RULES
OF
DEPARTMENT OF REVENUE

CHAPTER 560-7
INCOME TAX DIVISION

SUBJECT 567-7-8
RETURNS AND COLLECTIONS

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

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

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

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

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

(d) For taxable years beginning on or after January 1, 2012 and before January 1, 2022, a physician who was practicing in a rural county and residing in a rural county or a county contiguous to the rural county in which such physician practices, as determined under the decennial

census of 2000, in a taxable year beginning before January 1, 2012, will be considered to continue to qualify even if the rural county, or either rural county if they were practicing and residing in different rural counties, is not included in the decennial census of 2010, provided they otherwise qualify.

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

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

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

(h) In the case where a physician qualifies for the rural physician credit but later the rural hospital increases its number of beds so that the hospital is not considered a rural hospital as provided by subparagraph (2)(c) of this regulation, the physician will be considered to continue to qualify provided they otherwise qualify.

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

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

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

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

(5) **Effective Date.** This regulation shall be applicable to years beginning on or after January 1, 2024. 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, 48-7-29.

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

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

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

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

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

(f) **Competitive Project.** The term "competitive project" as used in this regulation is defined in O.C.G.A. Section 48-7-40.

(4) **Designation/Redesignation of Less Developed Counties and Less Developed Census Tract Areas.** Counties will be designated tier 1, tier 2, tier 3 or tier 4 less developed counties subject to the factors set out in Community Affairs Regulation 110-9-1-.02. Census tracts will be designated less developed census tract areas subject to the factors set out in Community Affairs

Regulation 110-9-1-.02. Less developed counties and less developed census tract areas may be redesignated according to the factors set out in Community Affairs Regulation 110-9-1-.02.

(5) **Amount of Credit.**

(a) **Business Enterprises that Create a New Year One Under DCA Regulations for Any Taxable Year Beginning On or After January 1, 2009.** Business enterprises in counties designated as tier 1, tier 2, tier 3 or tier 4 less developed areas, or in a less developed census tract area will receive an annual credit for taxes imposed under Article 2 for each new full-time employee job created. Replacement jobs and transferred jobs will not generate a credit. The amount of the credit will be $3,500 for business enterprises located in less developed census tract areas or tier 1 counties, $2,500 for business enterprises located in tier 2 counties, $1,250 for business enterprises located in tier 3 counties and $750 for business enterprises located in tier 4 counties. A business enterprise located within the jurisdiction of a joint development authority as described in O.C.G.A. Section 36-62-5.1(e) will qualify for an additional $500 credit for each new full-time job created, subject to the conditions and limitations set forth in these regulations. An existing business enterprise as defined in O.C.G.A. Section 48-7-40(a)(4) will qualify for an additional $500 credit for each new full-time job for the first year in which the new full-time job is created, subject to the conditions and limitations set forth in O.C.G.A. Section 48-7-40 and this regulation.

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

(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.

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

(8) **Eligibility for Credit.**

(a) **Net Employment Increase.** Except as otherwise provided in this paragraph, in less developed census tract areas, only those business enterprises that increase employment by 5 or more new full-time jobs for the taxable year will be eligible for the credit. For a business enterprise that initially claimed the credit for any taxable year beginning before January 1, 2012, in tier 1 counties, the business enterprise must increase employment by 5 or more new full-time jobs for the taxable year in order to be eligible for the credit. Within areas of pervasive poverty as designated under O.C.G.A. Section 48-7-40.1, business enterprises shall only have to increase employment by two or more jobs in order to be eligible for the credit, subject to the conditions and limitations set forth in O.C.G.A. Section 48-7-40.1. For a business enterprise that creates a new year one under DCA regulations for any taxable year beginning on or after January 1, 2012, in tier 1 counties, the business enterprise must increase employment by two or more new full-time jobs for the taxable year in order to be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by 10 or more new full-time jobs for the taxable year will be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more new full-time jobs for the taxable year will be eligible for the credit. In tier 4 counties, only those business enterprises that increase employment by 25 or more new full-time jobs for the taxable year will be eligible for the credit. A credit is not generated during a year if the net employment increase in that year falls below the number of new full-time jobs required in that tier or census tract area.

(b) **Business Enterprises that Create a New Year One Under DCA Regulations for Any Taxable Year Beginning On or After 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 year one. Such business enterprise will also receive job tax credits in years two through five 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 five.

2. **Additional New Jobs Created in Years Two Through Five.** For each additional new job created in years two through five, a business enterprise will receive a job tax credit, so long as the additional new jobs are maintained. Additional new jobs means those new jobs created in years two through five 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.

(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, 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 in a tier 2 county, must notify the Commissioner, 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 in a tier 3 county or a tier 4 county whose credit amount exceeds 50 percent of the business enterprise's income tax liability for the taxable year, must notify the Commissioner, in the manner specified in subparagraph (9)(b) of this regulation, 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. The withholding tax benefit may only be applied against the withholding tax account used by the business enterprise for payroll purposes. In the event the business enterprise 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. When this election is made, the excess tax credit will not pass through to the shareholders, partners, or members of the business enterprise if the business enterprise is a pass-through entity. The amount per job that is eligible to be taken against the quarterly or monthly withholding tax payment for such business enterprise shall not exceed the following amounts:

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

2. $2,500 for a business enterprise engaged in competitive project located in a tier 2 county;

3. $1,250 for a business enterprise engaged in a competitive project located in a tier 3 county; or

4. $750 for a business enterprise engaged in competitive project located in a tier 4 county.

(b) **Notice of Intent.** To claim any excess tax credit not used on the income tax return against the business enterprise's withholding tax liability, the business enterprise must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period after the due date of the Georgia income tax return (including extensions). 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.

1. A business enterprise engaged in a competitive project in a tier 2, tier 3 or tier 4 county must attach certification from the Department of Economic Development to Revenue Form IT-WH. Failure to file Revenue Form IT-WH with the certification from the Department of Economic Development (if engaged in a competitive project) 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) **Carryforward.** Any job tax credit which is claimed but not used in a taxable year may be carried forward for 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.

(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.**

(a) **Effective Date.** The provisions set forth in this regulation will apply 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 exist before January 1, 2025 in the same manner as if the amendments set forth in this regulation had not been promulgated.

(b) Overlap. Where the boundaries of a less developed census tract area and a less developed county overlap, Community Affairs Regulations 110-9-1-.02 and 110-9-1-.03 shall apply.

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

560-7-8-.37 Manufacturer's and Telecommunications Investment 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 included in this industry; and

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

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

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

(e) **Support Facility.** The term "support facility" refers to any establishment involved in the performance of activities designed primarily to support a manufacturing facility or a telecommunications facility, such as corporate offices, sales offices, computer operations facilities, warehouses, distribution centers, storage facilities, research and development facilities, laboratories, repair and maintenance facilities, telecommunications centers, regional or district administrative offices, and other related manufacturing or telecommunications support activities.

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

(g) **Expansion of an Existing Manufacturing or Telecommunications Facility.** The term "expansion of an existing manufacturing or telecommunications facility" means the capitalized purchase or acquisition of qualified investment property by a taxpayer for use in a manufacturing or telecommunications facility already existing in this state when the purchase or acquisition of such qualified investment property expands the taxpayer's asset base and is directly related to the taxpayer's manufacturing process or to providing telecommunications services. It does not mean the purchase or acquisition of qualified investment property for the purpose of repairing existing property.

(h) **Project.** The term "project" means a planned undertaking involving the capitalized purchase or acquisition of qualified investment property for the construction of an additional 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.

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

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

(b) **Higher Rate of Credit.** In the event that the qualified investment property purchased or acquired by taxpayers consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery and equipment, a pollution control or prevention facility, or is used in the conversion from defense to domestic production, then the qualified investment property will be subject to a higher rate of credit. The amount of the higher rate of credit varies according to whether the qualified investment property is purchased or acquired for a facility 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 qualified investment property subject to the higher rate of credit is purchased or acquired for a facility located in a county designated as tier 1, then the amount of the credit is equal to 8 percent of the cost of such property purchased or acquired by the taxpayer in that taxable year.

2. **Tier 2 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 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 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 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 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.

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

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

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

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

7. **Minimum Threshold Amount.**

(i) **For Projects Beginning On or After January 1, 1995 and Beginning in a Taxable Year**

Beginning Before January 1, 2020. Before the credit may be claimed, the cost of all qualified investment property purchased or acquired by the taxpayer pursuant to the project plan must exceed a minimum threshold amount of $50,000.

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

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.

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.

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.

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

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

(8) **Preapproval for Withholding Tax for Taxpayers in Rural Counties located in Tier 1 Counties or Tier 2 Counties.** A taxpayer with a manufacturing or telecommunications facility in a rural county located in a tier 1 county or tier 2 county that has received an approved Form IT-APP from the Department for qualified investment property purchased or acquired 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), may request preapproval to use their excess credit against withholding tax by submitting the appropriate forms to the Department as provided in this paragraph.

(a) **Mandatory Electronic Preapproval Application for Withholding Tax For Taxpayers in Rural Counties located in Tier 1 Counties or Tier 2 Counties.** To claim any excess investment tax credit not used on the income tax return against the taxpayer's withholding tax liability, a taxpayer that has received an approved Form IT-APP from the Department shall electronically 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 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 Carryforward to be used against Withholding Tax.**

(a) A taxpayer that has investment tax credit 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 carryforward against withholding tax, if within a single taxable year beginning on or after January 1, 2020 and before January 1, 2025 such taxpayer:

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

year; or

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

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

(10) **Preapproval for Investment Tax Credit Carryforward to be used against Withholding Tax.** A taxpayer that expects to meet the requirements in paragraph (9) of this regulation may request preapproval to use such investment tax credit carryforward against withholding tax as provided in this paragraph.

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

(i) Example. Taxpayer claimed and does not use or expects not to use the investment tax credit in a taxable year which begins on January 1, 2019 and ends on December 31, 2019. Taxpayer expects to meet the requirements in paragraph (9)(a) or (9)(b) of this regulation in the taxable year which begins on January 1, 2020 and ends on December 31, 2020. Taxpayer applies for

preapproval to use their investment tax credit carryforward against withholding by submitting Form IT-WHRZ-APP through the Georgia Tax Center between April 1, 2020 and May 31, 2020.

(ii) Example. Taxpayer claimed and does not use or expects not to use investment tax credit in a taxable year which begins on December 1, 2019 and ends on November 30, 2020. Taxpayer expects to meet the requirements in paragraph (9)(a) or ((9)(b) of this regulation in the taxable year which begins December 1, 2020 and ends on November 30, 2021. Taxpayer applies for preapproval to use their investment tax credit carryforward against withholding by submitting Form IT-WHRZ-APP through the Georgia Tax Center between April 1, 2021 and May 31, 2021.

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

(iv) 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.

(v) The Department will not preapprove any use of the investment tax credit carryforward against withholding tax where Form IT-WHRZ-APP is submitted or filed in any other manner. 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 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 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 approved 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 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.

(f) Qualified investment property purchased or acquired under 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 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 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:

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

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

2. Such information shall be submitted electronically through the Georgia Tax Center using

Form IT-WHRZ-RPT when the taxpayer completes such requirements. Until the taxpayer submit Form IT-WHRZ-RPT through the Georgia Tax Center, the credit cannot be utilized against withholding as provided in this regulation.

(11) **Carryforward.**

(a) **Income Tax Carryforward.** A credit which is claimed but not used in a taxable year may be carried forward for 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 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 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 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 at the final carryforward year~~s~~ 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, 2025 and ends on December 31, 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, 2026 and May 31, 2026 and is granted preapproval on June 30, 2026. Taxpayer files their Georgia income tax return and claims the investment tax credit on the October 15, 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, 2027. The taxpayer's 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 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 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 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 requirements of paragraph (9) of this regulation on July 1, 2020. The taxpayer's carryforward period expires on June 30, 2021.

(ii) Example. Taxpayer purchased qualified investment property in the taxable year that began on January 1, 2014 and ended on December 31, 2014. The credit was claimed on the taxable year that began on January 1, 2015 and ended on December 31, 2015. As such the taxable year that begins on January 1, 2024 and ends on December 31, 2024 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 carryforward against withholding by submitting Form IT-WHRZ-APP through the Georgia Tax Center between April 1, 2024 and May 31, 2024 and is granted preapproval on June 30, 2024. Taxpayer meets the requirements of paragraph (9) of this regulation on July 1, 2024. The taxpayer's carryforward period expires on June 30, 2025.

(iii) If the taxpayer's carryforward amount includes multiple years, each year shall be given a separate carryforward period.

(12) **Sunset for Paragraphs (9) and (10) of this regulation.** Paragraphs (9) and (10) of this regulation shall be repealed on December 31, 2024; provided, however, such automatic repeal shall not impair or affect a taxpayer's ability or right to apply an unused credit for a taxable year

after December 31, 2024, that such taxpayer accrued under such paragraphs under the conditions of such paragraphs prior to its automatic repeal.

(13) **Coordination with Job, Quality Jobs, Headquarters Job and Optional Investment Tax Credits.** A taxpayer may not claim or carry forward the investment tax credit for a given project in any year in which either a job tax credit is claimed or carried forward under O.C.G.A. Sections 48-7-40 or 48-7-40.1, a quality jobs tax credit or headquarters job tax credit is claimed under O.C.G.A. Section 48-7-40.17, 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 a taxpayer alternately claim the investment tax credit in one year and either the job, quality jobs, headquarters job, or optional investment tax credit in the next year for a given project. The job, investment, and optional investment tax credits are not interchangeable. Taxpayers may elect to claim only one of the job, investment, or optional investment credits for a given project.

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

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

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

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

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

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

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

(16) **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. 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, 2020. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2020 tax year.

(17) **Specific Applications.**

(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, 2025. Qualified investment property purchased or acquired in 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.

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

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 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 Regulation 560-7-8-.37.

(b) As used in this regulation, the meaning of the terms "manufacturing facility", "manufacturing support facility", "expansion of an existing manufacturing facility", "cost of qualified investment property", and "project" are identical to the meaning of "manufacturing facility", "manufacturing support facility", "expansion of an existing manufacturing facility", "cost of qualified investment property", and "project" provided in Department of Revenue Regulation 560-7-8-.37.

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

(d) **Remains in Service.** The term "remains in service" as used in this regulation means the continued and regular use of qualified investment property in the manufacturing process in a manufacturing facility.

(e) **Base Year.** The term "base year" as used in this regulation means the taxable year in which qualified investment property is first placed in service by the taxpayer.

(f) **Base Year Average.** The term "base year average" as used in this regulation means the amount of state income tax owed by the taxpayer for the base year and each of the two immediately

preceding taxable years (determined without regard to any credits) added together and divided by three.

(g) **Aggregate Credit Amount Allowed.** The term "aggregate credit amount allowed" as used in this regulation means 10 percent, 8 percent, or 6 percent of the cost of all qualified investment property purchased or acquired by the taxpayer and first placed in service during a taxable year, depending on whether the taxpayer first places such property in service in a tier 1, tier 2, or tier 3 county. If the taxpayer first places such property in service in a tier 1, tier 2, or tier 3 county, then the taxpayer's aggregate amount of credit allowed will be 10 percent, 8 percent, and 6 percent, respectively.

(2) **Calculation of Credit.**

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

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

(c) **Annual Amount of Credit.** Against state income tax liability for a taxable year, the taxpayer will apply the lesser of the following amounts:

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

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

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

(a) **Three-Year Threshold.** Taxpayers must have operated an existing manufacturing facility or related manufacturing support facility in this state for three years 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 and first placed in service after the three-year eligibility requirement is met may be used to compute the tax credit. Qualified investment property purchased or acquired or first placed in service by taxpayers in taxable years prior to establishing the three-year eligibility requirement may not be claimed for those years by filing an amended tax return.

(b) **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 48-7-40.7, 48-7-40.8, and 48-7-40.9, a taxpayer must purchase and acquire qualified investment property and place it in service pursuant to a 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 acquired by the taxpayer and placed in service pursuant to a project plan must exceed a minimum threshold amount which varies according to whether the taxpayer's manufacturing facility is located in a county designated as a tier 1, tier 2, or tier 3 county under O.C.G.A. Section 48-7-40. Depending on whether the manufacturing facility is located in a tier 1, tier 2, or tier 3 county, the aggregate cost of the qualified investment property purchased or acquired by the taxpayer pursuant to the project plan must exceed $5 million, $10 million, and $20 million, respectively.

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

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

9. **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 and placed in service pursuant to the project plan. Such certification shall be on forms provided by the Commissioner and shall be attached to the taxpayer's state income tax return.

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

(4) **Coordination with the Investment Tax Credit and the Job Tax Credit.** The credit allowed under this Section is an optional investment tax credit in lieu of the regular investment tax credit allowed under O.C.G.A. Sections 48-7-40.2, 48-7-40.3, and 48-7-40.4. Taxpayers who elect

to claim this credit for a given project make an irrevocable election and may not thereafter claim either the job tax credit or the regular investment tax credit for a given project. Taxpayers who have previously claimed credits under O.C.G.A. Sections 48-7-40, 48-7-40.1, 48-7-40.2, 48-7-40.3, or 48-7-40.4 for a given project in any taxable year are not eligible for the optional investment tax credit for the same project in any subsequent year.

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

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

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

(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 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.

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 exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under Code Section 48-7-103. The withholding tax benefit may only be applied against the withholding tax account used by the business enterprise for payroll. In the event the business enterprise 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. A business enterprise must notify the commissioner, in the manner specified in subparagraph (5)(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 payment for such business enterprise. When this election is made, the excess research tax credit will not pass through to the shareholders, partners, or members of the business enterprise if the business enterprise is a pass-through entity.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the business enterprise's withholding tax liability, the business enterprise must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period after the due date of the Georgia income tax return (including extensions). 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.

2. Review Period. The Department of Revenue has one hundred and twenty (120) days from the date the applicable Form IT-WH under subparagraph (5)(a)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 business enterprise stating the tax credit amount which may be applied against withholding and when the business enterprise 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.

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

(7) **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 research 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, 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.

(8) **Effective Date.** This regulation as amended shall be 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 exist before January 1, 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 and 48-7-40.12.

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 qualified production expenditures.

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

(c) As used in this regulation, the terms "affiliates", "base investment", "game platform", "game sequel", "multimarket commercial distribution", "prereleased interactive game", "production company", "qualified Georgia promotion", "qualified production activities", "state certified production", and "total aggregate payroll" have the same meaning as in O.C.G.A. § 48-7-40.26.

(d) "Loan-out Company" means any personal service company contracted with and retained by the production company or qualified interactive entertainment production company to provide individual personnel (which are not employees of the production company or qualified interactive entertainment production company), such as artists, actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, or similar personnel for the performance of services used directly in a qualified production activity, but not

including persons retained by the production company or qualified interactive entertainment production company to provide tangible property or outside independent contractor service, such as catering, construction, trailers, equipment and transportation.

(e) "Personal Service Company" means any personal service corporation as defined in Internal Revenue Code Section 269A(b) or any other entity, which also includes a sole proprietorship or an individual being paid as an independent contractor, meeting the principal 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 establishes the amount of the 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 production company's or qualified interactive entertainment production company's affiliates under the provisions of O.C.G.A. § 48-7-42. When a 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 (13) of this regulation and may not claim any excess 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.

