any remaining income of the group. (See Example 1)

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Company	A	B	C	Consolidated Total
	(1)			
12/31/2001 (Separate Return Loss Year)	(75,000)	25,000	10,000	
				(2)
12/31/2002	(50,000)	20,000	15,000	(15,000)
12/31/2003	50,000	20,000	15,000	
	(3)			
Less: 2001 GSRLY NOL from Company A	<u>(50,000)</u>	-	-	
				(4)
12/31/2003 Income	-	20,000	15,000	35,000
				(5)
2002 Consolidated NOL				<u>(15,000)</u>
				(6)
12/31/2003 Net Taxable Income				20,000
	(7)			
Total GSRLY Carryforward for Company A	(25,000)			

Explanation For Example 1:

1. The year 12/31/01 is a Georgia separate return year, and the (\$75,000) loss of company A is limited in subsequent years to the income of company A. The years 12/31/02 and 12/31/03 are consolidated post apportionment years.
2. The 12/31/02 tax year reflects a (\$15,000) consolidated loss which may be carried forward.
3. In 12/31/03, the first consolidated profitable year, any GSRLY loss applies first. Therefore, (\$50,000) of company A's loss from 12/31/01 is used against company A's income in 12/31/03.
4. The reduced income of the group for 12/31/03 is \$35,000.
5. The consolidated loss of (\$15,000) from 12/31/02 which was carried forward may now be deducted.
6. The reduced taxable income is \$20,000.

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7. Company A has a remaining GSRLY loss of \$25,000 which may be carried forward.

2. Net operating losses arising in tax years beginning after December 31, 2017 and carried to a consolidated return year from a Georgia separate return limitation year (GSRLY) may be used to reduce the group's income only to the extent of 80% of the Georgia taxable income contributed by the GSRLY member. (See example 1A)

Example 1A - NOL Limitation

Company	A	B	C	Consolidated Total
12/31/2018 (Separate Return Loss Year)	(1) (75,000)	25,000	10,000	
12/31/2019	(50,000)	20,000	15,000	(2) (15,000)
12/31/2020	50,000	20,000	15,000	
Less: 2018 GSRLY NOL from Company A	(3) (40,000)	-	-	(4) 45,000
12/31/2020 Income	10,000	20,000	15,000	(5) (15,000)
2019 Consolidated NOL				(6) 30,000
12/31/2020 Net Taxable Income				
Total GSRLY Carryforward for Company A	(7) (35,000)			

Explanation For Example 1A:

1. The year 12/31/18 is a Georgia separate return year, and the (\$75,000) loss of company A is limited in subsequent years to 80% of the income of company A. The years 12/31/19 and 12/31/20 are consolidated post apportionment years.

2. The 12/31/19 tax year reflects a (\$15,000) consolidated loss which may be carried forward.

3. In 12/31/20, the first consolidated profitable year, any GSRLY loss applies first. Therefore, \$40,000 (\$50,000 x .80) of company A's loss from 12/31/18 is used against company A's income

in 12/31/20.

4. The reduced income of the group for 12/31/20 is \$45,000.
5. The consolidated loss of (\$15,000) from 12/31/19 which was carried forward may now be deducted. The maximum amount of consolidated NOL carry forward arising in tax years beginning after December 31, 2017 that can be used is limited to 80%. Therefore, a maximum of \$36,000 could be used ($45,000 \times 80\%$); however, there is only a \$15,000 consolidated NOL carry forward available, so the entire \$15,000 can be used.
6. The reduced taxable income is \$30,000.
7. Company A has a remaining GSRLY loss of \$35,000 which may be carried forward.