(5) **Certification of Qualified Production Activities.** Prior to claiming the film tax credit (which includes the additional tax credit for including the qualified Georgia promotion), each new film, video, or digital project must be certified by the Department of Economic Development. Production companies that are required to reduce their investment basis by the amount of

expenditures in prior years, must receive certification from the Department of Economic Development for current year projects prior to claiming the film tax credit. The Department of Economic Development will provide a Credit Certificate Number to the production company or qualified interactive entertainment production company for each qualifying project which is approved. The credit certificate number(s) will be used to report any transfer or sale of film tax credit by the production company or qualified interactive entertainment production company for the qualifying project(s).

(a) The Department of Economic Development shall electronically certify to the Department when the requirements for the additional tax credit for a qualified Georgia promotion have been met.

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

1. Example 1: A production company produces 20 commercials in one calendar year, and each

commercial has $25,000 in production expenditures. The production company can aggregate their production expenditures for multiple commercials in one calendar year (20 x $25,000 = $500,000) to meet the $500,000 base investment threshold.

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

3. Example 3: For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company completes two certified projects in one tax year, and each has $125,000 in production expenditures. The qualified interactive entertainment production company can aggregate their production expenditures for multiple projects completed in one tax year to meet the $250,000 base investment threshold for a qualified interactive entertainment production company.

4. Example 4: In a taxable year beginning on or after January 1, 2018, a qualified interactive entertainment production company has $400,000 in production expenditures during two years (they spend $100,000 in year 1 and $300,000 in year 2) completing one certified project. The qualified interactive entertainment production company may aggregate their production expenditures over the two years for this single project to achieve the $250,000 base investment threshold. The qualified interactive entertainment production company can claim the credit in the year the $250,000 base investment has been achieved.

(b) Direct use. A production company or qualified interactive entertainment production company may only claim production expenditures that are directly used in a qualified production activity. In determining whether an expenditure is directly used in a qualified production activity, the Department of Revenue will consider the proximity of the expenditure to the activity as well as the causal relationship between the expenditure and the activity.

(c) Production expenditures include preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity,

including, but not limited to, the following: set construction and operation; wardrobes, 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; sound recording projects used in feature films, series, pilots, or movies; lighting and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing; film processing; transfers of film to tape or digital format; sound mixing; computer graphics services; special effects services; animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company, airfare is generally 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. Expenditures for services conducted or rendered both in Georgia and outside Georgia shall only

qualify to the extent the service is conducted or rendered in Georgia;

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

(iv) Freight or shipping charges incurred relating to a non-Georgia vendor; or

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

(d) The production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider shall withhold Georgia income tax at the rate imposed by subsection (a) of O.G.C.A § 48-7-21 on all payments to 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 G2-FP to the loan-out company by January 31st of the year following the calendar year in which the withholding payments were made. Such G2-FP shall not be submitted to the Commissioner, except upon request.

(i) The loan-out company shall complete Form G2-FL, which requires: the loan out company's name, address, and identification numbers; the allocated amount withheld (see subparagraph (6)(d)5.); the employee's name, address, and tax identification number; the name and identification numbers of the production company or qualified interactive entertainment production company that paid the withholding; and any other information required by the Commissioner. The loan-out company must provide Form G2-FL to the employee allocated the withholding amount by February 28th of the year following the calendar year in which the withholding payments were made. The loan-out company must also electronically file a copy of Form G-1003 and Form G2-FL by February 28th of the year following the calendar year in which the withholding payments were made.

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

5. Allocation of Personal Income Credit Against Taxes. The amount deducted and withheld as tax under this subparagraph (6)(d) shall be allowed as a credit to the employee whose services were provided in the certified project against the employee's income tax. If the services of multiple employees are provided by the loan-out company, the amount deducted and withheld under this subparagraph (6)(d) shall be allocated to each employee based on the payments made to the loan-out company's employees performing services in Georgia.

(i) Employee Filing Responsibility. The employee providing services must file a Georgia income tax return attaching Form G2-FL, provided by the loan-out company, and apply the credit for the withholding tax allocated to the employee against the calculated individual income tax liability for that employee.

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

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

8. The failure of the loan-out company or the loan-out company's employees to comply with any registration, filing, and reporting obligations imposed by Georgia law, including those imposed by O.C.G.A. § 48-7-40.26 and this rule, shall not affect the film tax credit claimed by the production company or qualified interactive entertainment production company.

(e) Depreciation, amortization, or other expense on production expenditures with a useful life of more than one year. The costs of production expenditures with a useful life of more than one year are considered "other direct costs of producing the project in accordance with generally accepted entertainment industry practices." Such costs shall be included in the computation of the film tax credit for the taxable year based upon the depreciation, amortization, or other expense included in the computation of Georgia taxable income of the production company or qualified interactive entertainment production company for the applicable taxable year. Such depreciation, amortization, or other expense shall be prorated based upon the time the asset is used in qualified production activities in this state. Depreciation, amortization, or other expense on expenditures incurred before the pre-production period shall not be included in the computation of the Film Tax Credit in this state. In order to claim depreciation, amortization, or other expense, the expenditure for the asset that generated the depreciation, amortization, or other expense, must have been incurred in this State as provided in subparagraph (6)(f) of this regulation.

(f) Production expenditures incurred in this state. In order to be considered to have been

incurred in this state, the following rules shall apply:

1. Production expenditures, which are attributable to the performance of services by individuals and companies directly at the filming site in Georgia who were not employees of the production company or qualified interactive entertainment production company, shall be attributed to Georgia in the same manner as salaries as provided in subparagraph (6)(g) of this regulation.

2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the filming site (such as insurance, service fees paid to a payroll company including workers compensation if the service fees include such, editing and related services, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, etc.) will be allowed if 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 production company or qualified interactive entertainment production company is unable to track the cost of the services rendered in Georgia, then some other reasonable method which approximates the cost of the 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 production expenditures for purchases and rentals of property, the property must have been used in Georgia and purchased or rented from a Georgia vendor. Goods are not considered purchased or rented in Georgia if the goods are shipped or delivered from the Georgia vendor's location outside of Georgia unless more than a de minimis amount of the type of goods held and shipped or delivered from outside of Georgia are normally held in inventory in the ordinary course of business in Georgia by the Georgia vendor. Purchase receipts, invoices, contracts, packing slips, or other documentation shall be 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 provided;

Failure to provide documentation in this subparagraph when requested will result in the purchases from the vendor being disqualified.

(g) Salaries. Total aggregate payroll, as such term is used in the Act, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employees 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 rule, 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. Only amounts included in total aggregate payroll shall be subject to the $500,000 limit provided in O.C.G.A. § 48-7-40.26(b)(14). Guaranteed payments to partners do not qualify for the film tax credit and are not included in total aggregate payroll. Except as otherwise provided in this paragraph, if the production company or qualified interactive entertainment production company is unable to track the actual time spent by an employee in Georgia, the production company or qualified interactive entertainment 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 preproduction, for actual production, and for postproduction excluding publicity, the amount that is incurred in Georgia shall be based on the amount paid for each such period and prorated based on the actual time spent in Georgia by the employee in each such period. For purposes of determining the time spent in Georgia for this subparagraph the following shall apply. Travel days are considered a half day. Hold days and other service days that do not begin and end in Georgia are not included in the numerator for purposes of the calculation but are included in the denominator. Prescreening, wardrobe, and free days are included in the numerator if performed in Georgia but in all cases are included in the denominator. Publicity and promotion days do not qualify and must be included in the denominator to the extent the services are contractually specified in the employment agreement. If the production company or qualified interactive entertainment production company is unable to track the actual time spent by the individual in Georgia, the production company or qualified interactive entertainment production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia for each such period but such approximation will be subject to adjustment by the Department.

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

1. SUI (state unemployment insurance);

2. FUI (federal unemployment insurance);

3. FICA (employer portion);

4. Pension and welfare if the amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

5. Health insurance premiums if these amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

(i) Other Fringe Benefits. The following fringe benefits are attributed to Georgia as follows:

1. Meal and incidental allowance per diems, including those not taken on set, as set forth by United States General Services Administration, if incurred in Georgia;

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

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

(j) For services rendered on set, such persons or vendors providing such services, must be identified on the daily production reports or the production company must provide other reasonable evidence that such services were rendered on set.

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

(7) **Credit Amount.**

(a) Except as provided in paragraph (7)(a)1 of this regulation, a production company or qualified interactive entertainment production company, that meets or exceeds the $500,000 base investment threshold provided in O.C.G.A. § 48-7-40.26(c) and this regulation, shall be allowed a tax credit of 20 percent of the base investment in this state; and an additional tax credit of 10 percent of the 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.

1. For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company, that meets or exceeds the $250,000 base investment threshold provided in O.C.G.A. § 48-7-40.26(c) and this regulation, shall be allowed a tax credit of 20 percent of the base investment in this state; and an additional tax credit of 10 percent of the 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.

(b) Except as provided in paragraph (7)(b)1 of this regulation, a production company or qualified interactive entertainment production company, that meets or exceeds the $500,000 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; and an additional tax credit of 10 percent of the excess base investment shall be allowed if the qualified production activities 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.

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 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 to any other taxpayer.

(a) For taxable years beginning on or after January 1, 2018, 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 taxable year in which the qualified interactive entertainment production company claims the tax credits. Any amount in excess of this credit limit shall not be eligible for 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 to any other taxpayer.

(b) For taxable years beginning on or after January 1, 2018, qualified interactive entertainment production companies are eligible for film tax credits for prereleased interactive game production; provided such credits shall not be available for a period that exceeds three years for each such qualified interactive entertainment production company.

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

(a) For taxable years beginning on or after January 1, 2013, and before January 1, 2014, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive

entertainment production companies and their affiliates which are qualified interactive entertainment production companies shall not exceed $25 million. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed $5 million for taxable years beginning on or after January 1, 2013 and before January 1, 2014;

(b) For taxable years beginning on or after January 1, 2014, and before January 1, 2015, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified interactive entertainment production companies shall not exceed $12.5 million. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed $1.5 million for taxable years beginning on or after January 1, 2014 and before January 1, 2015;

(c) For taxable years beginning on or after January 1, 2015, and before January 1, 2016, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified interactive entertainment production companies shall not exceed $12.5 million. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed $1.5 million for taxable years beginning on or after January 1, 2015 and before January 1, 2016;

(d) For taxable years beginning on or after January 1, 2016, and before January 1, 2018, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified interactive entertainment production companies shall not exceed $12.5 million for each taxable year. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed $1.5 million for each taxable year beginning on or after January 1, 2016 and before January 1, 2018; and

(e) For taxable years beginning on or after January 1, 2018, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production

companies shall not exceed $12.5 million for each taxable year. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed $1.5 million for each taxable year beginning on or after January 1, 2018.

(f) Allocation of Film Tax Credit for Qualified Interactive Entertainment Production Company and Affiliates. For taxable years beginning on or after January 1, 2013 and before January 1, 2016, the Commissioner shall allow the film tax credit for any qualified interactive entertainment production company and affiliates on a first-come, first served basis. The paper filing date or electronic filing date of the qualified interactive entertainment production company's income tax return that claims the film tax credit as provided in paragraph (10) of this regulation shall be used to determine such first-come, first-served basis. At the time the credit is claimed, all qualified interactive entertainment production companies must also send a paper copy of the Form IT-FC "Film Tax Credit" to the address listed on such form. Failure to send such paper copy may cause the qualified interactive entertainment production company to not be allowed the film tax credit.

(g) Income Tax Returns Claiming the Credit on the Day the Aggregate Credit Amount is Reached. For taxable years beginning on or after January 1, 2013 and before January 1, 2016, on the day credit amounts on qualified interactive entertainment production companies' income tax returns, which claim the film tax credit as provided in paragraph (10) of this regulation, are received that exceed the aggregate limits in paragraph (9) of this regulation, then the tax credits shall be allocated among such qualified interactive entertainment production companies on a pro rata basis based upon amounts otherwise allowed by O.C.G.A. § 48-7-40.26 and this regulation. Only credit amounts on income tax returns filed on the day the aggregate limits were exceeded will be allocated on a pro rata basis.

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

1. Application. A qualified interactive entertainment production company seeking preapproval to claim the film tax credit must electronically submit Form IT-QIEPC-AP through the Georgia Tax Center. A qualified interactive entertainment production company that has submitted its Form IT-QIEPC for certification by the Department or that submits Form IT-QIEPC on the same day as

Form IT-QIEPC-AP is submitted may request preapproval from the Department before meeting the requirements of the film tax credit. Such qualified interactive entertainment production company must estimate their credit amounts on Form IT-QIEPC-AP. The amount of tax credit claimed by the qualified interactive entertainment production company on the qualified interactive entertainment production company's applicable Georgia income tax return must be based on the actual film tax credit earned pursuant O.C.G.A. § 48-7-40.26 and this regulation and cannot exceed the amount preapproved. If the qualified interactive entertainment production 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 qualified interactive entertainment production company nor shall such excess preapproved amount be assigned, sold, or transferred to any other taxpayer.

2. Notification. The Department will notify each qualified interactive entertainment production company of the tax credits preapproved or denied to such qualified interactive entertainment production company.

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

4. 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 subparagraph (9)(d) of this regulation, then the tax credits shall be allocated among the qualified interactive entertainment production companies who submitted Form IT-QIEPC-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. § 48-7-40.26, 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.

5. Once the credit cap is reached for a calendar year, qualified interactive entertainment production companies who meet the requirements of the film tax credit during such calendar year shall no longer be eligible for a credit under O.C.G.A. § 48-7-40.26. If any Form IT-QIEPC-AP is

received after the calendar year preapproval limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

6. In the event it is determined that the qualified interactive entertainment production company has not met all the requirements of O.C.G.A. § 48-7-40.26 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.

(10) **Production Company or Qualified Interactive Entertainment Production Company Claiming Credit.**

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

(b) Withholding Tax. The production company or qualified interactive entertainment production company may claim any excess film tax credit, which has been claimed as provided in subparagraph (10)(a) or paragraph (21), 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 production company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(b)3. The withholding tax benefit may only be applied against the withholding tax account used by the production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider for payroll purposes. In the event the production company or qualified interactive entertainment production 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 (10)(b)3. Any production company or qualified interactive entertainment production company that qualifies to

take all or a part of the film tax credit against withholding tax otherwise due the Department of Revenue, must notify the Commissioner, in the manner specified in subparagraph (10)(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 payment for such company. When this election is made, the excess film tax credit will not pass through to the shareholders, partners, or members of the production company or qualified interactive entertainment production company if the production company or qualified interactive entertainment production company is a pass-through entity.

1. Notice of Intent. To claim any excess film tax credit not used on the income tax return against the production company's or qualified interactive entertainment production company's withholding tax liability, the production company or qualified interactive entertainment production company must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period after the due date of the Georgia income tax return (including extensions). 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.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under paragraph (10)(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 production company or qualified interactive entertainment production company stating the film tax credit amount which may be applied against withholding and when the production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider may begin to claim the film 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 made by the production company or its payroll service provider or the qualified interactive entertainment production company or its payroll service

provider.

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

(11) **Conditions and Limitations.**

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

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

(c) Except as provided in paragraph (22) of this regulation, any film tax credits that cannot be used against a taxpayer's income tax liability in the year established will be carried forward for the numbers of years authorized under O.C.G.A. § 48-7-40.26.

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

(e) Except as provided in paragraphs (17) through (24) of this regulation, any Department of Revenue audit triggered by a production company's or qualified interactive entertainment production company's use or transfer of a film tax credit will require the production company or qualified interactive entertainment production company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the production company or qualified interactive entertainment production company that the audit is a 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.

(12) **Pass-Through Entities.** When a production company or qualified interactive entertainment production company generating a film tax credit is a pass-through entity, and has no income tax liability of its own, the 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 production company or qualified interactive entertainment production company that incurred the qualifying expenditures to establish the amount of the 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 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, 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.

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

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

(b) The taxpayer may only make a one-time sale or transfer of 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 film tax credit is earned but must occur before the expiration of the carryforward period of such credit. For example, a production company or qualified interactive entertainment production company earns a $500,000 credit in year 1. In year 2 the production company or qualified interactive entertainment production company sells $200,000 of the credit to taxpayer 2 and $50,000 to taxpayer 3. In year 3 the production company or qualified interactive entertainment production 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.

(c) Except as provided in paragraphs (17) through (24) of this regulation, the film tax credit may be transferred before the tax return is filed by the production company or qualified interactive entertainment production company provided the film tax credit has been earned. Preapproval for a qualified interactive entertainment production company by itself does not qualify as earning the credit. For credits subject to paragraphs (17) through (24) of this regulation, the film tax credit may be transferred before the tax return is filed by the production company provided the film tax credit has been finally certified. 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.

(d) The production company or qualified interactive entertainment production 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 of each transfer or sale of the 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 (13)(d)1. With respect to such production companies and qualified interactive entertainment production companies, the Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. Before submitting Form IT-TRANS, the production company that earned the film tax credit must have reported to the Department of Revenue the information required by paragraph (16) of this regulation or for credits subject to paragraphs (17) through (24) of this regulation, the film tax credit must have been finally certified or the qualified interactive entertainment production company that earned the film tax credit must have received preapproval from the Department of Revenue if required by subparagraph (9)(h) of this regulation. If the production company or qualified interactive entertainment 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 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 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 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 carryforward period for this credit will expire on December 31, 2019. This 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.

(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 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 have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the 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 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

2. During any later tax year before the carryforward period associated with the tax credit ends or the carryforward period under paragraph (22) of this regulation associated with the tax credit ends.

(i) Example: A production company or qualified interactive entertainment production company reaches the $500,000 base investment threshold and claims the film tax credit in calendar 2014 tax year. 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 carryforward period associated with the tax credit ends).

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

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

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

(16) **Reporting Required for Production Companies (not applicable to Qualified Interactive Entertainment Production Companies).**

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

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

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

3. The Department of Economic Development certification number; and

4. A copy of the Department of Economic Development certification.

(b) If the production company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity but the certification from the Department of Economic Development that is attached to such submission should be in the name of the disregarded entity.

(c) If a project spans more than one year and the $500,000 base investment threshold or excess base investment threshold is not met in the first year, the production company shall only be required to report such information in the year in which the credit will be claimed which is the year the $500,000 base investment threshold or excess base investment threshold is met. In such case the Department of Economic Development certifications for all years should be submitted through the Georgia Tax Center. The Department of Economic Development certifications should either be submitted together as one file or the additional certification should be submitted using the additional document option.

(17) **Mandatory Film Tax Credit Audit.** For any project first certified by the Department of Economic Development on or after January 1, 2021 and on or before December 31, 2021, if the total amount of such film tax credit for the project exceeds $2.5 million, the film tax credit shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for a mandatory film tax credit audit under paragraph (18) of this regulation and the Department issues a final certification(s) of the film tax credit under paragraph (19) of this regulation.

(a) For any project first certified by the Department of Economic Development on or after January 1, 2022 and on or before December 31, 2022, if the total amount of such film tax credit for the project exceeds $1.25 million, the film tax credit shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for a mandatory film tax credit audit under paragraph (18) of this regulation and the Department issues a final certification(s) of the film tax credit under paragraph (19) of this regulation.