(f) If a Georgia consolidated net operating loss can carry forward to a Georgia separate return year of a corporation which was a member of a Georgia affiliated group in the year in which the loss arose, then the portion of the net operating loss attributable to such corporation shall be apportioned to such corporation under the provisions of subparagraph (g) and shall be a net operating loss carryover to such Georgia separate return year. However, such portions shall not be included in the consolidated net operating loss carryovers to the equivalent consolidated return year;

(g) The portion of a Georgia consolidated net operating loss attributable to a member of a group is the consolidated net operating loss multiplied by a fraction, the numerator of which is the separate net operating loss of such corporation, and the denominator of which is the sum of the separate net operating losses of all members of the group in the year in which such losses were incurred. See example 2. The separate net operating loss of such corporation and of each member as is mentioned in this subparagraph shall be computed as follows:

1. The separate net operating loss for the taxable year that this regulation is first applicable to and each year thereafter shall be computed on a post apportionment basis as is provided in paragraph (5).
2. The separate net operating loss for each taxable year prior to the 2002 taxable year shall be

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computed as follows:

(i) Income or loss subject to apportionment pursuant to O.C.G.A. § 48-7-31(d). When the Georgia affiliated group consolidated its income or loss subject to apportionment and then applied the group's apportionment percentage to the income or loss subject to apportionment (pre-apportionment basis), the portion of the separate net operating loss, attributable to income or loss subject to apportionment, of each separate corporation shall be computed by applying the group's apportionment percentage to the separate corporation's income or loss subject to apportionment.

(ii) Income or loss subject to allocation pursuant to O.C.G.A. § 48-7-31(c). The portion of the separate net operating loss, attributable to income or loss subject to allocation, of each separate corporation shall be equal to its separate corporation income or loss subject to allocation.

Example 2

Company	A	B	C	Total
12/31/02 SNTI* (SNOL**)	(5,000)	2,000	(1,000)	(4,000)
Gains \$2,000	-/-		-/-	
Losses (\$6,000)	(6,000)		(6,000)	
Net Loss (4,000)	= .8333	-0-	= .1667	
	X (4,000)		X (4,000)	
NOL	(\$3,333)	-0-	(\$667)	(4,000)

*SNTI=Separate Net Taxable Income

**SNOL=Separate Net Operating Loss

Explanation For Example 2, Member Leaving Group:

Corporation A, B and C file a consolidated return in 12/31/02. On 1/1/03, Corporation C is sold to Corporation D. This example above computes Corporation C's loss carryforward to its new Georgia affiliated group and the loss carryforward of the original group, Corporation A&B. Corporation C has a loss carryforward of (\$667) and the remaining group (Corporation A&B) has a loss carryforward of (\$3,333);

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(h) If a corporation ceases to be a member during a consolidated return year, any Georgia consolidated net operating loss carryover from a prior tax year must first be carried to such Georgia consolidated return year even though all or a portion of the Georgia consolidated net operating loss giving rise to the carryover is attributable to the corporation which ceases to be a member. To the extent not deducted in such consolidated return year, the portion of the consolidated net operating loss attributable to the corporation ceasing to be a member shall then be carried to the corporation's first Georgia separate return year;

(i) The provisions of § 108 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 108 provisions shall be applied on a separate entity basis and the Internal Revenue Service regulations relating to how to apply such provisions to consolidated returns shall not apply. The reduction in the Georgia net operating losses shall be determined by applying the Georgia apportionment percentage for the year of the discharge to the amount of the Internal Revenue Code § 108 net operating loss reduction determined pursuant to this regulation. A determination under the federal consolidated regulations that the separate entity has an amount of discharge of indebtedness income and/or is required to reduce tax attributes shall also apply for Georgia purposes, except that paragraph (a)(4) of the Internal Revenue Service Regulation § 1.1502-28 shall not apply.

2. Any elections, with respect to the order of the tax attribute reductions, made for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations, shall also apply for Georgia purposes.

(j) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 381, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations (including those regulations relating to how to apply Internal Revenue Code § 381 to consolidated returns).

(k) The provisions of § 382 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 382 limitation

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shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. Such limitation shall be computed on a separate entity basis even when a consolidated federal income tax return is filed. Except as otherwise provided in this regulation, the Internal Revenue Service Regulations regarding how to apply Internal Revenue Code § 382 when a consolidated return is filed and paragraph (f) of Internal Revenue Service Regulation § 1.382-8 shall not apply for Georgia purposes.