(b) For any project first certified by the Department of Economic Development on or after

January 1, 2023, the film tax credit shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for a mandatory film tax credit audit under paragraph (18) of this regulation and the Department issues a final certification(s) of the film tax credit under paragraph (19) of this regulation.

(c) Prior to issuing a final certification to projects covered under this paragraph, the Department shall conduct or cause to be conducted an audit of each project by either the Department or an independent third party certified by the Department as an eligible auditor under paragraph (19) of this regulation.

(d) Only projects that meet the requirements of paragraph (17) shall receive a mandatory film tax credit audit. If the production company intends to seek and is qualified for the 10% qualified Georgia promotion credit, such credit amount shall be considered in determining if the project meets the requirements of paragraph (17). If a production company applies for a mandatory film tax credit audit for a project and the Department or an eligible auditor performs an audit and the credit amount is less than the required amount under this paragraph, the project will not receive a final certification but the production company may request that a voluntary audit be completed. If the production company does not apply for a mandatory film tax credit audit for a project that meets the requirements of this paragraph, then the credit will not be allowed to be claimed, assigned, sold, transferred, or utilized in any manner without a mandatory film tax credit audit.

1. Example 1: On February 1, 2021 the Department of Economic Development first certifies a project for the 20% film tax credit and the 10% credit for a qualified Georgia promotion, the project has estimated expenditures of $10 million. At the completion of the base investment the project has a credit amount of $3 million (the estimated expenditures of $10 million equal the expenditures at the completion of the base investment). Therefore, the production company must apply for a mandatory audit for this project as provided in paragraph (18) of this regulation.

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

3. Example 3: On January 31, 2021, the Department of Economic Development first certifies a

project for the 20% film tax credit, the project has $10 million in estimated expenditures. At the completion of the base investment the project has a credit amount of $3 million (the expenditures at the completion of the base investment were $15 million instead of $10 million). Therefore, the production company must apply for a mandatory film tax credit audit for this project as provided in paragraph (18) of this regulation.

4. Example 4: On December 20, 2020, the Department of Economic Development first certifies a project for the 20% film tax credit, the project has $15 million in estimated expenditures. On January 3, 2022 the Department of Economic Development certifies the same project for reshoots. This project does not qualify for or require a mandatory film tax credit audit.

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

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

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

(a) The following information shall be submitted with the application or prior to the commencement of the audit required under paragraph (17) of this regulation:

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

2. A detailed accounting of all qualified production activities and the attendant production expenditures included in the base investment for the state certified production;

3. A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

4. Vendor invoices for goods or services included in the base investment as requested by the Department or the eligible auditor hired to conduct the audit for the state certified production;

5. Contracts for goods or services included in the base investment as requested by the Department or the eligible auditor hired to conduct the audit for the state certified production;

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

7. Notification of any intent to utilize an auditor other than the Department;

8. A description of the status of the distribution of the state certified production and information related to any qualified Georgia promotion connected with such production;

9. The total amount of the tax credit sought for the state certified production;

10. A statement affirming that the contents of the application are true and correct;

11. Production payroll information (summary of payroll and loan out payments by person, W-2s, 1099s, etc.) issued by the payroll company must be submitted directly by the payroll company to the Department or the eligible auditor;

12. Disclosure of related persons or related members as such terms are defined in O.C.G.A. § 48-7-28.3. Disclosure of the total value of goods and services provided by related parties to the production company for the project as well as a breakdown of all such related party transactions.

All transactions with related persons or related members must be in accordance with an "arm's length" standard and a minimum of 3 comparison bids and/or studio rate cards will be requested;

13. Disclosure of contracts, agreements, purchase orders or other financially binding instruments with all related persons or related members as such terms are defined in O.C.G.A. § 48-7-28.3;

14. Fees for the audit or the portion of the audit that will be completed by the Department; and

15. Any other information requested by the Department.

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

(a) The Department shall provide for certification and decertification of certified public accountants as eligible auditors. For purposes of this regulation, the Department will certify the accounting firm. One or more persons of such accounting firm must meet the requirements of this regulation in order for the accounting firm to be certified. When the audit is submitted to the Department, one of such persons must certify on behalf of the accounting firm that the requirements of O.C.G.A. § 48-7-40.26, this regulation, and procedures developed by the Department were completed or met. To obtain certification as an eligible auditor, an eligible certified public accounting firm shall:

1. Register with the Department and be accepted by the Department on an annual basis;

2. Maintain its registration with the Georgia State Board of Accountancy and provide documentation of such when it registers and when otherwise requested by the Department;

3. Agree to and be capable of completing audits related to O.C.G.A. § 48-7-40.26 in accordance with O.C.G.A. § 48-7-40.26 and this regulation and procedures developed by the Department;

4. Pay the Department a registration fee that the Department shall set in an amount that reflects the expenses incurred by the Department for registration, etc.;

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:

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

2. Submit audit workpapers and supporting documentation in the format required by the Department and provide copies of written correspondence and conversation memos with the production company in the format required by the Department;

3. Submit an affidavit of independence with each audit in the format required by the

Department;

4. Maintain for a period of seven years after completion of each mandatory film tax credit audit copies of all records pertaining to the mandatory film tax credit audit; and shall make the records available upon request from the Department;

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

6. Participate in administrative proceeding or legal proceedings or inquiries as required regarding the mandatory film tax credit audit;

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

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

(e) Each audit shall:

1. Be completed in accordance with O.C.G.A. § 48-7-40.26 and this regulation and procedures developed by the Department;

2. Utilize sampling methods that the Department adopts;

3. Follow guidance published by the Department regarding expenditures incurred with related persons or related members as such terms are defined in O.C.G.A. § 48-7-28.3;

4. Verify each reported expenditure that is included in the audit and identify and exclude each such expenditure that does not fully meet the requirements of O.C.G.A. § 48-7-40.26 and this regulation;

5. Exclude any expenditure:

(i) Not submitted with the application required under paragraph (18) or with respect to any expenditure required to be submitted when requested by the Department or the eligible auditor, not submitted within 60 days of such request; or

(ii) That was incurred after the application required under paragraph (18) of this regulation was submitted;

6. Not be performed by an eligible accounting entity that is not determined to be independent as provided in the American Institute of Certified Public Accountants Code of Professional Conduct with respect to the production company or any of its related persons or related members as such terms are defined in O.C.G.A. § 48-7-28.3 or as otherwise provided by the Department; and

7. Be submitted to the Department which shall review the audit, make adjustments as necessary, and issue a final certification to the production company.

(f) The Department shall:

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

2. Publish on its website the application to be certified as an eligible auditor as well as all requirements related to certification and conducting an audit under this paragraph. Publish on its website the auditor registration fee and any auditor bond requirements;

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

4. Review protests of disqualified or decertified auditors;

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

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

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

8. Notify the production company through the production company's designee, that the audit was received from the eligible auditor;

9. Perform the audit of expenditures when, due to confidentiality of information, the eligible auditor is unable to access necessary information that the Department is able to access;

10. Review each audit conducted by an eligible auditor, conduct the portions of the audit described in subparagraph (f)9. of this paragraph, perform additional auditing as necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue the final certification of the tax credit to the production company;

11. For an audit it conducts without an eligible auditor, complete the audit, adjust the value of the tax credit as necessary, and issue the final certification of the tax credit to the production company.

12. Issue final list of exceptions to the eligible auditor, if applicable, and the production company's designee; and

13. Review, evaluate, and respond to a protest by the production company.

(20) **Reimbursement Costs for Audit.** The production company applying for a final certification of the tax credit shall agree and be required to reimburse the Department for all costs incurred by the Department for the performance of a related audit, or any portion thereof, including for review of an audit conducted by an eligible auditor, at the time of application.

(a) The cost of any such audit whether conducted in whole or in part by the Department, an

eligible auditor, or a combination of the two shall be borne by the production company and shall not be included as an expenditure claimed under the film tax credit.

1. The cost of the audit depends on the production company's audit selection of either an audit performed by the Department or an audit performed in part by an eligible auditor selected by the Department. The cost for a mandatory film tax credit audit performed by the Department will be as published on the Department's website. If a portion of the film tax credit audit is performed by an eligible auditor selected by the Department, the Department fees will be reduced. Once the eligible auditor is selected, such auditor shall contract directly with the production company and as such any fees that are paid for services rendered by an eligible auditor are paid directly to such eligible auditor. The Department may at its discretion establish fees that an eligible auditor may charge.

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

(22) **Carryforward for projects that receive a final certification.** In no event shall the amount of film tax credit 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 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.

(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.

(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.

(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.

(26) Effective Date. This regulation as amended shall become effective on January 1, 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.

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

560-7-8-.48 Wood Residuals Tax Credits

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

(2) **Coordination of Agencies.** The Georgia Forestry Commission and the Department of Revenue have been designated as the primary agencies responsible within Georgia to administer the program. 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.

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

(a) Certification. Prior to submitting an application for approval (Form IT-WR-AP) to claim

the tax credit for transporting or diverting wood residuals, the taxpayer must receive certification, which attributes a dollar value to such transported or diverted wood residuals, from the Georgia Forestry Commission. Such certification must be attached to Form IT-WR-AP.

(b) Credit limitation. The amount of wood residual tax credit granted to a taxpayer shall not exceed the actual amount certified by the Georgia Forestry Commission to the taxpayer.

(c) Carryforward. Any unused credit for transporting or diverting wood residuals shall be allowed to be carried forward for the number of years authorized under O.C.G.A. § 48-7-29.14.

(4) **Denial of Credit.** In the event it is determined that the taxpayer has not met all the requirements of O.C.G.A. § 48-7-29.14 and this regulation, then the amount of the 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.

(5) **Claiming tax credits under O.C.G.A. § 48-7-29.14(b)(2).** Any taxpayer seeking to claim tax credits under O.C.G.A. § 48-7-29.14(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)(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) 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.

(6) **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. 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, 2009. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2009 tax year.

(7) **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, 48-7-29.14.

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. 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 taxpayer shall be equal to 10 percent of the taxpayer's qualified investment.

(b) Certification. Prior to claiming the seed-capital fund tax credit for any qualified investment in a legal entity in which the research fund has invested, 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 the total amount of qualified investments in legal entities that the research fund has invested in reaches $75 million, investments will no longer be eligible for the credit.

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

(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. § 48-7-40.28. 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.

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

(6) **Carryforward.** Any credit which is claimed under O.C.G.A. § 48-7-40.27 or § 48-7-40.28 but not used in a taxable year may be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.27 or § 48-7-40.28.

(7) **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 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 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, 2009. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2009 tax year.

(8) **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, 48-7-40.27, 48-7-40.28.

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.

(4) **Credit Amount.** Except as otherwise provided in this regulation, a taxpayer shall be granted a tax credit for each qualified donation under O.C.G.A. § 48-7-29.12 in an amount not to exceed the lesser of: $500,000, or 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

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

(5) **Per Taxpayer Credit Limitation.** The credit amount allowed under paragraph (4) of this regulation shall be further limited for each taxpayer for a taxable year and shall not exceed the

following amounts:

(a) Entity Limit. $500,000 for an entity with respect to tax liability determined under O.C.G.A. § 48-7-21. This limit applies to a return filed by a C-Corporation, S-Corporation with an entity level income tax liability, and to each return filed by partners in a partnership where such partners are C-Corporations or S-Corporations with 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) **Carryforward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward for the number of years authorized under O.C.G.A. § 48-7-29.12. However, the amount in excess of the annual dollar limits specified in paragraph (5) of this regulation shall

not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by, reallocated to, or transferred or sold to any other taxpayer.

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

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

(a) Example 1. A taxpayer claims a $100,000 charitable deduction on their federal return. The taxpayer is allowed a $25,000 state tax credit ($100,000 x 25%). The taxpayer must add back $100,000 of the charitable contribution deduction on their Georgia return.

(b) Example 2. A taxpayer claims a $100,000 charitable deduction on their federal return in year 1 but due to federal limitations is only allowed to deduct $25,000 in year 1 and $75,000 in year 2. The taxpayer is allowed a $25,000 state tax credit ($100,000 x 25%). The taxpayer must add back $25,000 in year 1 and $75,000 in year 2 of the charitable contribution deduction on their Georgia returns.

(c) Example 3. A taxpayer claims a $2,000,000 charitable deduction on their federal return. 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 $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 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 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, 2025. This credit is based on a donation from calendar 2025 tax year. The credit may be claimed by the transferee on the 2025, 2026, 2027, 2028, 2029, or 2030 return and the carryforward period for this credit will expire on December 31, 2030. This 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 $125,000. The taxpayer sells $225,000 of the credit at the partnership level which leaves $243,750 that will flow though. Shareholder C's credit is reduced by $120,000 ($250,000/$468,750 x $225,000) and therefore is entitled to a credit of $130,000. Shareholder D's credit is reduced by $45,000 ($93,750/$468,750 x $225,000) and therefore is entitled to a credit of $48,750. Partner B's credit is reduced by $60,000 ($125,000/$468,750 x $225,000) and therefore is entitled to a credit of $65,000.

(b) 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.

(c) Pass-Through Entity. The taxpayer may be structured as a pass-through entity. To the extent the pass-through entity does not make an election to sell or transfer the tax credit at the entity level

as provided in paragraph (15) 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 and as provided in this regulation. The shareholders, members, or partners may then sell their respective conservation tax credit to a Georgia taxpayer.

(d) Transferee Pass-through Entity. The taxpayer, or its shareholders, members, or partners, may sell or transfer the 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 (as provided in subparagraph (15)(e) 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 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 carryforward period associated with the tax credit ends.

(i) Example: A taxpayer makes a qualified donation and claims the conservation tax credit in calendar year 2025. The taxpayer sells the conservation tax credit to a Georgia taxpayer in calendar 2026 tax year. The transferee Georgia taxpayer may claim the purchased conservation tax credit on either their 2025 return (transferee's tax year in which the income tax year of the taxpayer transferor ends) or their 2026, 2027, 2028, 2029, or 2030 return (during any later tax year before

the 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 2025, an individual taxpayer makes a qualified donation. 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 2027, this taxpayer purchases $100,000 conservation tax credit from a qualified donation made in 2025. Since this taxpayer has already met the limits in paragraph (5) of this regulation for 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.

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, 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. 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 to be used in the facility or facilities. Any lease for a period of three years or longer of any real or personal property used in a new or expanded facility or facilities which would otherwise constitute qualified investment property shall be treated as the

purchase or acquisition thereof by the lessee. The taxpayer may treat the full value of the leased property as qualified investment property in the year in which the lease becomes binding on the lessor and the taxpayer.

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

(e) **Qualified project.** The term “qualified project” means a project which meets the qualified investment property requirement and which involves the lease or construction of one or more new facilities in this state or the expansion of one or more existing facilities in this state. For purposes of this definition, the term “facilities” means all facilities comprising a single project, including noncontiguous parcels of land, improvements to such land, buildings, building improvements, and any personal property that is used in the facility or facilities.

(f) **Project.** The term “project” is defined in Department of Revenue Regulation 560-7-8-.37.

(g) **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.

(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 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 period, exceeds the monthly average of new quality jobs that existed in the prior twelve-month period by fifty (50), such requirement shall be met. Taxpayers who were not located in Georgia during the prior twelve-month period shall use a prior twelve-month period average of zero.

1. For purposes of such prior 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 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 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 2009. The average number of new quality jobs from July 2008 until June 2009 is 89. In August of 2009 the taxpayer has 140 new quality jobs and therefore meets the 50 new quality jobs requirement (140-89=51). Accordingly, the taxpayer may claim the credit in the tax year ending 12/31/09.

(b) Except as provided in subparagraphs (4)(c) and (4)(d) of this regulation if the taxpayer first withholds wages for new quality jobs on a date in a taxable year beginning on or after January 1, 2017, the taxpayer is required to employ at least fifty (50) persons in new quality jobs within two years 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 two-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 two-year period, exceeds the monthly average of new quality jobs that existed in the prior twelve-month period prior to the start of the two-year period by fifty (50), such requirement shall be met. Taxpayers who were not located in Georgia during the prior twelve-month period shall use a prior twelve-month period average of zero.

1. For purposes of such prior 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 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 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 period, exceeds the monthly average of new quality jobs that existed in the prior twelve-month period by ten (10), such requirement shall be met. Taxpayers who were not located in Georgia during the prior twelve-month period shall use a prior twelve-month period average of zero.

1. For purposes of such prior 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 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 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 2 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 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 period, exceeds the monthly average of new quality jobs that existed in the prior twelve-month period by twenty-five (25), such requirement shall be met. Taxpayers who were not located in Georgia during the prior twelve-month period shall use a prior twelve-month period average of zero.

1. For purposes of such prior 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 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 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 period average number of jobs from July 2008 until June 2009 is 89. In August of 2009 the taxpayer meets the 50 new quality jobs requirement because they have 140 jobs (140-89=51) so the tax year ending 12/31/09 will be the taxpayer's year one. Assume the average number of new quality jobs from January 2009 to December 2009 is 132. The taxpayer is eligible to claim credits for 43 new quality jobs (132-89) in year one. Assume the average number of new quality jobs from January 2010 to December 2010 is 180. The taxpayer is eligible to claim 48 new quality jobs in year two (180-132) and the 43 new quality jobs maintained from year one.

4. Example: Taxpayer elects to have jobs qualify as new quality jobs in January of 2017. The prior twelve-month period average number of jobs from January 2016 until December 2016 is 109. In August of 2018 the taxpayer meets the 50 new quality jobs requirement because they have 160 jobs (160-109=51) so the tax year ending 12/31/2018 will be the taxpayer's year one. Assume the average number of new quality jobs from January 2018 to December 2018 is 158. The taxpayer is eligible to claim credits for 49 new quality jobs (158-109) in year one. Assume the average number of new quality jobs from January 2019 to December 2019 is 240. The taxpayer is eligible to claim 82 new quality jobs in year two (240-158) and 49 new quality jobs maintained from year one.

(g) Other credits.

1. The taxpayer must elect not to receive the tax credits provided for by Code Sections 48-7-40 and 48-7-40.1 for such jobs. This election is deemed to have been made when the taxpayer claims the quality jobs tax credit on its state income tax return. Taxpayers may not alternatively claim the jobs credit provided by Code Sections 48-7-40 and 48-7-40.1 and the quality jobs tax credit with respect to such jobs. These credits are not interchangeable. Jobs for which the 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 x 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 x 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 must compute increases and decreases in full-time jobs on the basis of twelve-month periods only, even when the taxpayer has taxable years that are not equal to twelve months. This may cause the quality jobs tax credit calculation period to be different from the tax year of the taxpayer.

(7) **Claiming the credit.** The quality jobs tax credit shall be claimed on an income tax return for the first taxable year in which the taxpayer first becomes eligible for the credit. The quality jobs 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) Income tax. For a taxpayer to claim the quality jobs tax credit, the taxpayer must submit Form IT-QJ and a listing of new quality jobs employees, which includes the name of the employee, the last four digits of the employee's social security number, wages, and any other information that the Commissioner may request, with the taxpayer's Georgia income tax return. The taxpayer may seek the Commissioner's permission to provide alternative employee identification numbers such as taxpayer's internal employee identification numbers instead of providing the employee's social security number. A software program's Form IT-QJ that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(b) Withholding tax. A taxpayer may claim any excess quality jobs tax credit against its withholding tax liability. The withholding tax benefit may only be applied against the withholding tax account used by the taxpayer for payroll purposes. Unless an election is made pursuant to subparagraph (2)(h) of this regulation, in the event the entity 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. A taxpayer must notify the commissioner, 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 after the due date of the Georgia income tax return (including extensions). 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) **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.

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. § 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board under Title 43 of the O.C.G.A.

(d) Qualified Business. The term "qualified business" means a business that:

1. Is either a corporation, limited liability company, or a general or limited partnership located in this state;

2. Was organized no more than three years before the qualified investment was made;

3. Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefited from the tax credit under O.C.G.A. § 48-7-40.30.

4. Employs 20 or fewer people in this state at the time it is registered as a qualified business;

5. Has had in any complete fiscal year before registration gross annual revenue as determined in accordance with the Internal Revenue Code of $500,000.00 or less on a consolidated basis;

6. Has not obtained during its existence more than $1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from chartered banking or savings and loan institutions;

7. Has not utilized the tax credit under O.C.G.A. § 48-7-40.26;

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 cash of qualified subordinated debt in a qualified business; provided, however, that funds constituting a qualified investment cannot have been raised or be raised as a result of other tax incentive programs. Furthermore, no investment of common or preferred stock or an equity interest or purchase of subordinated debt shall qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting such investment or purchase.

(f) Qualified Investor. The term "qualified investor" means an accredited investor as that term is defined by the United States Securities and Exchange Commission who is:

1. An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by O.C.G.A. § 48-7-20; or

2. A pass-through entity, owned by individual persons, which is formed for investment purposes, has no business operations, has committed capital under management of equal to or less than $5 million, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

(g) Qualified Subordinated Debt. The term "qualified subordinated debt" means indebtedness that is not secured, that may or may not be convertible into common or preferred stock or other equity interest, and that is subordinated in payment to all other indebtedness of the qualified business issued or to be issued for money borrowed and no part of which has a maturity date less than five years after the date such indebtedness was purchased.

(3) **Registration.** A qualified business must electronically register with the Commissioner by electronically submitting Form IT-QBR through the Georgia Tax Center; registration shall constitute certification by the Commissioner for 12 months beginning on the date of the

Commissioner's approval. The Department will not process any Form IT-QBR for registration that is submitted or filed in any other manner. A business shall be permitted to renew its registration with the Commissioner so long as at the time of renewal, the business remains a qualified business. In order to be certified, the qualified business shall provide the Commissioner any information required by the Commissioner.

(a) Registration Conditions and Limitations. The registration of a business as a qualified business shall be subject to the following:

1. If the Commissioner finds that any of the information contained in Form IT-QBR is false, the Commissioner shall revoke the registration of such business. The Commissioner shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration;

2. Registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the twelve-month registration period without further application to the Commissioner. In such a case, the surviving company which constitutes the qualified business must provide the Commissioner with written notice of the merger, conversion, consolidation, or similar transaction and such other information as required by the Commissioner.

(4) **Credit Amount.** A qualified investor that makes a qualified investment directly in a qualified business in calendar year 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018 shall be allowed a tax credit of 35 percent of the amount invested commencing on January 1 of the second year following the year in which the qualified investment was made.

(5) **Per Individual Credit Limitation.** The credit amount allowed under paragraph (4) of this regulation shall be further limited for each individual, for one or more qualified investments whether made directly or by a pass-through entity, for a taxable year and shall not exceed $50,000.00.

(6) **Credit Cap.** In no event shall the total amount of tax credits allowed under O.C.G.A. § 48-7-40.30 exceed the following amounts:

(a) For investments made in calendar year 2011 and claimed and allowed in taxable year 2013, $10 million;

(b) For investments made in calendar year 2012 and claimed and allowed in taxable year 2014, $10 million;

(c) For investments made in calendar year 2013 and claimed and allowed in taxable year 2015, $10 million;

(d) For investments made in calendar year 2014 and claimed and allowed in taxable year 2016, $5 million;

(e) For investments made in calendar year 2015 and claimed and allowed in taxable year 2017, $5 million;

(f) For investments made in calendar year 2016 and claimed and allowed in taxable year 2018, $5 million;

(g) For investments made in calendar year 2017 and claimed and allowed in taxable year 2019, $5 million; and

(h) For investments made in calendar year 2018 and claimed and allowed in taxable year 2020, $5 million.

(7) **Claiming the Credit.** Any qualified investor seeking to claim the tax credit under O.C.G.A. § 48-7-40.30, must submit the appropriate forms to the Department as provided in this paragraph.

(a) Application. A qualified investor seeking to claim the tax credit under O.C.G.A. § 48-7-40.30 shall electronically submit Form IT-QI-AP for tentative approval through the Georgia Tax Center between September 1 and October 31 of the year for which the tax credit is claimed and allowed. The Department will not preapprove any qualified investor tax credit where Form IT-QI-AP is submitted or filed in any other manner.

(b) Notification. The Department will notify each qualified investor of the tax credits, tentatively approved and allocated to such qualified investor by December 31 of the year in which the application was submitted.

(c) Allocation of Tax Credit. In the event the credit amounts on applications filed with the Commissioner exceed the maximum aggregate limit of tax credits under paragraph (6) of this regulation, then the tax credits shall be allocated among the qualified investors who filed a timely application through the Georgia Tax Center on a pro rata basis based upon the amounts otherwise allowed under 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) **Carryforward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward for 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.

(13) **Recapture.** Any credit claimed under O.C.G.A. § 48-7-40.30 shall be recaptured if any of the following occur:

(a) Within two years after the qualified investment was made, the qualified investor transfers any of the securities or subordinated debt received in the qualified investment to another person or entity, other than a transfer resulting from one of the following:

1. The death of the qualified investor;

2. A transfer to the spouse of the qualified investor upon incident of divorce; or

3. A merger, conversion, consolidation, sale of the qualified business' assets, or similar transaction requiring approval by the owners of the qualified business under applicable law, to the extent the qualified investor does not receive cash or tangible property in such merger, conversion, consolidation, sale, or other similar transaction~~;~~.

(b) Except as provided in subparagraph (13)(a) of this regulation, within five years after the qualified investment was made, the qualified business makes a redemption with respect to the securities received or pays any principal of the subordinated debt; or

(c) Within two years after the qualified investment was made, the qualified investor participates in the operation of a qualified business, or the qualified investor's spouse, parent, sibling, or child, or a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides uncompensated professional advice to a qualified business whether as an officer, a member of the board of directors or managers or otherwise or participates in a stock or membership option or stock or membership plan, or both, shall be eligible for the credit~~;~~.

(14) **Recapture Amount.** The amount of credit recaptured:

(a) Shall apply only to the qualified investment in the particular qualified business in which the investment was made; and

(b) Shall be added to the qualified investor's income tax liability for the taxable year in which the recapture occurs.

(15) **Qualified Business Ceases Business Operations, Dissolves, or Liquidates.** In the event the qualified business ceases business operations, dissolves, or liquidates, the qualified investor may claim either the credit authorized under O.C.G.A. § 48-7-40.30 or any capital loss the qualified investor otherwise would be able to claim regarding that qualified business, but shall not be authorized to claim and be allowed both. If the qualified investor claims a capital loss and has already utilized the credit, the credit shall be recaptured.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40.30.

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 taxpayer shall be allowed a tax credit equal to 25 percent of the qualified rehabilitation expenditures for the certified rehabilitation of a historic home in the taxable year in which the certified rehabilitation is placed in service; except that in the case of a historic home located within a target area, an additional credit equal to 5 percent of the qualified rehabilitation expenditures shall be allowed.

(a) Credit cap. In no event shall the aggregate amount allowed for historic homes exceed the maximum aggregate limit in paragraph (5) for calendar year 2022 and $5 million per year for calendar years 2023 through 2029. No credit shall be issued for historic homes completed on or after January 1, 2030.

(b) Credit limitation. The amount of historic rehabilitation tax credit for a historic home shall not exceed $100,000 in any 120-month period.

(c) Preapproval for Historic Homes. Any taxpayer seeking preapproval to claim the historic rehabilitation tax credit for a historic home completed on or after January 1, 2022 must electronically submit Form IT-RHC-AP and their precertification from the Georgia Department of

Community Affairs through the Georgia Tax Center. The taxpayer must estimate their credit amounts on Form IT-RHC-AP if the certified rehabilitation has not been completed. The amount of tax credit claimed on the taxpayer's applicable Georgia income tax return must be based on the actual amount of the qualified rehabilitation expenditures. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated using the actual amount of the qualified rehabilitation expenditures when the return is filed, the excess preapproved amount cannot be claimed by the taxpayer, nor shall the excess preapproved amount be claimed by, reallocated to, assigned to, transferred to, or sold to any other taxpayer. If the taxpayer is a disregarded entity, then such information should be submitted in the name of the owner of the disregarded entity.

(d) Notification. The Department will notify each taxpayer of the tax credits preapproved and allocated to such taxpayer within thirty (30) days from the date the fully completed Form IT-RHC-AP and all required supporting documentation were submitted through the Georgia Tax Center.

(e) Allocation of Tax Credit. For any taxpayer seeking preapproval to claim the tax credits for a historic home completed on or after January 1, 2022, the Commissioner shall allow the tax credit on a first-come, first-served basis. The date the fully completed Form IT-RHC-AP is electronically submitted shall be used to determine such first-come, first-served basis.

(f) Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner for historic homes completed on or after January 1, 2022 exceed the maximum aggregate limit in paragraphs (4) and (5) of this regulation, then the tax credits shall be allocated among the taxpayers who submitted Form IT-RHC-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. § 48-7-29.8 and this regulation. Such proration shall include all applications received on the day the maximum aggregate limit was exceeded, regardless of whether it is for the credit cap year at issue or for an earlier year where the credit cap has been reached. Only credit amounts for applications received on the day the maximum aggregate limit was exceeded will be allocated on a pro rata basis.

(g) For historic homes, priority for prorated applications and applications submitted after a calendar year cap is reached. Any application for the 2022 calendar year credit that is prorated because the 2022 calendar year credit cap is reached and any application for the 2022 calendar year credit that is submitted after the 2022 calendar year credit cap is reached shall not be approved for a subsequent calendar year whose credit cap has not been reached and shall not have priority

over any applications with a later submission date. Any other application that is prorated because a calendar-year credit cap is reached and any other application that is submitted after a calendar-year credit cap is reached shall be approved for a subsequent calendar year whose credit cap has not been reached and shall have priority over any applications with a later submission date. In such cases, the taxpayer shall claim the credit in the taxable year that begins in such subsequent preapproved calendar year or as provided in paragraph (7) of this regulation. If the calendar-year credit cap for all subsequent calendar years has been reached, then the application shall be denied.

1. Example: Taxpayer submits the electronic Form IT-RHC-AP through the Georgia Tax Center on April 25, 2022 seeking preapproval to claim the 2022 historic rehabilitation tax credit for a historic home. On April 25, 2022, the 2022 calendar-year credit cap for historic homes was reached, and Taxpayer received an allocation of the 2022 historic rehabilitation tax credit on a pro rata basis. Taxpayer's preapproval application will not be approved for a subsequent calendar year and will not receive priority over applications with a later submission date.

2. Example: Taxpayer submits the electronic Form IT-RHC-AP through the Georgia Tax Center in 2023 seeking preapproval to claim the 2023 historic rehabilitation tax credit for a historic home. On the day that Taxpayer submits Form IT-RHC-AP, the 2023 calendar-year credit cap for historic homes was reached, and Taxpayer received an allocation of the 2023 historic rehabilitation tax credit on a pro rata basis. Taxpayer's preapproval application will be approved for the 2024 calendar year if the 2024 credit cap has not been reached and will receive priority over applications with a later submission date.

(h) Claiming the Historic Rehabilitation Tax Credit for a Historic Home. For a taxpayer to claim the historic rehabilitation tax credit for a historic home, the taxpayer must submit with the taxpayer's Georgia income tax return Form IT-RHC, the property tax bill for the year immediately before the beginning of the 24 month (or 60 month) period, the property tax bill for the year immediately after the beginning of the 24 month (or 60 month) period, and their completed final certification from the Georgia Department of Community Affairs.

(i) In the event it is determined that a taxpayer has not met all the requirements of O.C.G.A. § 48-7-29.8 and this regulation, then the credits shall not be approved or the approved credits shall be retroactively denied. The taxpayer shall file amended returns for the taxable year the credit was

claimed, reducing the credit. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been used by the taxpayer or have been sold or transferred, regardless of whether the transferee has used the credit or not.

(j) Carryforward. Any unused historic rehabilitation tax credit for a historic home may be carried forward for ten years after the close of the taxable year in which the certified rehabilitation was completed.

(k) Sale of the Historic Home. Except as provided in subparagraph (4)(l) of this regulation, in the event a historic rehabilitation tax credit for a historic home is claimed and allowed to the taxpayer, upon the sale or transfer of the historic home, the taxpayer shall be authorized to transfer the remaining unused amount of such historic rehabilitation tax credit to the purchaser of such historic home. If a historic home for which a certified rehabilitation has been completed by a nonprofit corporation is sold or transferred, the full amount of the credit to which the nonprofit corporation would be entitled if taxable shall be transferred to the purchaser or transferee at the time of the sale or transfer.

1. Such purchaser shall be subject to the limitations of this paragraph and O.C.G.A. § 48-7-29.8 and shall file with the purchaser's tax return a copy of the final certification from the Georgia Department of Community Affairs and a copy of the form evidencing the transfer of the tax credit.

2. Such purchaser shall be entitled to rely in good faith on the information contained in and used in connection with obtaining the final certification of the credit including, without limitation, the amount of the qualified rehabilitation expenditures.

(l) Recapture of the Historic Rehabilitation Tax Credit for a Historic Home. If an owner other than a nonprofit corporation sells a historic home within three years of receiving the credit, the seller shall recapture the credit to the Department as follows:

1. If the property is sold within one year of receiving the credit, the recapture amount will equal the lesser of the credit or the net profit of the sale;

2. If the property is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

3. If the property is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit of the sale.

(m) Exception to Recapture Provision. The recapture provisions in subparagraph (4)(l) of this regulation shall not apply to a sale resulting from the death of the owner.

(5) **Credit cap for 2022 for Historic Homes and for Any Other Certified Structure earning $300,000 or less.** In no event shall the aggregate amount allowed for historic homes completed on or after January 1, 2022 and any other certified structures earning $300,000 or less, together, exceed $5 million for calendar year 2022.

(6) **Historic Rehabilitation Tax Credit for Any Other Certified Structure.** A taxpayer shall be allowed a tax credit equal to 25 percent of the qualified rehabilitation expenditures for the certified rehabilitation of any other certified structure, other than a historic home, in the taxable year in which the certified rehabilitation is placed in service, except as provided in subparagraph (6)(j) of this regulation and paragraph (7) of this regulation.

(a) Credit limitations. For certified rehabilitations completed before January 1, 2017, the historic rehabilitation tax credit for any other certified structure shall not exceed $300,000 in any 120-month period.

(b) For certified rehabilitations completed on or after January 1, 2017, the maximum credit for any other individual certified structure shall be $5 million per taxable year; except that in the case 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 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 earning $300,000 or less in historic rehabilitation tax credits exceed the maximum aggregate limit in paragraph (5). For calendar years beginning on or after January 1, 2023, and ending on or before December 31, 2029, in no event shall historic rehabilitation tax credits issued for any other certified structure other than a historic home, regardless of the amount of credits earned, exceed $30 million per calendar year.

(f) Preapproval. For certified rehabilitations earning $300,000 or less that were completed on or after January 1, 2022 and for all other certified rehabilitations completed on or after January 1, 2017, any taxpayer seeking preapproval to claim the tax credits must electronically submit Form IT-RHC-AP, including the information required by subparagraph (6)(f)1. of this regulation, and their precertification from the Georgia Department of Community Affairs through the Georgia Tax Center. For a certified rehabilitation earning $300,000 or less that was expected to be completed in 2021 or before and that has preapproval for such year, the taxpayer is not required to request another preapproval but must complete the project within the two-year period as provided in paragraph (7) of this regulation. The taxpayer must estimate their credit amounts on Form IT-RHC-AP if the certified rehabilitation has not been completed. The amount of tax credit claimed on the taxpayer's applicable Georgia income tax return must be based on the actual amount of the qualified rehabilitation expenditures. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated using the actual amount of the qualified rehabilitation expenditures when the return is filed, the excess preapproved amount cannot be claimed by the taxpayer, nor shall the excess preapproved amount be claimed by, reallocated to, assigned to, transferred to, or sold to

any other taxpayer. If the taxpayer is a disregarded entity, then such information should be submitted in the name of the owner of the disregarded entity.

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);

(iv) The percentage of the subject property that will be used for non-profit purposes, if any;

(v) Whether the applicant or another entity intends to sublease the property to other entities, which entities they intend to sublease to, and if such entities are tax-exempt entities;

(vi) If the property is being leased, whether or not the owner of the property is a tax-exempt

entity;

(vii) Whether or not the project qualifies for the Federal Rehabilitation Credit allowed under Internal Revenue Code Section 47; and

(viii) Any other information requested by the Department.

(g) Notification. The Department will notify each taxpayer of the tax credits preapproved and allocated to such taxpayer within thirty (30) days from the date the fully completed Form IT-RHC-AP and all required supporting documentation were submitted through the Georgia Tax Center.

(h) Allocation of Tax Credit. For any taxpayer seeking preapproval to claim the tax credits for any other certified structure, the Commissioner shall allow the tax credit on a first-come, first-served basis. The date the fully completed Form IT-RHC-AP is electronically submitted shall be used to determine such first-come, first-served basis.

(i) Applications received on the day the maximum credit amount is reached for any other certified structure. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in subparagraph (6)(e) of this regulation, then the tax credits shall be allocated among the taxpayers who submitted Form IT-RHC-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. § 48-7-29.8 and this regulation. Such proration shall include all applications received on the day the maximum aggregate limit was exceeded, regardless of whether it is for the credit cap year at issue or for an earlier year where the credit cap has been reached. Only credit amounts for applications received on the day the maximum aggregate limit was exceeded will be allocated on a pro rata basis.

(j) For any other certified structure, priority for pro-rated applications and applications submitted after a calendar year cap is reached. Any application for the 2022 calendar year credit that is prorated because the 2022 calendar year credit cap is reached and any application for the 2022 calendar year credit that is submitted after the 2022 calendar year credit cap is reached shall not be approved for a subsequent calendar year whose credit cap has not been reached and shall not have priority over any applications with a later submission date. Any other application that is prorated because a calendar-year credit cap is reached and any application that is submitted after a calendar-year credit cap is reached shall be approved for a subsequent calendar year whose credit

cap has not been reached and shall have priority over any applications with a later submission date. In such cases, the taxpayer shall claim the credit in the taxable year that begins in such subsequent preapproved calendar year or as provided in paragraph (7) of this regulation. If the calendar-year credit cap for all subsequent calendar years has been reached, then the application shall be denied.

1. Example: Taxpayer submits the electronic Form IT-RHC-AP through the Georgia Tax Center on January 4, 2022 seeking preapproval to claim the 2022 historic rehabilitation tax credit for a certified structure other than a historic home. On January 4, 2022, the 2022 calendar year credit cap for certified structures other than historic homes was reached, and Taxpayer received an allocation of the 2022 historic rehabilitation tax credit on a pro rata basis. Taxpayer's preapproval application will not be approved for a subsequent calendar year and will not receive priority over applications with a later submission date.