2. A determination that an ownership change has occurred for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) shall apply for Georgia purposes.

3. Adjustments to prevent duplication of value contained in the Internal Revenue Code § 382 regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) apply for Georgia purposes. However, the election to restore value provided in paragraph (c) of Internal Revenue Service Regulation § 1.382-8 shall not be available.

4. Whenever an ownership change occurs, an Internal Revenue Code § 382 limitation will apply to all Georgia pre-change losses that are carried over to a post-change year. "Pre-change years" end on or before the date of an ownership change, while "post-change years" end after the date of an ownership change. In a post-change year, the limitation on the use of any pre-change year Georgia net operating losses shall be determined by applying that post-change year's apportionment percentage to the Internal Revenue Code § 382 limitation for that post-change year determined pursuant to this regulation.

5. The Internal Revenue Code § 382 limitation does not reduce the total amount of pre-change Georgia net operating losses available for carryforward but, similar to federal treatment, restricts the amount of net operating losses from pre-change years that can be applied to the income in a post-change year.

6. If there is any unused Internal Revenue Code § 382 limitation for Georgia purposes in a post-change year, the following year's limitation shall be increased by the excess amounts determined for Georgia tax purposes in a manner similar to Internal Revenue Code § 382(b)(2).

7. In the event the Internal Revenue Code § 382 limitation and the GSRLY limitation both apply

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to a net operating loss, the net operating loss shall be subject to both the GSRLY limitation and the Internal Revenue Code § 382 limitation. For example, a taxpayer has a net operating loss of \$1000. The Internal Revenue Code § 382 limitation only allows \$500 of the loss to be used. The GSRLY limitation only allows \$200 of the loss to be used. \$200 of the loss is allowed to be used. Conversely, a taxpayer has a net operating loss of \$1000. The Internal Revenue Code § 382 limitation only allows \$200 of the loss to be used. The GSRLY limitation only allows \$500 of the loss to be used. \$200 of the loss is allowed to be used.

(l) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 384, as they apply to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. The adjustment for such Internal Revenue Code Section shall be determined on a separate entity basis. The limitation on offsetting losses against any recognized built in gains which are allocated to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains. The limitation on offsetting losses against any recognized gains which are apportioned to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains multiplied by the apportionment percentage for the recognition period taxable year.

(m) For purposes of subparagraphs (8)(i) through (8)(l), the Georgia net operating loss of each separate member for the applicable year shall be computed as follows:

1. If the net operating loss is carried to a consolidated return year from a Georgia separate return limitation year (GSRLY), the Georgia net operating loss shall be the separate Georgia net operating loss of the member for the applicable year.

2. If the net operating loss is carried to a consolidated return year from a year other than a Georgia separate return limitation year (GSRLY), the portion of a Georgia consolidated net operating loss attributable to a member of a group shall be computed in the same manner as provided in subparagraph (g) of this paragraph.

(n) A Georgia consolidated net operating loss may not be carried back to a Georgia separate return limitation year.

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(o) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback under paragraph (10.1) of subsection (b) of O.C.G.A. § 48-7-21, the taxpayer may file an amended return within the time period prescribed by O.C.G.A. § 48-7-21 or alternatively may file an "application for a tentative carryback adjustment of the taxes" within a period of twelve (12) months following the end of the taxable year of the net operating loss. The application shall be in such form as the Commissioner shall prescribe. Such application shall not constitute a claim for credit or refund for purposes of O.C.G.A. § 48-2-35. Within a period of ninety (90) days from the last day of the month in which the application for a tentative carryback adjustment is filed, the Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to determine the amount of tax decrease attributable to such carryback adjustment upon the basis of the application and examination. The Commissioner may disallow, without further action, any application which contains errors of computation which he or she deems cannot be corrected within such ninety (90) day period or which contains material omissions. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety (90) day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund made within such ninety (90) day period shall be without interest. If the Commissioner should determine that the amount credited or refunded under this paragraph is in excess of the amount properly attributable to the carryback adjustment, he or she may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of a return.