2. Example: Taxpayer submits the electronic Form IT-RHC-AP through the Georgia Tax Center in 2023 seeking preapproval to claim the 2023 historic rehabilitation tax credit for a certified structure other than a historic home. On the day that Taxpayer submits the Form IT-RHC-AP, the 2023 calendar year credit cap for certified structures other than historic homes was reached, and Taxpayer received an allocation of the 2023 historic rehabilitation tax credit on a pro rata basis. Taxpayer's preapproval application will be approved for the 2024 calendar year if the 2024 credit cap has not been reached and will receive priority over applications with a later submission date.

(k) Preapproval for Calendar Year 2022 for any other certified structure earning more than $300,000 in historic rehabilitation tax credits. Taxpayers that were prorated or denied the any other certified structure credit for a project earning more than $300,000 because the credit cap was met for 2017, 2018, 2019, 2020, or 2021 may submit the electronic Form IT-RHC-AP for 2022 for additional credit amounts so long as it is the same project, and they will have priority as provided in this regulation. Taxpayers that meet the requirements for any other certified structure for a credit amount of more than $300,000 and choose to apply for the noncapped credit for any other certified structure (for a credit amount of $300,000 or less) for 2017, 2018, 2019, 2020, or 2021 may submit an electronic Form IT-RHC-AP for 2022 for any other certified structure earning more than $300,000 for additional credit amounts so long as it is the same project and they will have priority as provided in this regulation.

(l) Change of Ownership. If ownership of the other certified structure subsequently changes after historic rehabilitation tax credits were preapproved and allocated to the initial owners and no rehabilitation has begun, then the new owners must contact the Department to request reallocation of the preapproved credits to the new owners. Along with their request, the new owners must submit the amended precertification from the Georgia Department of Community Affairs and the information required by subparagraph (6)(f)1 of this regulation. Once the credits are reallocated to the new owners, the initial owners cannot claim, sell, or transfer the credits.

(m) Claiming the Historic Rehabilitation Tax Credit for Any Other Certified Structure. A taxpayer claiming the tax credits under subparagraph (6)(a) of this regulation shall attach to its Georgia income tax return, for each year the credit is claimed on Form IT-RHC, the property tax bill for the year immediately before the beginning of the 24 month (or 60 month) period, the property tax bill for the year immediately after the beginning of the 24 month (or 60 month) period, and their completed final certification from the Georgia Department of Community Affairs. A taxpayer claiming the tax credits under subparagraph (6)(b) of this regulation must attach to its Georgia income tax return, for each year the credit is claimed, an approved Form IT-RHC-AP, Form IT-RHC, the property tax bill for the year immediately before the beginning of the 24 month (or 60 month) period, the property tax bill for the year immediately after the beginning of the 24 month (or 60 month) period, and their completed final certification from the Georgia Department of Community Affairs.

(n) In the event it is determined that the taxpayer has not met all the requirements of O.C.G.A. § 48-7-29.8 and this regulation, then the amount of credits shall not be approved or the approved credits shall be retroactively denied. The taxpayer shall file amended returns for the taxable year the credit was claimed, reducing the credit. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been used by the taxpayer or have been sold or transferred, regardless of whether the transferee has used the credit or not.

(o) Pass-through entities. When the taxpayer is a pass-through entity and has no income tax liability of its own, the historic rehabilitation tax credit for any other certified structure shall be allocated to the partners, members, or shareholders of that entity in accordance with the provisions of any agreement among the partners, members, or shareholders of that entity and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified structure, provided that the entity or person that claims the credit must be subject to Georgia tax. 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 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, 2017. The partnership passes the credit to a calendar-year partner. The credit is available for use by the individual partner beginning with the calendar 2017 tax year.

(p) Selling or Transferring the Historic Rehabilitation Tax Credit for Any Other Certified Structure. The taxpayer may sell or transfer in whole or in part any historic rehabilitation tax credit for any other certified structure earned under subparagraph (6)(b) of this regulation that was previously claimed but not used by such taxpayer against its income tax to another Georgia taxpayer subject to the following conditions:

1. The taxpayer may only make a one-time sale or transfer of historic rehabilitation tax credits for any other certified structure earned in each taxable year. However, the sale or transfer may involve more than one transferee. For example, taxpayer 1 earns a $100,000 credit in year 1. In year 2, they sell $75,000 of the credit to taxpayer 2. In year 3, they are allowed to sell the remaining $25,000 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 once.

2. The historic rehabilitation tax credits for any other certified structure may be transferred before the tax return is filed by the taxpayer, provided the historic rehabilitation tax credits have been earned. 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. The credit is considered earned when the credit has been preapproved by the Department, the certified rehabilitation has been completed, and the taxpayer has received their completed final certification from the Georgia Department of Community Affairs. Preapproval of the credits by itself does not qualify as earning the credit.

3. 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 historic rehabilitation tax credit for any other certified structure. Form IT-TRANS must be submitted electronically to the

Department of Revenue through the Georgia Tax Center, or alternatively, as provided in subparagraph (6)(p)3.(i) of this regulation. 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 Form IT-RHC should be in the name of the disregarded entity and attached to the owner's Georgia income tax return.

(i) 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.

4. The taxpayer must provide all required historic rehabilitation tax credit for any other certified structure detail and transfer information to the Department of Revenue. Failure to do so will result in the historic rehabilitation tax credit for any other certified structure being disallowed until the taxpayer complies with such requirements.

5. The carryforward period of the historic rehabilitation tax credit for any other certified structure for the transferee will be the same as it was for the taxpayer. 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 be carried forward.

(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 in the taxpayer's calendar 2017 tax year. 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.

6. A transferee shall have only such rights to claim and use the historic rehabilitation tax credit for any other certified structure 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.

7. Only the taxpayer who earned the historic rehabilitation tax credit for any other certified structure and no subsequent good faith transferee shall be responsible in the event of a recapture, reduction, disallowance, or other failure related to such credit, provided the credit was properly claimed by the taxpayer.

(q) How to Sell or Transfer the Historic Rehabilitation Tax Credit for Any Other Certified Structure. The taxpayer may sell or transfer the historic rehabilitation tax credit for any other certified structure directly to a Georgia taxpayer (or multiple Georgia taxpayers, as provided in subparagraph (6)(p)1. of this rule). A pass-through entity may make an election to sell or transfer the unused historic rehabilitation tax credit for any other certified structure earned in a taxable year at the entity level. If the pass-through entity makes the election to sell the historic rehabilitation tax credit for any other certified structure 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.

1. Pass-Through Entity. The taxpayer 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 (6)(q) of this rule, the tax credit will pass through to the shareholders, partners, or members of the entity based on any agreement among the partners, members, or shareholders of that entity without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified structure, provided that the entity or person that claims the credit must be subject to Georgia tax. The shareholders, members, or partners may then sell their respective historic rehabilitation tax credit for any other certified structure to a Georgia taxpayer.

2. 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, it may then pass the credit through to its shareholders, members, or partners based on any agreement among the partners, members, or shareholders of that entity without regard to the ownership interest of the partners, members, or shareholders in the pass-through entity, provided that the entity or person that claims the credit must be subject to Georgia tax. For example, if a calendar-year partnership buys the credit earned by a taxpayer in calendar year 2017

and the credit was preapproved by the Department for calendar year 2017, then all the partners receiving the credit must have been a partner in the partnership no later than the end of the 2017 tax year of the partnership. 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 that received preapproval for calendar year 2017 and placed in service the 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 Department for calendar year 2017 (on their Form IT-RHC-AP, the completion calendar year was 2017 and the credit was awarded for such year) and was placed in service on December 31, 2019. As provided in paragraph (7), the taxpayer chooses to claim the credit on their tax year ending June 30, 2020 tax return. The transferee is a calendar-year taxpayer. The credit must be claimed by the transferee on the calendar 2020 tax year return. This credit cannot be carried forward by the

taxpayer or the transferee. This credit can only be utilized on the transferee's calendar 2020 tax year return.

(r) Required reporting. Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, the Department shall furnish a report to the chairperson of the House Committee on Ways and Means and the chairperson of the Senate Finance Committee by June 30 of each year. Such report shall contain the total sales tax collected in the prior calendar year, the average number of full-time employees at the certified structure, and the total value of credits claimed for each taxpayer claiming credits under subparagraph (6)(b).

1. For certified rehabilitations completed on or after January 1, 2017, any taxpayer that generates and claims the tax credit under subparagraph (6)(b) of this regulation must electronically report to the Department through the Georgia Tax Center, using Form IT-RHC-RPT, the monthly average full-time employees employed at the certified structure, the total sales tax collected, and the credits claimed. Such reports must be submitted to the Department for five calendar years following the calendar year in which the credit is claimed by the taxpayer. Such report shall be due by the February 28th date that follows the calendar year that is being reported.

2. For purposes of this subparagraph, in the event that the taxpayer that generates and claims the tax credit under subparagraph (6)(b) of this regulation leases such other certified structure, all total sales tax receipts from the certified structure and all total full-time employees at the certified structure shall be aggregated.

3. For certified rehabilitations completed on or after January 1, 2017, where the maximum credit amount exceeds $5 million for any other individual certified structure, the taxpayer shall report using Form IT-RHC-RPT whether or not they created 200 or more full-time permanent jobs or had $5 million in annual payroll within two years of the placed-in-service date. Such report shall be due no later than 60 days following the end of such two-year period.

(7) **Completion of the Project for Preapproved Projects.**

(a) For certified rehabilitations of any other certified structure under subparagraph (6)(b) of this regulation completed on or after January 1, 2017 and historic homes preapproved on or after

January 1, 2022, the project must be placed in service within two years after the completion calendar year listed in the taxpayer's Form IT-RHC-AP (the year for which the credit was originally reserved). If the taxpayer has a fiscal year, such completion calendar year shall, for purposes of this paragraph, be the tax year that begins in such completion calendar year. If this requirement is met, the taxpayer claims the credit in the year listed in the taxpayer's preapproval letter from the Department of Revenue; or the taxpayer may claim the credit in the tax year in which the project is placed in service, provided the project is placed in service within two years after the completion calendar year listed in their Form IT-RHC-AP and provided such placed-in-service year ends later than the end of the year listed in the taxpayer's preapproval letter from the Department of Revenue. If the project is not placed in service within such time period, the credit is lost and cannot be claimed, sold, or transferred unless the taxpayer reapplies for the credit and receives preapproval 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 taxpayer places the project in service on November 15, 2020. The taxpayer may claim the credit on their taxable year end December 31, 2019 Georgia income tax return or their taxable year end December 31, 2020 Georgia income tax return.

2. Example 4. 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 fiscal year filer with a February 28 taxable year end. This taxpayer places the project in service on January 31, 2021. The taxpayer may claim the credit on their taxable year end February 28, 2020 Georgia income tax return or their taxable year end February 28, 2021 Georgia income tax return.

(c) For historic homes estimated to be completed before January 1, 2022 and which are not actually completed before January 1, 2022, the project must be placed in service within two years after the estimated completion year listed on the precertification from the Georgia Department of Community Affairs. If this two-year requirement is met, the taxpayer claims the credit in the estimated completion year listed on the precertification from the Georgia Department of Community Affairs, and the taxpayer does not need to apply for preapproval for the historic home. If the project is not placed in service within such time period, the credit is lost and cannot be claimed, sold, or transferred unless the taxpayer reapplies for the credit and receives preapproval 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.

(d) A project that is delayed beyond two years may submit an application for a later year, subject to all the other requirements of this regulation.

(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, 2029. As such, projects completed on or after January 1, 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.

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 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 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 October 31, 2025 (this is the only amount contributed by taxpayers to an approved rural hospital organization in 2025). When taxpayers file their 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' 2025 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five 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 Subchapter 'S' corporation, or a partner in a partnership, the credit is limited to the lesser of the actual amount expended or $25,000 per tax year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter 'S' corporation, or partner in 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 $25,000; the individual taxpayer decides which pass-through entities to include when computing Georgia income for purposes of the qualified rural hospital organization expense tax 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 rural hospital organization expense tax 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 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 rural hospital organization expense tax credit for calendar year 2025 by submitting Form IT-QRHOE-TP1 on May 31, 2025. On Form IT-QRHOE-TP1, Taxpayer estimates that the taxpayer's Georgia income from A, Inc. is $300,000, and that Taxpayer's share of Georgia income from BC Company is $200,000, Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified rural hospital organization expense tax credit; therefore the Department preapproves Taxpayer for $25,000 qualified rural hospital organization expense tax credit (since $25,000 is less than $25,950 (5.19% of $500,000)), the applicable marginal tax rate for 2025 is 5.19%. Taxpayer makes a $25,000 donation to the rural hospital organization within 180 days of receiving preapproval from the Department and before October 31, 2025. When Taxpayer files Taxpayer's 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 (the Taxpayer can choose to include this company even though it was not considered at the time of preapproval), Taxpayer can only claim $7,785 qualified rural hospital organization expense tax credit (which is 5.19% of the $150,000 actual income from Taxpayer's selected pass-through entities), and the extra $17,215 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $7,785 qualified rural hospital organization expense tax credit claimed but not used on the taxpayer's 2025 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 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.

1. Example: Taxpayer, a corporation, requests preapproval for the qualified rural hospital organization expense tax credit for calendar year 2025 by electronically submitting Form IT-QRHOE-TP1 through the Georgia Tax Center on May 31, 2025. On Form IT-QRHOE-TP1 Taxpayer's intended contribution for 2025 is $100,000; and Taxpayer's estimated income tax liability for the 2025 tax year is $150,000; therefore, the Department preapproves Taxpayer for $100,000 qualified rural hospital organization expense tax credit for calendar year 2025. Taxpayer makes a $100,000 donation to the rural hospital organization within 180 days of receiving preapproval from the Department and before October 31, 2025. When Taxpayer files its 2025 Georgia income tax return, Taxpayer's income tax liability for tax year 2025 is $80,000, Taxpayer can only claim $60,000 of qualified rural hospital organization expense tax credit ($60,000 is 75% of its actual Georgia income tax liability for tax year 2025, which is less than $100,000), and the extra $40,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $60,000 qualified rural hospital organization expense tax credit claimed but not used on the taxpayer's 2025 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

2. Example: Taxpayer, a S corporation electing to pay tax at the entity level, requests preapproval for the qualified rural hospital organization expense tax credit for calendar year 2025 by electronically submitting Form IT-QRHOE-TP1 through the Georgia Tax Center on May 31, 2025. On Form IT-QRHOE-TP1 Taxpayer's intended contribution for 2025 is $100,000; and Taxpayer's estimated income tax liability for the 2025 tax year is $150,000; therefore, the Department preapproves Taxpayer for $100,000 qualified rural hospital organization expense tax credit for calendar year 2025. Taxpayer makes a $100,000 donation to the rural hospital organization within 180 days of receiving preapproval from the Department and before October 31, 2025. When Taxpayer files its 2025 Georgia income tax return, Taxpayer's income tax liability for tax year 2025 is $80,000. Taxpayer can only claim $60,000 of qualified rural hospital organization expense tax credit ($60,000 is 75% of its actual Georgia income tax liability for tax year 2025, which is less than $100,000), and the extra $40,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $60,000 qualified rural hospital organization expense tax credit claimed but not used on the taxpayer's 2025 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability but shall not be allowed to be 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 for calendar 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 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 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.

(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 IT-QRHOE-TP1 is submitted or filed in any other manner. Each rural hospital organization shall be registered with the Department to facilitate the web-based preapproval process for Form IT-QRHOE-TP1.

(a) The taxpayer should not file Form IT-QRHOE-TP1 with the Department of Revenue until the taxpayer's recipient rural hospital organization is listed on the Department of Community Health's website. If the taxpayer's recipient rural hospital organization is not listed on the Department of Community Health's website at the time that the Department of Revenue attempts to verify the rural hospital organization's listing, the Department of Revenue shall deny the preapproval request. If at a later date the taxpayer's recipient rural hospital organization becomes listed, the taxpayer will have to submit a new Form IT-QRHOE-TP1 to the Department of Revenue.

(b) The qualified rural hospital organization expense tax credit shall be allowed on a first-come, first-served basis. The date and time the Form IT-QRHOE-TP1 is electronically submitted shall be used to determine such first-come, first-served basis. There shall be no proration based on the date an application is received.

(c) The Department will notify each taxpayer and the taxpayer's selected rural hospital organization of the contribution amount, the tax credit certificate number, and the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QRHOE-TP1 was received. If the taxpayer's contribution was attributed to multiple rural hospital organizations, then the Department will notify such taxpayer of the contribution amounts attributed to each rural hospital organization, the tax credit certificate number, and the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QRHOE-TP1 was received. The Department will also notify each rural hospital organization only the contribution amounts attributed to it, the tax credit certificate number, and the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QRHOE-TP1 was received.

(d) If a taxpayer was preapproved for tax credits before September 30th of the year, the contribution must be made by the taxpayer within 180 days of the date of the preapproval notice received from the Department but not later than October 31st of the year. If a taxpayer was preapproved for tax credits after September 30th, the contribution must be made by the taxpayer on or before December 31st.

(e) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § 48-7-29.20 and this regulation, then the amount of the qualified rural hospital organization expense tax credit shall not be preapproved or, if already claimed, the preapproved qualified rural hospital organization expense tax credit shall be disallowed. With respect to such disallowed credit, tax and interest shall be due.

(f) Notwithstanding any laws to the contrary, the Department shall not disallow donors' credits for contributions to rural hospital organizations if the Commissioner preapproved a donation for a tax credit prior to the date the rural hospital organization is removed from the Department of Community Health list pursuant to O.C.G.A. § 31-8-9.1, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with O.C.G.A. § 48-7-29.20(e)(3) and this regulation.

(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 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) **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 by those filing income tax returns as single, head of household, married filing separate, and married filing joint;

(c) The total number and dollar value of corporate, fiduciary, S corporation, and partnership contributions and qualified rural hospital organization expense tax credits preapproved;

(d) A list of donors (which includes the donor's name, address, and identification number), including the dollar value of each donation, the dollar value of each preapproved qualified rural hospital organization expense tax credit, and each Department issued tax credit certificate number; and

(e) Any other information required by the Commissioner.

(15) **Report by Donor.** Until the time the Department changed the Georgia Tax Center on June 26, 2019, each taxpayer that received preapproval of the qualified rural hospital organization expense tax credit had to report to the Department the amount of the contribution and the Department issued tax credit certificate number and had to provide a copy of the Form IT-QRHOE-RHO1 to the Department. Such information had to be submitted within 30 days of the date of the contribution and had to be submitted electronically through the Georgia Tax Center. If the taxpayer failed to timely file the report, the taxpayer shall not be allowed the credit. The taxpayer may again request preapproval for such denied donation subject to the credit caps.

(16) **Confirmation of Donations.** Upon the rural hospital organization's confirmation to the Department, as required by paragraph (14) of this regulation, of the receipt of donations that have been preapproved by the Department, any taxpayer preapproved by the Department shall receive the full benefit of the qualified rural hospital organization expense tax credit even though the rural hospital organization to which the taxpayer made a donation does not properly comply with the reports or filings required by O.C.G.A. § 48-7-29.20.

(17) **Website posting.** The Department shall post the following in a prominent location on the Department's website:

(a) All pertinent timelines relating to the tax credit, including but not limited to:

1. Beginning date when contributions can be submitted for preapproval by donors for the January 1 to June 30 period;

2. Ending date when contributions can be submitted for preapproval by donors for the January 1 to June 30 period;

3. Beginning date when contributions can be submitted for preapproval by donors for the July 1 to December 31 period;

4. Ending date when contributions can be submitted for preapproval by donors for the July 1 to December 31 period; and

5. Date by which preapproved contributions are required to be sent to the rural hospital organization;

(b) The list and ranking order of rural hospital organizations eligible to receive contributions under O.C.G.A. § 31-8-9.1(b)(1).

(c) A monthly progress report including:

1. Total preapproved contributions to date by rural hospital organizations;

2. Total contributions received to date by rural hospital organizations;

3. Total aggregate amount of preapproved contributions made to date; and

4. Aggregate amount of tax credits available; and

(d) A list of all preapproved contributions that were made to an unspecified or undesignated rural hospital organization and the rural hospital organizations that received such contributions.

(18) **Preapproval Periods.**

(a) Beginning of an Approval or Preapproval Period. Pursuant to O.C.G.A. § 48-2-39, when the approval or preapproval period (January 1 through December 31) for the qualified rural hospital organization expense tax credit begin on a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed, such beginning dates shall be postponed until the first day following which is not a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed. Preapprovals, which must be requested through the Department's Georgia Tax Center, may be submitted beginning at 8:00AM on such following day.

(b) First-Come, First-Served Basis. Any application submitted on a Saturday, Sunday, legal holiday, or day on which the Federal Reserve Bank is closed, shall be considered to have been submitted on such date and time and shall not be prorated based on the date the application is received. This paragraph shall only apply to an application submitted on a day following the beginning date of the approval or preapproval period as provided by subparagraph (18)(a) of this regulation.

(19) **Sunset Date.** O.C.G.A. § 48-7-29.20, the qualified rural hospital organization expense tax credit, shall be repealed on December 31, 2029.

(20) **Effective Date.** This regulation shall be applicable to years beginning on or after January 1, 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.

Authority: O.C.G.A. §§ 48-2-12, 48-7-29.20.

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 $500,000 in qualified postproduction expenditures, has a total aggregate payroll of at least $100,000 but less than $500,000 for employees working within the state in the taxable year that the postproduction company claims the postproduction film tax credit.

3. Is engaged in qualified postproduction activities; and

4. Has been certified by the Department as provided in paragraph (3) of this regulation.

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. In the instance of a work for hire in which one postproduction company hires another postproduction company to engage in qualified postproduction activities for pay, the hired postproduction company shall be considered a service provider for the hiring postproduction company and the hiring postproduction company shall be entitled to the postproduction film tax credit for postproduction expenditures related to the hired postproduction company only if the Department certifies that the hired postproduction company is a Georgia company employing workers in this state and that the work on the postproduction expenditures is solely in this state. In order to make such certification, the postproduction company must certify on Form IT-PC that the hired postproduction company is a Georgia company employing workers in this state and that the work on the postproduction expenditures is solely in this state. If the Department determines at any time that the certification is not valid, then the Department shall disallow the postproduction expenditures related to the hired postproduction company. In the event that the hiring postproduction company does not qualify for the postproduction film tax credit, because the hiring postproduction company does not meet the

definition of a postproduction company under O.C.G.A. § 48-7-40.26A and this paragraph, then the hired postproduction company would be entitled to the postproduction film tax credit for its qualified postproduction expenditures provided it otherwise qualifies.

(b) ”Work for hire” means an arrangement whereby one postproduction company contracts with another postproduction company to engage in qualified postproduction activities pursuant to a production services agreement. Merely financing or providing funding to a postproduction company does not make the financing/funding company the “hiring” postproduction company for purposes of the postproduction film tax credit. In the instance of co-productions, the claiming company must attach a written agreement to Form IT-PFC when the credit is claimed as to which party will be entitled to earn and claim the tax credit. Failure to execute and attach such agreement shall result in the loss of the postproduction film tax credit.

(3) **Certification for a Postproduction Company.**

(a) The postproduction company must electronically certify on Form IT-PC to the Department of Revenue through the Georgia Tax Center that:

1. The postproduction company maintains a business location physically located in this state; and

2. The postproduction company has expended or intends to expend a total aggregate payroll of $250,000 or more for employees working within this state in the taxable year that the postproduction company claims the postproduction film tax credit; or if the postproduction company has incurred at least $100,000 but less than $500,000 in qualified postproduction expenditures, that the postproduction company has expended or intends to expend a total aggregate of at least $100,000 but less than $500,000 for employees working within this state in the taxable year that the postproduction company claims the postproduction film tax credit.

(b) If the postproduction company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity.

(4) **Qualified Postproduction Expenditures.** Qualified postproduction expenditures include postproduction expenditures incurred in this state that are directly used in qualified postproduction activities, including without limitation the following: 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; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; 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 postproduction costs for the project in accordance with generally accepted entertainment industry practices. This term includes postproduction expenditures for footage shot inside or outside of Georgia.

(a) Depreciation, amortization, or other expense on qualified postproduction expenditures with a useful life of more than one year. The costs of qualified postproduction expenditures with a useful life of more than one year are considered "other direct costs of the qualified postproduction activities in accordance with generally accepted entertainment industry practices." Such costs shall be included in the computation of the postproduction film tax credit for the taxable year based upon the depreciation, amortization, or other expense included in the computation of Georgia taxable income of the postproduction company for the applicable taxable year. Such depreciation, amortization, or other expense shall be prorated based upon the time the asset is used in qualified postproduction activities in this state. Depreciation, amortization, or other expense on expenditures incurred before the postproduction period shall not be included in the computation of the postproduction film tax credit. In order to claim depreciation, amortization, or other expense, the qualified postproduction expenditure for the asset that generated the depreciation, amortization, or other expense, must have been incurred in this state as provided in subparagraph (4)(b) of this regulation.

(b) Qualified postproduction expenditures incurred in this state. In order to be considered to have been incurred in this state, the following rules shall apply:

1. Qualified postproduction expenditures, which are attributable to the performance of services by individuals and companies directly at the postproduction site in Georgia who were not employees of the postproduction company, shall be attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation.

2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the postproduction site (such as insurance, service fees paid to a payroll company including workers compensation if the service fees include such, editing and related services, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, etc.) will be allowed if 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 employees

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:

1. SUI (state unemployment insurance);

2. FUI (federal unemployment insurance);

3. FICA (employer portion);

4. Pension and welfare if the amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

5. Health insurance premiums if these amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

(i) Other Fringe Benefits. The following fringe benefits are attributed to Georgia as follows:

1. Meal per diems, as set forth by United States General Services Administration, if incurred in Georgia; and

2. Hotel per diems, as set forth by United States General Services Administration, if incurred in Georgia.

(e) Direct use. A postproduction company may only claim qualified postproduction expenditures that are directly used in a qualified postproduction activity. In determining whether a postproduction expenditure is directly used in a qualified postproduction activity, the Department of Revenue will consider the proximity of the expenditure to the activity as well as the causal relationship between the expenditure and the activity.

(5) **Credit Amount.** Except as provided in paragraph (6) of this regulation, a postproduction company that meets or exceeds $500,000 in qualified postproduction expenditures in a taxable year as provided in O.C.G.A. § 48-7-40.26A and this regulation, shall be allowed a tax credit of 20 percent of the qualified postproduction expenditures; and an additional tax credit of 10 percent of the qualified postproduction expenditures shall be allowed if the qualified production expenditures under O.C.G.A. § 48-7-40.26 and upon which the qualified postproduction expenditures were incurred, were filmed in this state; an additional 5 percent of the qualified postproduction expenditures shall be allowed if the qualified postproduction expenditures were 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 amount for small postproduction companies.** A postproduction company that has incurred at least $100,000 but less than $500,000 in qualified postproduction expenditures and has a total aggregate payroll in this state of at least $100,000 but less than $500,000 in a taxable year shall be allowed a tax credit of 20 percent of the qualified postproduction expenditures in a taxable year.

(7) **Credit Amount Limitation.** A postproduction company's credit amount shall not exceed the amounts in paragraph (5) or (6) of this regulation, and for any single tax year shall not exceed the postproduction company's total aggregate payroll expended to employees working within this state for the taxable year that the postproduction company claims the postproduction film tax

credit. Any amount in excess of this credit limit shall not be eligible for carryforward to succeeding years' tax liability, nor shall such excess amount be eligible for use against the postproduction company's quarterly or monthly payment under O.C.G.A. § 48-7-103, nor shall such excess amount be assigned, sold, or transferred 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 aggregate amount of postproduction film tax credits available for such taxable year under paragraph (8) of this regulation.

(10) **Credit Cap for small postproduction companies.** 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 for postproduction companies that have incurred at least $100,000 but less than $500,000 in qualified postproduction expenditures and have a total aggregate payroll in this state of at least $100,000 but less than $500,000 in a taxable year, exceed $1 million per taxable year. The credit cap under this paragraph is separate from and shall not be included in the aggregate credit cap under paragraph (8) of this regulation.

(a) The postproduction film tax credit for small postproduction companies shall not be available for taxable years beginning on or after January 1, 2023.

(11) **Preapproval for Postproduction Companies (not applicable to Small Postproduction Companies under Paragraph (12) of this Regulation).** Any postproduction company seeking preapproval to claim tax credits under paragraph (8) of this regulation, must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this subparagraph.

(a) Application. A postproduction company seeking preapproval to claim the tax credits under paragraph (8) of this regulation must electronically submit Form IT-PC-AP through the Georgia Tax Center. A postproduction company that has submitted its Form IT-PC for certification by the Department or that submits Form IT-PC on the same day as Form IT-PC-AP is submitted may request preapproval from the Department before meeting the requirements of the 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 was exceeded will be allocated on a pro rata basis.

(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-PC-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 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.

(12) **Preapproval for Small Postproduction Companies.** Any postproduction company seeking preapproval to claim tax credits under paragraphs (10) of this regulation, must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this subparagraph.

(a) Application. A postproduction company seeking preapproval to claim the tax credits under paragraph (10) of this regulation must electronically submit Form IT-SPC-AP through the Georgia Tax Center. A postproduction company that has submitted its Form IT-PC for certification by the Department or that submits Form IT-PC on the same day as Form IT-SPC-AP is submitted may request preapproval from the Department before meeting the requirements of the postproduction

film tax credit. Such postproduction company must estimate their credit amounts on Form IT-SPC-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 (10) 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-SPC-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 (10) of this regulation, then the tax credits shall be allocated among the postproduction companies who submitted Form IT-SPC-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 was exceeded will be allocated on a pro rata basis.

(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 an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such company. 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 after the due date of the Georgia income tax return (including extensions). 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.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (14)(a)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 postproduction company stating the postproduction film tax credit amount which may be applied against withholding and when the postproduction company or its payroll service provider may begin to claim the postproduction film 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 made by the postproduction company or its payroll service provider.

(b) Use of Other Tax Credits. Postproduction companies claiming the postproduction film tax credit may not claim the job tax credit, headquarters tax credit, or quality jobs tax credit for employees whose wages are used to calculate the postproduction film tax credit.

(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) **Carryforward.** Any credit that is claimed but not used in a taxable year may be carried forward for 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 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 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 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 carryforward period for this credit will expire on December 31, 2023. This 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 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 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 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 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.

(a) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall report yearly to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each postproduction company. The first report shall be submitted by June 30, 2018, and each year thereafter by June 30.

(21) **Effective Date.** This regulation shall be 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 and 48-7-40.26A.

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 $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 $2,500, or the actual amount donated, whichever is less.

(c) For individual taxpayers filing married filing joint, the credit amount shall not exceed $5,000, or the actual amount donated, whichever is less.

(d) For an individual taxpayer who is a member of a limited liability company duly formed under state law, a shareholder of a Subchapter ‘S’ corporation, or a partner in a partnership, the credit is limited to the lesser of the actual amount donated or $25,000 per tax year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter ‘S’ corporation, or partner in 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 $25,000; the individual taxpayer decides which pass-through entities to include when computing Georgia income for purposes of the qualified education donation tax 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 education donation tax credit. Such combined Georgia income shall be multiplied by the applicable marginal tax rate to determine the tax that was actually paid. If the taxpayer is filing a joint return, the taxpayer's spouse may also claim a credit for their ownership interests and shall separately be eligible for a credit as provided in this subparagraph. If the taxpayer(s) chooses to be preapproved pursuant to this subparagraph, for all purposes of claiming the credit they shall be subject to the provisions of this subparagraph and shall not be entitled to claim any other amounts provided in O.C.G.A. § 48-7-29.21 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 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 $240,000, and that Taxpayer's share of Georgia income from BC Company is $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 $25,000 qualified education donation tax credit (since $25,000 is less than $25,064 (5.39% of $465,000)), the applicable marginal tax rate for 2024 is 5.39%. Taxpayer makes a $25,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of 2024. When Taxpayer files Taxpayer's 2024 Georgia income tax return, Taxpayer received a salary from A, Inc. of $80,000 and A, Inc.'s actual Georgia income is $120,000; Taxpayer's actual share of Georgia income from BC Company is $100,000 and Taxpayer received a guaranteed payment from BC Company of $55,000; Taxpayer's actual share of Georgia income from XYZ Company is $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 $21,560 qualified

education donation tax credit (which is 5.39% of the $400,000 actual income from Taxpayer's selected pass-through entities), and the extra $3,440 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $21,560 qualified education donation tax credit claimed but not used on the taxpayer's 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 2024 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1 Taxpayer's intended contribution for 2024 is $100,000; and Taxpayer's estimated income tax liability for the 2024 tax year is $100,000; therefore, the Department preapproves Taxpayer for $75,000 qualified education donation tax credit for calendar year 2024. Taxpayer makes a $75,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of 2024. When Taxpayer files their 2024 Georgia income tax return, Taxpayer's income tax liability for tax year 2024 is $80,000, Taxpayer can only claim $60,000 of qualified education donation tax credit ($60,000 is 75% of their actual Georgia income tax liability for tax year 2024), and the extra $15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $60,000 qualified education donation tax credit claimed but not used on the taxpayer's 2024 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

2. Example: Taxpayer, a S Corporation electing to pay tax at the entity level, requests preapproval for the qualified education donation tax credit for calendar year 2024 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1 Taxpayer's intended contribution for 2024 is $100,000; and Taxpayer's estimated income tax liability for the 2024 tax year is $100,000; therefore, the Department preapproves Taxpayer for $75,000 qualified education donation tax credit for calendar year 2024. Taxpayer makes a $75,000 donation to the recipient within 60 days of receiving preapproval from the Department and before

the end of 2024. When Taxpayer files their 2024 Georgia income tax return, Taxpayer's income tax liability for tax year 2024 is $80,000, Taxpayer can only claim $60,000 of qualified education donation tax credit ($60,000 is 75% of their actual Georgia income tax liability for tax year 2024), and the extra $15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $60,000 qualified education donation tax credit claimed but not used on the taxpayer's 2024 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability but shall not be allowed to be passed through to and used by the shareholders.

(f) Except as provided in subparagraph (3)(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 (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 for 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 days from the date the Form IT-QED-TP1 was received.

(c) On the day any Form IT-QED-TP1 is received for a calendar year that causes the calendar year limit in paragraph (4) of this regulation to be reached, then the remaining tax credits shall be allocated among the applicants who filed the Form IT-QED-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. § 48-7-29.21 and this regulation. Only credit amounts on Form IT-QED-TP1(s) received on the day the calendar year limit was exceeded shall be allocated on a pro rata basis.

(d) 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.

(e) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § 48-7-29.21 and this regulation, then the amount of the qualified education donation tax credit shall not be preapproved or, if already claimed, the preapproved qualified education donation tax credit shall be disallowed. With respect to such disallowed credit, tax and interest shall be due.

(f) Once the calendar year limit is reached for a calendar year, taxpayers shall no longer be eligible for a credit under O.C.G.A. § 48-7-29.21, for such calendar year. If any Form IT-QED-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.

(6) **Letter of Confirmation.** Form IT-QED-FUND1 shall be provided by the recipient to the taxpayer to confirm the contribution within 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) **Carryforward.** Any credit which is claimed but not used in a taxable year shall be allowed

to be carried forward 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 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) X ($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 attend.

(11) **Report by the Nonprofit Corporation Incorporated by the Georgia Foundation for Public Education.** The nonprofit corporation incorporated by the Georgia Foundation for Public Education shall electronically submit Form IT-QED-FUND2 to the Department through the Georgia Tax Center by January 12 each year. The report, Form IT-QED-FUND2, shall be prepared on a calendar year basis and shall include the following:

(a) The total number and dollar value of individual contributions and qualified education donation tax credits preapproved. Individual contributions include contributions made by those filing income tax returns as single, head of household, married filing separate, and married filing joint;

(b) The total number and dollar value of corporate, fiduciary, S corporation, and partnership contributions and qualified education donation tax credits preapproved;

(c) The total number and dollar value of grants awarded to public schools;

(d) A list of donors (which includes the donor's name, address, and identification number), including the dollar value of each donation, the dollar value of each preapproved qualified education donation tax credit, and each Department issued tax credit certificate number; and

(e) Any other information required by the Commissioner.

The Department shall post on its website the information received from the nonprofit corporation incorporated by the Georgia Foundation for Public Education under subparagraph 11(a) through 11(c) of this regulation.

(12) **Sunset Date.** O.C.G.A. § 48-7-29.21, the qualified education donation tax credit, shall be

repealed on December 31, 2029.

(13) **Effective Date.** This regulation shall be applicable to years beginning on or after January 1, 2024. 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 and 48-7-29.21.

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 computation of the musical tax credit for the taxable year based upon the depreciation, amortization, or other expense included in the computation of Georgia taxable income of the production company for the applicable taxable year. Such depreciation, amortization, or other expense shall be prorated based upon the time the asset is used in qualified production activities in this state. Depreciation, amortization, or other expense on expenditures incurred before the production period shall not be included in the computation of the musical tax credit. In order to claim depreciation, amortization, or other expense, the qualified production expenditure for the asset that generated the depreciation, amortization, or other expense, must have been incurred in this state as provided in subparagraph (4)(b) of this regulation.

(b) Qualified production expenditures incurred in this state. In order to be considered to have been incurred in this state, the following rules shall apply:

1. Qualified production expenditures, which are attributable to the performance of services by individuals and companies directly at the production site in Georgia who were not employees of the production company, shall be attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation.