(p) Complete schedules must be submitted for all net operating losses carried forward to or from consolidated returns. Schedules must contain information to substantiate which corporations incurred net operating losses and the age of the net operating losses.

(9) Transition Rule for Credit Carryforward.

(a) Any Georgia affiliated group, which was granted permission to file a consolidated return for taxable years beginning before January 1, 2023 and elects to file a Georgia consolidated return under subparagraph (2)(b)2. for the taxable year beginning on or after January 1, 2023 and for the four succeeding taxable years, will be eligible to carry forward to the Georgia consolidated return the credits shown on the last-filed consolidated return filed under the prior grant of permission.

(b) Subsection (d) of O.C.G.A. § 48-7-42 shall not apply for the purposes under this paragraph.

(10) Transition Rules for Net Operating Loss Carryforward.

(a) Any Georgia affiliated group, which was granted permission to file a consolidated return for taxable years beginning before January 1, 2023 and elects to file a Georgia consolidated return under subparagraph (2)(b)2. for the taxable years beginning on or after January 1, 2023 and for the four succeeding taxable years, will be eligible to carry forward to the Georgia consolidated return the net operating loss shown on the last-filed consolidated return filed under the prior grant of permission.

(b) A corporation which was a member of a Georgia affiliated group that filed a consolidated return under the prior grant of permission but will not be included in the Georgia consolidated return shall be treated as ceasing to be a member of that group, as described in subparagraph (8)(h), for the first taxable year that the election to file the Georgia consolidated return is made by the group. The separate member Georgia net operating loss for the member, if any, shall then be determined according to subparagraphs (8)(f) and (8)(g).

(c) A corporation which was not a member of a Georgia affiliated group that filed a consolidated return under the prior grant of permission but will be included in the Georgia consolidated return shall be treated pursuant to the terms of subparagraph (8)(e).

(11) Estimated Tax Payments.

(a) Georgia affiliated groups that file a Georgia consolidated return or will elect to file a Georgia consolidated return are required to make corporate estimated income tax payments. The payments are to be calculated and paid on the consolidated parent return. The other member(s) are not required to make estimated income tax payments based on the estimated net worth or income tax liability of the member(s).

(b) If the member(s) of the Georgia affiliated group, other than the consolidated parent, submits estimated income tax payments, then such member(s) must electronically request a refund of such payments through the Georgia Tax Center.

(12) Special Issues.

(a) If a corporation ceases to be a member of the federal consolidated group part way through the taxable year, and as a result, has a taxable year that ends prior to the taxable year end of the consolidated group, such corporation will have two short taxable periods. The first short taxable period will be part of the Georgia consolidated return, and the second short taxable period will be on a separate return if that corporation does not become part of another Georgia affiliated group.

1. The due date of the separate return for the first short taxable period shall be the 15th day of the fourth month following the end of the first short taxable period.

2. The due date of the separate return for the second short taxable period shall be the 15th day of the fourth month following the end of the second short taxable period.

3. If the corporation, instead, becomes part of another Georgia affiliated group, then the due date of the return for the second short taxable period shall be the due date of that Georgia affiliated group's Georgia consolidated return.

(b) If a corporation ceases to be a member during a consolidated return year, the corporation must notify the Department of the amount of credits and net operating loss carryforwards attributable to the corporation ceasing to be a member that will be carried over to the corporation's first Georgia separate return year. Notifications regarding the amount of credit carryforwards can be made via email to taxcredits.inquiries@dor.ga.gov and notifications regarding net operating loss carryforwards can be made via email to corporate.incometaxissues@dor.ga.gov.

(13) Effective Date. This regulation will apply to taxable years beginning on or after January 1, 2023. Taxable years beginning before January 1, 2023 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2023 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 48-7-21.