2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the production site (such as insurance, service fees paid to a payroll company including workers compensation if the service fees include such, editing and related services, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, etc.) will be allowed if 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 production 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 production 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 production site, which is the subject of the qualified production 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 employees 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:

1. SUI (state unemployment insurance);

2. FUI (federal unemployment insurance);

3. FICA (employer portion);

4. Pension and welfare if the amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

5. Health insurance premiums if these amounts are paid as part of pension, health, and welfare plans (these would not be required to be paid to a Georgia vendor);

(i) Other Fringe Benefits. The following fringe benefits are attributed to Georgia as follows:

1. Meal per diems, as set forth by United States General Services Administration, if incurred in Georgia; and

2. Hotel per diems, as set forth by United States General Services Administration, if incurred in Georgia.

(e) Direct account. A production company may only claim qualified production expenditures on direct account of a qualified production activity. In determining whether a production expenditure is on direct account of a qualified production activity, the Department of Revenue will consider the proximity of the expenditure to the activity as well as the causal relationship between the expenditure and the activity; and the applicable rules of the Department of Economic Development and any determination made by the Department of Economic Development regarding whether a qualified production 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 applicable Georgia income tax return must be based on the actual musical tax credit earned under O.C.G.A. § 48-7-40.33 and this regulation and cannot exceed the amount preapproved. If the production 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 production company nor shall such excess preapproved amount be assigned to any other taxpayer or added to the credit cap under paragraph (6) of this regulation. If the production 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 production company of the tax credits preapproved or denied to such production 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-MC-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 (6) of this regulation, then the tax credits shall be allocated among the production companies who submitted Form IT-MC-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. § 48-7-40.33, and this regulation. Only credit amounts on applications received on the day the aggregate credit cap was exceeded will be allocated on a pro rata basis.

(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 production expenditures during two years (they spend $600,000 in year 1 and $200,000 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 1 for $600,000 (the year the $500,000 spending threshold is met) and in year 2 the production company must request preapproval for $200,000 of production expenditures (the later year). If preapproved for year 1, the production company must claim the $600,000 on their applicable year 1 Georgia income tax return and if preapproved for year 2 the production company must claim $200,000 on their applicable year 2 Georgia income tax return.

(9) **Qualified Production Expenditures Not Eligible for the Musical Tax Credit.** Any qualified production expenditures for which a production company claims the tax credit under O.C.G.A. § 48-7-40.26 are not eligible for the musical tax credit under O.C.G.A. § 48-7-40.33 and this regulation.

(10) **Claiming the Musical Tax Credit.** A production company claiming tax credits under paragraph (6) of this regulation must attach Form IT-MC, and their final certification from the Georgia Department of Economic Development to its Georgia income tax return for each tax year in which the credit is claimed.

(a) Withholding Tax. The production company may claim any excess musical 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 production company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(a)3. of this regulation. The withholding tax benefit may only be applied against the withholding tax account used by the production company or its payroll service provider for payroll purposes. In the event the production 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 (10)(a)3. of this regulation. Any production company that qualifies to take all or a part of the musical tax credit against withholding tax otherwise due the Department of Revenue, must notify the Commissioner, in the manner specified in subparagraph (10)(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 payment for such company. When this election is made, the excess musical tax credit will not pass through to the shareholders, partners, or members of the production company if the production company is a pass-through entity.

1. Notice of Intent. To claim any excess musical tax credit not used on the income tax return against the production company's withholding tax liability, the production company must file

Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period after the due date of the Georgia income tax return (including extensions). 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.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (10)(a)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 production company stating the musical tax credit amount which may be applied against withholding and when the production company or its payroll service provider may begin to claim the musical 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 made by the production company or its payroll service provider.

(b) Use of Other Tax Credits. Production companies claiming the musical tax credit may not claim the job tax credit, headquarters tax credit, or quality jobs tax credit for employees whose wages are used to calculate the musical tax credit.

(c) Assignment of Credit to Affiliates. Once the production company establishes the amount of the musical 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 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) **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, 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.

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.

(4) **Rural Zone Jobs Tax Credit.** A certified entity that creates at least two new full-time equivalent jobs in a rural zone shall be allowed a tax credit in the amount of $2,000 for each new full-time equivalent job in year one. Such certified entity shall receive rural zone jobs tax credit in years two through five for each new full-time equivalent job created in year one, provided the new full-time equivalent jobs are maintained in each year, and provided the certified entity maintains at least two new full-time equivalent jobs.

(a) Additional New Full-Time Equivalent Jobs Created in Years Two Through Five. For each additional new full-time equivalent job created in years two through five, a certified entity shall receive rural zone jobs tax credit, provided the new full-time equivalent jobs are maintained. Additional new full-time equivalent jobs means those new full-time equivalent jobs created in years two through five 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 in Department of Community Affairs Regulation 110-34-1-.06.

(i) The credits for additional new full-time equivalent jobs may only be taken if the certified entity already qualifies for the rural zone jobs tax credit in year one.

(b) Subsequent Year One. The certified entity may begin a subsequent year one and years two through five as provided in Department of Community Affairs Regulation 110-34-1-.06.

(c) Per Certified Entity Credit Limitation. The credit amount allowed under paragraph(4) of this regulation shall be further limited for each certified entity and shall not exceed $40,000.00 per taxable year.

(d) Number of Full-Time Equivalent Jobs. The number of new full-time equivalent jobs shall be determined by comparing the monthly average of full-time equivalent jobs subject to Georgia income tax withholding for a given taxable year with the corresponding period of the prior taxable year; provided a certified entity that begins operations during the taxable year may be certified by the Department of Community Affairs to base initial eligibility on a period of less than 12 months.

(e) Computation of Rural Zone Jobs Tax Credit Based on Twelve Month Periods Only. Except as provided in subparagraph (4)(d) of this regulation, a certified entity must compute increases and decreases in full-time equivalent jobs on the basis of twelve month periods only, even when the certified entity has taxable years that are not equal to twelve months. This may cause the rural zone jobs tax credit calculation period to be different from the tax year of the certified entity.

(5) **Rural Zone Property Tax Credit**. A certified investor that acquires and develops property in a rural zone shall be allowed a tax credit if an eligible business that claims the tax credit under paragraph (4) of this regulation is located in the investment property; or if an eligible business is located in the investment property and that eligible business maintains a minimum of two full-time equivalent jobs for each year the rural zone property tax credit is claimed.

(a) Credit Amount. The credit amount for the rural zone property tax credit is 25 percent of the purchase price and shall not exceed $125,000; provided that the entire credit shall not be taken in the year in which the property is placed in commercial service but shall, for taxable years ending on or before December 31, 2024, be prorated equally in five installments over five taxable years, beginning with the taxable year in which the property is placed in service. For taxable years beginning on or after January 1, 2025, the entire credit shall not be taken in the year in which the property is placed in commercial 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.

(b) Certified Investor May Preserve the Rural Zone Property Tax Credit. A certified investor shall be allowed to claim the rural zone property tax credit for up to seven years from the date of initial eligibility in the event the commercial requirement under paragraph (5) of this regulation is not satisfied in consecutive years.

(6) **Rural Zone Qualified Rehabilitation Expenditures Tax Credit.** A certified entity or certified investor that meets the minimum historic preservation standards provided by the Department of Community Affairs, that has qualified rehabilitation expenditures, shall receive the rural zone qualified rehabilitation expenditures tax credit for three years beginning with the year the property is placed in service. The certified entity or certified investor shall maintain a minimum of two full-time equivalent jobs for each year the tax credit is claimed; or with respect to a certified investor, if an eligible business is located in the investment property, such eligible business must maintain a minimum of two full-time equivalent jobs for each year the tax credit is claimed.

(a) Credit Amount. The credit amount for the rural zone qualified expenditures tax credit is 30 percent of the qualified rehabilitation expenditures and shall not exceed $150,000 per project; provided that the entire credit shall not be taken in the year in which the 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) **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 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, 2032.

(12) **Effective Date**. This regulation shall be applicable to taxable years beginning on or after January 1, 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.

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.

(3) **Credit Amount.** For tax years beginning on or after January 1, 2019, and ending on or before December 31, 2026, a Class III railroad shall be allowed a tax credit in the amount of 50 percent of the qualified railroad track maintenance expenditures paid or incurred by such Class III railroad during the taxable year.

(4) **Credit Amount Limitation.** The credit amount allowed under paragraph (3) of this regulation shall be further limited for each Class III railroad and shall not exceed $3,500 multiplied by each mile of railroad track owned or leased in Georgia as of the close of the taxable year by such Class III railroad. Double track is treated as multiple lines of railroad track, rather than as a single line of railroad track. Thus, one mile of single track is one mile, but one mile of double track is two miles.

(5) **Per Mile Limitation.** The credit allowed under O.C.G.A. § 48-7-40.34 and this regulation shall only be allowed once for each mile of railroad track in each taxable year.

(6) **Reduction of basis.** If a credit is allowed under O.C.G.A. § 48-7-40.34 and this regulation with respect to any railroad track, the basis of such railroad track shall be reduced by the amount of the credit allowed. Such reduction shall be treated in the same manner as provided by Section 45G of the Internal Revenue Code of 1986.

(7) **Preapproval.** A taxpayer seeking preapproval to claim the tax credit under O.C.G.A. § 48-7-40.34 must electronically submit Form IT-RTM-AP through the Georgia Tax Center along with

documentation that substantiates the miles of railroad track owned or leased by the taxpayer in Georgia, and any other information that the Commissioner may request. The Department will not preapprove any taxpayer where Form IT-RTM-AP is submitted or filed in any other manner. If the taxpayer is a disregarded entity then Form IT-RTM-AP should be electronically submitted in the name of the owner of the disregarded entity. If Form IT-RTM-AP is submitted before the credit is earned or before the end of the taxpayer's tax year, the taxpayer must estimate their credit amounts on Form IT-RTM-AP. The amount of tax credit claimed on the taxpayer's applicable Georgia income tax return must be based on the actual amount of qualified railroad track maintenance expenditures. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated using the actual amount of the qualified railroad track maintenance expenditures when the return is filed, the excess preapproved amount cannot be claimed by the taxpayer, nor shall the excess preapproved amount be claimed by, reallocated to, assigned to, or transferred or sold to any other taxpayer.

(a) Notification. The Department will notify each taxpayer of the tax credits preapproved to such taxpayer, within thirty (30) days from the date the completed Form IT-RTM-AP was submitted through the Georgia Tax Center.

(8) **Claiming the Credit.** To claim the railroad track maintenance tax credit, the taxpayer must submit Form IT-RTM, and any other information that the Commissioner may request, with the taxpayer's Georgia income tax return each year the tax credit is claimed. A software program's Form IT-RTM that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(9) **Carryforward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.34.

(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 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, 2020. The partnership passes the credit to a calendar year partner. The credit is available for use by the individual partner beginning with the calendar 2020 tax year.

(11) **Selling or Transferring the Railroad Track Maintenance Tax Credit.** The taxpayer may sell or transfer in whole or in part any railroad track maintenance tax credit previously claimed but not used by such taxpayer 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 railroad track maintenance tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee. For example, taxpayer 1 earns and claims $100,000 credit in year 1. In year 2 they sell $75,000 of the credit to taxpayer 2. In year 3, they are allowed to sell the remaining $25,000 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 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 carryforward period of the railroad track maintenance tax credit for the transferee will be the same as it was for the taxpayer. This credit may be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.34.

1. Example. Taxpayer sells the railroad track maintenance tax credit on June 15, 2026. This credit is for qualified railroad track maintenance expenditures preapproved by the Department for 2025, paid or incurred in 2025 and claimed by the taxpayer on their 2025 income tax return. The transferee is a calendar year taxpayer. The credit may be claimed by the transferee on the 2025, 2026, 2027, 2028 return and the carryforward period for this credit will expire on December 31, 2028. This carryforward treatment applies regardless of whether it is being claimed by Taxpayer or the transferee.

(f) A transferee shall only have such rights to claim and use the railroad track maintenance 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.

(g) In the event of recapture, reduction, disallowance, or other failure related to the railroad track maintenance tax credit, the Department may pursue the taxpayer or the transferee.

(12) **How to Sell or Transfer the Railroad Track Maintenance Tax Credit.** The taxpayer may sell or transfer the railroad track maintenance tax credit directly to a Georgia taxpayer (or multiple 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 2025, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2025 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.

(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.

(i) Example. Taxpayer sells the railroad track maintenance tax credit on October 15, 2025. This credit is for qualified railroad track maintenance expenditures preapproved by the Department for 2025, incurred in 2025 and claimed by the taxpayer on their 2025 income tax return. The transferee is a calendar year taxpayer. The credit may be claimed by the transferee on the 2025, 2026, 2027, or 2028 return.

(13) **Report.** On or before September 1, 2020, 2021, 2022, 2023, 2024, 2025, 2026, and 2027 the Department shall issue a report to the chairpersons of the Senate Finance Committee and the

House Committee on Ways and Means, which shall include the following statistics for the preceding taxable year:

(a) The total number of taxpayers that claimed a credit; and

(b) The number and total value of all credits earned and all credits applied during such tax year.

(14) **Sunset Date.** O.C.G.A. § 48-7-40.34, the railroad track maintenance tax credit, shall be repealed on January 1, 2027.

(15) **Effective Date.** This regulation shall be 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, 48-7-40.34.

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. § 48-7-40.1A.

(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 protective clothing, helmets, gloves,

face shields, goggles, facemasks, hand sanitizer, and respirators or other equipment designed to protect the wearer from injury or to prevent the spread of infection, disease, virus, or other illness. Such term shall include equipment identified under 29 C.F.R. Section 1910, Subpart I.

(d) ”Personal protective equipment manufacturer” or “PPE manufacturer” means any business enterprise which is engaged in the manufacturing of PPE in this state. Such term shall also include any business enterprise which, in response to COVID-19, began manufacturing PPE in this state. Such term shall not include retail businesses that sell PPE. Such term shall not include a manufacturer that manufactures the material used in the personal protective equipment but not the personal protective equipment itself. Such term shall not include a manufacturer that manufactures the equipment used to manufacture the personal protective equipment.

(3) **Credit Amount.** A personal protective equipment manufacturer that qualifies for the jobs tax credit under O.C.G.A. § 48-7-40 or 48-7-40.1 and the applicable jobs tax credit regulations and claims the jobs tax credit as provided in Revenue Regulation 560-7-8-.36 shall be allowed an additional $1,250 personal protective equipment manufacturer jobs tax credit for those qualifying jobs to the extent they are engaged in the qualifying activity of manufacturing personal protective equipment in Georgia during the taxable year.

(4) **Maximum Amount of Credit.** The personal protective equipment manufacturer jobs tax credit may be used to offset 100% of the personal protective equipment manufacturer’s Georgia income tax liability derived from operations within this state.

(5) **Eligibility.** A personal protective equipment manufacturer shall be eligible for the additional personal protective equipment manufacturer jobs tax credit under paragraph (3) of this regulation at an individual establishment of the business. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity of manufacturing personal protective equipment in Georgia shall be eligible for the additional personal protective equipment manufacturer jobs tax credit.

(a) The determination of whether a job is considered engaged in the qualifying activity of manufacturing personal protective equipment in Georgia shall be determined on a monthly basis. In order to qualify for the PPE tax credit, such job must first qualify for and be claimed for the jobs tax credit under O.C.G.A. § 48-7-40 or 48-7-40.1. The personal protective equipment manufacturer must compute a monthly average number of jobs engaged in the qualifying activity

of manufacturing personal protective equipment in Georgia. Any job that is included in the jobs tax credit calculation (either a new or maintained job), where 50 percent or more of the time is spent on the qualifying activity of manufacturing personal protective equipment 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 jobs tax credit computation for such month. A job should 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 jobs tax credit for such year.

(b) For example. A taxpayer started their business in 2019 and manufactures personal protective equipment in Georgia and also has another business in Georgia. The taxpayer qualified for and claimed the jobs tax credit for jobs at both businesses. Not all the jobs included in the jobs tax credit are involved in the manufacture of personal protective equipment. The taxpayer has the following job numbers in 2020:

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 - Number of jobs eligible for the jobs tax credit and allowed for the PPE credit	57	32

(c) Only jobs that are involved in the qualifying activity of manufacturing personal protective equipment in Georgia are allowed to be included when claiming the personal protective equipment manufacturer jobs tax credit. This shall include managers, sales jobs, and support jobs that are involved in the qualifying activity of manufacturing personal protective equipment in Georgia provided such persons meet the other requirements including the 50% requirement.

(6) **Conditions and Limitations.** The personal protective equipment manufacturer jobs 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 jobs tax credit regulations. The personal protective equipment manufacturer jobs tax credit shall be disallowed during any year that the taxpayer does not qualify as a personal protective equipment manufacturer but the PPE manufacturer may requalify in a later year if they meet the requirements.

(a) Personal protective equipment 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 jobs tax credit numbers for their 2020 or 2021 jobs tax credit, cannot use their 2019 jobs tax credit numbers to determine the personal protective equipment manufacturer jobs tax credit for 2020 or 2021. Only personal protective equipment manufacturing jobs actually created or maintained in each respective year can be claimed.

(7) **Claiming the Credit.** For a personal equipment manufacturer to claim the personal protective equipment manufacturer jobs tax credit, the personal protective equipment manufacturer must submit Form IT-CA with the personal protective equipment manufacturer's Georgia income tax return each year the credit is claimed. A software program's Form IT-CA that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(a) Withholding tax. A personal protective equipment manufacturer may claim any excess personal protective equipment manufacturer jobs tax credit against its withholding tax liability. Except in the case of a timely assignment under O.C.G.A. § 48-7-42, the withholding tax benefit may only be applied against the withholding tax account used by the personal protective equipment manufacturer for 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, 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 after the due date of the Georgia income tax return (including extensions). 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.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (7)(a)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 personal protective equipment manufacturer stating the tax credit amount which may be applied against withholding and when the personal protective equipment manufacturer 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) **Carryforward.** Any personal protective equipment manufacturer jobs tax credit which is claimed but not used in a taxable year may be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.1A from the close of the taxable year in which the qualifying personal protective equipment manufacturer jobs were created.

(9) **Pass-Through Entities.** When the personal protective equipment manufacturer 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 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, 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.

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. § 48-7-40.1B.

(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. § 48-7-40.1B.

(b) "Life Sciences Manufacturing Job Tax Credit" is the credit established under O.C.G.A. § 48-7-40.1B that is allowed to a medical equipment and supplies manufacturer and pharmaceutical and medicine manufacturer.

(3) **Credit Amount.** A medical equipment and supplies manufacturer or a pharmaceutical and medicine manufacturer, that qualifies for the job tax credit under O.C.G.A. § 48-7-40 or 48-7-40.1 and the applicable job tax credit regulations thereunder, shall be allowed an additional $1,250 life sciences manufacturing job tax credit for jobs created on or after July 1, 2021 that are engaged in the qualifying activity of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in Georgia during the taxable year.

(4) **Maximum Amount of Credit.** The life sciences manufacturing job tax credit may be used to offset 100% of the medical equipment and supplies manufacturer's and pharmaceutical and medicine manufacturer's Georgia income tax liability derived from operations within this state.

(5) **Eligibility.** A medical equipment and supplies manufacturer and pharmaceutical and medicine manufacturer shall be eligible for the life sciences manufacturing job tax credit under paragraph (3) of this regulation at an individual establishment of the business. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in Georgia shall be eligible for the life sciences manufacturing job tax credit.

(a) The determination of whether a job is considered engaged in the qualifying activity of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in

Georgia shall be determined on a monthly basis. In order to qualify for the life sciences manufacturing job tax credit, such job must first qualify for and be claimed for the job tax credit under O.C.G.A. § 48-7-40 or 48-7-40.1. The medical equipment and supplies manufacturer 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 manufacturing job tax 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 - Number of jobs eligible for the job tax credit and allowed for the life sciences manufacturing job tax credit	57	32

(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 claiming the life sciences manufacturing job tax credit. This shall include managers, sales jobs, and support jobs that are involved in the qualifying activity of manufacturing medical equipment and supplies or manufacturing pharmaceuticals or medicine in Georgia provided such persons meet the other requirements including the 50% monthly requirement.

(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 job tax credit regulations. The life sciences manufacturing job tax credit shall be disallowed during any year that the taxpayer does not qualify as a medical equipment and supplies manufacturer or a pharmaceutical and medicine manufacturer but the medical equipment and supplies manufacturer or the pharmaceutical and medicine manufacturer may requalify in a later year if they meet the requirements.

(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
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 Entire Year	58	47
Monthly average for entire year less Average for Jan to June and allowed for the life sciences 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.

(7) **Cannot claim the Personal Protective Equipment Manufacturer Jobs Tax Credit for the Same Jobs.** Taxpayers may not claim the life sciences manufacturing job tax credit for any job for which the taxpayer claims the tax credit provided under Code Section 48-7-40.1A. Jobs for which the personal protective equipment manufacturer jobs tax credit is claimed under Code Section 48-7-40.1A shall be excluded from all calculations for the life sciences manufacturing job tax credit under this regulation. Also, in no case can the number of jobs claimed under Code

Section 48-7-40.1A and Code Section 48-7-40.1B together exceed the number of jobs that are included in the job tax credit computation.

(8) **Claiming the Credit.** For a medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer to claim the life sciences manufacturing job tax credit, the medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer must submit Form IT-CA with the medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer's Georgia income tax return each year the credit is claimed. A software program's Form IT-CA that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(a) Withholding tax. A medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer may claim any excess life sciences manufacturing job tax credit against its withholding tax liability. Except in the case of a timely assignment under O.C.G.A. § 48-7-42, the withholding tax benefit may only be applied against the withholding tax account used by the medical equipment and supplies manufacturer or the pharmaceutical and medicine manufacturer for payroll purposes. In the event the medical equipment and supplies manufacturer or the pharmaceutical and medicine 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 medical equipment and supplies manufacturer or a pharmaceutical and medicine manufacturer must notify the commissioner, in the manner specified in subparagraph (8)(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 medical equipment and supplies manufacturer or pharmaceutical and medicine manufacturer. When this election is made by a pass-through entity, the excess life sciences manufacturing job tax credit will not pass through to the shareholders, partners, or members of the medical equipment and supplies manufacturer or the pharmaceutical and medicine manufacturer if the medical equipment and supplies manufacturer or the pharmaceutical and medicine 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 medical equipment and supplies manufacturer's or the pharmaceutical and medicine manufacturer's withholding tax liability, the medical equipment and supplies manufacturer or the pharmaceutical and medicine manufacturer must file Revenue Form IT-WH through the Georgia

Tax Center within the three-year statute of limitations period after the due date of the Georgia income tax return (including extensions). 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.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (8)(a)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 medical equipment and supplies manufacturer or the pharmaceutical and medicine manufacturer stating the tax credit amount which may be applied against withholding and when the medical equipment and supplies manufacturer or the pharmaceutical and medicine manufacturer 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.

(9) **Carryforward.** Any life sciences manufacturing job tax credit which is claimed but not used in a taxable year may be carried forward for the number of years authorized under O.C.G.A. § 48-7-40.1B from the close of the taxable year in which the life sciences manufacturing job tax credit jobs were created.

(10) **Pass-Through Entities.** When the medical equipment and supplies manufacturer or the pharmaceutical and medicine manufacturer 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 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, 48-7-40.1B.

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.

(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 $2,500, 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 $5,000, whichever is less.

1. Example: Taxpayers, a married couple filing jointly, request preapproval for the qualified foster child donation credit for calendar year 2025 by electronically submitting Form IT-QFCD-TP1 through the Georgia Tax Center. On Form IT-QFCD-TP1, Taxpayers' intended 2025 contribution is $4,000; therefore, the Department preapproves Taxpayers for a qualified foster child donation credit of $4,000. Taxpayers make a $3,000 donation to the foster child support organization within 60 days of receiving preapproval from the Department and before the end of 2025 (this is the only amount of qualified contributions made by Taxpayers to a qualified foster child support organization in 2025). When Taxpayers file their 2025 Georgia income tax return,

they can only claim a qualified foster child donation credit of $3,000 (which is the actual amount of qualified contributions made), and the extra $1,000 that was preapproved but not contributed cannot be claimed by Taxpayers and cannot be carried forward. Any amount of the $3,000 qualified foster child donation credit claimed but not used on Taxpayers' 2025 Georgia income tax return shall be allowed to be carried forward to apply to their succeeding 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 $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 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 $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 $5,190 (5.19% of $100,000) and the applicable marginal tax rate for 2025 is 5.19%). 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 2025. When Taxpayer files the 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 $3,633 (which is 5.19% of the $70,000 actual income from Taxpayer's selected pass-through entities), and the extra $1,367 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $3,633 qualified foster child donation credit claimed but not used on Taxpayer's 2025 Georgia income tax return shall be allowed to be carried forward to apply to Taxpayer's succeeding 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 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 2025 by electronically submitting Form IT-QFCD-TP1 through the Georgia Tax Center. On Form IT-QFCD-TP1, Taxpayer's intended 2025 contribution is $15,000, and Taxpayer's estimated 2025 income tax liability is $150,000. Therefore, the Department preapproves Taxpayer for a qualified foster child donation credit of $15,000 for 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 2025. When Taxpayer files its

2025 Georgia income tax return, Taxpayer's 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 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 2025 Georgia income tax return shall be allowed to be carried forward to apply to its succeeding 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 donation credit for calendar year 2025 by electronically submitting Form IT-QFCD-TP1 through the Georgia Tax Center. On Form IT-QFCD-TP1, Taxpayer's intended 2025 contribution is $15,000, and Taxpayer's estimated 2025 income tax liability is $150,000. Therefore, the Department preapproves Taxpayer for a qualified foster child donation credit of $15,000 for 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 2025. When Taxpayer files its 2025 Georgia income tax return, Taxpayer's 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 its actual Georgia income tax liability for tax year 2025), 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 2025 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding three 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 (6)(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 (6)(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 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 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 will be applied if subparagraph (6)(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 of qualified contributions made. 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. See examples in subparagraph (6)(e) of this regulation.

6. Except as provided in subparagraph (6)(g)5. 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 (6)(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. 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 foster child support 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 foster child support organizations, apply to make multiple donations to the same foster child support organization, or apply to make a donation both before and after July 1; provided, however, that each donation must be applied for separately.

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

(8) **Contributions Report.**

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

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

(c) The contributions report shall include the following:

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 submit a new Form IT-QFCD-TP1 to the Department.

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

1. The name of the qualified foster child support organization listed on the Department's website to which the contribution will be made;

2. The taxpayer identification number of the qualified foster child support organization to which the contribution will be made;

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

4. The type of taxpayer;

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

6. If the taxpayer is an individual filing a joint return, the name and taxpayer identification number of the joint filer;

7. The intended contribution amount;

8. If the taxpayer is a corporation, fiduciary, electing S corporation, or electing partnership, 10% of the estimated income tax liability the corporation, fiduciary, electing S corporation, or electing partnership expects for the tax year of the corporation, fiduciary, S corporation, or partnership in which the contribution will be made;

9. Tax year end of the taxpayer;

10. Calendar year in which the contribution will be made;

11. Any other information the Commissioner may require; and

12. Certification that all information contained on the Form IT-QFCD-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 foster child donation credit shall be allowed on a first-come, first-served basis. The date the Form IT-QFCD-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 qualified foster child support organization of the tax credits preapproved, denied, or prorated to such taxpayer within 30 days from the date the Form IT-QFCD-TP1 was received.

(f) On the day any Form IT-QFCD-TP1 is received for a calendar year that causes the calendar-year limit in paragraph (5) of this regulation to be reached, the remaining tax credits shall be allocated among the applicants who submitted the Form IT-QFCD-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. § 48-7-29.24 and this regulation. Only credit amounts on Form IT-QFCD-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 60 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 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 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) **Carryforward.** Any credit that is claimed but not used in a taxable year shall be allowed to be carried forward 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 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) X ($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.**

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

(b) If the qualified foster child support organization fails to correct all deficiencies within 90 days of receipt of notice from the Department, such qualified foster child support organization shall:

1. Have its status as a qualified foster child support organization revoked and be immediately removed from the Department's list of approved qualified foster child support organizations;

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

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

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

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, 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, 48-7-29.24.

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 firefighters and first responders but cannot use qualified contributions for such additional activities.

(c) “Letter of authorization” means the letter from a local law enforcement unit that designates a law enforcement foundation as its sole and exclusive law enforcement foundation and that is signed by the chief of police, law enforcement head, or sheriff of the local law enforcement unit.

(d) “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.

(e) “Contributions Report” means the report detailing the contributions received that must be

prepared on a calendar-year basis and submitted to the Department.

(3) **Certification of Qualified Law Enforcement Foundation.** The law enforcement foundation must apply for certification as a qualified law enforcement foundation and submit Form IT-LEF to the Department through the Georgia Tax Center. The Department will not process any Form IT-LEF that is submitted or filed in any other manner.

(a) Application. The law enforcement foundation must electronically attest on Form IT-LEF to the Department through the Georgia Tax Center that:

1. An authorized person is submitting Form IT-LEF on behalf of the law enforcement foundation;

2. A single local law enforcement unit has designated the applicant as its sole and exclusive qualified law enforcement foundation;

3. The law enforcement foundation agrees to fully comply with the terms and conditions under O.C.G.A. § 48-7-29.25; and

4. The law enforcement foundation understands that to knowingly prepare or present a document that is false, fictitious, or fraudulent in any matter within the jurisdiction of the Department is a felony under O.C.G.A. § 16-10-20.

(b) Letter of Authorization. The law enforcement foundation must submit the letter of authorization along with Form IT-LEF to the Department through the Georgia Tax Center. The letter of authorization must state:

1. The name of the local law enforcement unit;

2. The type of agency, office, or department of the local law enforcement unit;

3. The address of the local law enforcement unit;

4. The federal employer identification number of the local law enforcement unit;

5. The name of the law enforcement foundation that is designated by the local law enforcement unit to be its sole and exclusive law enforcement foundation;

6. The federal employer identification number of the law enforcement foundation that is designated by the local law enforcement unit to be its sole and exclusive law enforcement foundation;

7. The address of the law enforcement foundation that is designated by the local law enforcement unit to be its sole and exclusive law enforcement foundation;

8. The name of the previous law enforcement foundation that was designated by the local law enforcement unit to be its sole and exclusive law enforcement foundation (if applicable); and

9. The federal employer identification number of the previous law enforcement foundation that was designated by the local law enforcement unit to be its sole and exclusive law enforcement foundation (if applicable).

(c) Letter of Determination Recognizing Nonprofit Status under Section 501(c)(3) of the Internal Revenue Code. The law enforcement foundation must submit a copy of the letter of determination recognizing nonprofit status under Section 501(c)(3) of the Internal Revenue Code along with Form IT-LEF to the Department through the Georgia Tax Center.

1. If the law enforcement foundation has a pending application for nonprofit status filed with the Internal Revenue Service, it must submit copies of official correspondence from the Internal Revenue Service relating to the pending application, such as receipt acknowledgement letters or requests for additional information letters, along with Form IT-LEF to the Department through the Georgia Tax Center.

2. When the pending application is later processed by the Internal Revenue Service, the law enforcement foundation is not required to later submit a copy of the letter of determination recognizing nonprofit status under Section 501(c)(3) of the Internal Revenue Code to the Department.

3. If the law enforcement foundation has a pending protest after receiving a proposed adverse determination letter denying nonprofit status under Section 501(c)(3) of the Internal Revenue Code, the foundation must submit copies of official correspondence from the Internal Revenue Service Appeals Office, such as an acknowledgment and conference letter, along with Form IT-LEF to the Department through the Georgia Tax Center.

4. If the law enforcement foundation has a pending action for declaratory judgment after receiving a final adverse determination letter denying nonprofit status under Section 501(c)(3) of the Internal Revenue Code, the foundation must submit copies of court documents relating to the pending action, such as a notice of receipt of petition or a court order, along with Form IT-LEF to the Department through the Georgia Tax Center.

(d) The Department shall have rolling applications and certifications for qualified law enforcement foundations.

(e) Notice. The Department will notify the law enforcement foundation of the approval or denial of certification within thirty (30) days from the date the Form IT-LEF was submitted through the Georgia Tax Center.

(4) **Law Enforcement Foundation Designation Change.** If a qualified law enforcement foundation that was designated by a local law enforcement unit as the sole and exclusive foundation for the local law enforcement unit is no longer designated as such, then the qualified law enforcement foundation or the local law enforcement unit shall notify the Department in writing. The law enforcement foundation shall be removed from the Department's list of approved qualified law enforcement foundations, and the Department shall not preapprove any future contributions to such law enforcement foundation. If a new law enforcement foundation is designated by the local law enforcement unit as the new sole and exclusive foundation for the local law enforcement unit, then the new law enforcement foundation shall apply for certification as a qualified law enforcement foundation.

(5) **Credit Cap.** In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-29.25 exceed $75 million per calendar year for years beginning on or after January 1, 2023 and ending on or before December 31, 2027, unless otherwise provided by law.

(6) **Individual Law Enforcement Foundation Limitation.** For each calendar year of the credit, no more than $3 million of credit shall be preapproved for qualified contributions to any individual law enforcement foundation. On the day and time any Form IT-QLED-TP1 is received during a calendar year that causes the individual law enforcement foundation limitation in this paragraph to be reached, then any subsequent credit preapproval applications for qualified contributions to such individual law enforcement foundation shall be denied. There shall be no proration based on the date an application is received. The Department shall notify such individual law enforcement foundation if the $3 million limitation is reached.

(a) If a taxpayer is denied preapproval for this tax credit by the Department due to the individual law enforcement foundation limitation in this paragraph, the taxpayer may reapply for preapproval and list a law enforcement foundation from the 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 2025 by electronically submitting Form IT-QLED-TP1 through the Georgia Tax Center. On Form IT-QLED-TP1, Taxpayers' intended 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 2025 (this is the only amount of qualified contributions made by Taxpayers to a qualified law enforcement foundation in 2025). When Taxpayers file their 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' 2025 Georgia income tax return shall be allowed to be carried forward to apply to their succeeding 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 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 $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 $10,380 (5.19% of $200,000) and the applicable marginal tax rate for 2025 is 5.19%). 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 2025. When Taxpayer files the 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 $7,785 (which is 5.19% of the $150,000 actual income from Taxpayer's selected pass-through entities), and the extra $2,215 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the $7,785 qualified law enforcement donation credit claimed but not used on Taxpayer's 2025 Georgia income tax return shall be allowed to be carried forward to apply to Taxpayer's succeeding 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 2025 by electronically submitting Form IT-QLED-TP1 through the Georgia Tax Center. On Form IT-QLED-TP1, Taxpayer’s intended 2025 contribution is $75,000, and Taxpayer’s estimated 2025 income tax liability is $100,000. Therefore, the Department preapproves Taxpayer for a qualified law enforcement donation credit of $75,000 for 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 2025. When Taxpayer files its 2025 Georgia income tax return, Taxpayer’s 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 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 2025 Georgia income tax return shall be allowed to be carried forward to apply to its succeeding 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 2025 by electronically submitting Form IT-QLED-TP1 through the Georgia Tax Center. On Form IT-QLED-TP1. Taxpayer’s intended 2025 contribution is $75,000, and Taxpayer’s estimated 2025 income tax liability is $100,000. Therefore, the Department preapproves Taxpayer for a qualified law enforcement donation credit of $75,000 for 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 2025. When Taxpayer files its 2025 Georgia income tax return, Taxpayer’s 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 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 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 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.

(10) **Website Posting by the Department.** The following shall be posted on the Department's website:

(a) The application and requirements to be certified as a qualified law enforcement foundation:

(b) The list of all qualified law enforcement foundations and their affiliate local law enforcement units;

(c) The aggregate amount of tax credits remaining and available for preapproval for each year;

(d) The method for taxpayers seeking preapproval status for contributions through the Georgia Tax Center; and

(e) The Form 990 and contributions report received from each qualified law enforcement foundation, except for the information in subparagraph (c)4. of paragraph (9).

(11) **Confidential Taxpayer Information.** Except for the information published under paragraph (10), all information or reports relative to O.C.G.A. § 48-7-29.25 and this regulation that were provided by qualified law enforcement foundations 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 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;

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

4. The type of taxpayer;

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

6. If the taxpayer is an individual filing a joint return, the name and taxpayer identification number of the joint filer;

7. The intended contribution amount;

8. If the contributor is a corporation, fiduciary, electing S corporation, or electing partnership, 75% of the estimated income tax liability the corporation, fiduciary, electing S corporation, or electing partnership expects for the tax year of the corporation, fiduciary, S corporation, or partnership in which the contribution will be made;

9. Tax year end of the taxpayer;

10. Calendar year in which the contribution will be made;

11. Any other information the Commissioner may require;

12. Certification that all information contained on the Form IT-QLED-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 law enforcement donation credit shall be allowed on a first-come, first-served basis. The date and time the Form IT-QLED-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 qualified law enforcement foundation of the tax credits preapproved, denied, or prorated to such taxpayer within 30 days from the date the Form IT-QLED-TP1 was received.

(f) On the day any Form IT-QLED-TP1 is received for a calendar year that causes the calendar-year limit in paragraph (5) of this regulation to be reached, the remaining tax credits shall be allocated among the applicants who submitted the Form IT-QLED-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. § 48-7-29.25 and this regulation. Only credit amounts on Form IT-QLED-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 60 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 a taxpayer has not met all the requirements of O.C.G.A. § 48-7-29.25, then the qualified law enforcement donation credit shall not be preapproved or the preapproved qualified law enforcement donation credit shall be retroactively denied. With respect to such denied credit, any applicable tax, interest, and penalties shall be due if the qualified law enforcement donation credit has already been claimed.

(i) If the Commissioner preapproved a donation for a tax credit prior to the date the qualified law enforcement foundation is removed from the Department's list pursuant to O.C.G.A. § 48-7-29.25(j) and paragraph (22) 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. § 48-7-29.25(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. § 48-7-29.25 for such calendar year. If any Form IT-QLED-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.

(13) **Letter of Confirmation.** Form IT-QLED-LEF1 shall be provided by the law enforcement foundation to the taxpayer to confirm the contribution within 30 days of the contribution.

(14) **Claiming the Credit.** A taxpayer claiming the qualified law enforcement donation credit, unless indicated otherwise by the Commissioner, must submit Form IT-QLED-TP2 with the taxpayer's Georgia tax return when the qualified law enforcement donation credit is claimed. An electronically filed Georgia income tax return that includes the software's electronic Form IT-QLED-TP2 satisfies this requirement.

(15) **E-filing Attachment Requirements.** If a taxpayer claiming the credit electronically files

their tax return, the Form IT-QLED-LEF1 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.

(16) **Carryforward.** Any credit that is claimed but not used in a taxable year shall be allowed to be carried forward for the number of years authorized under O.C.G.A. § 48-7-29.25. However, any amount in excess of the credit amount limits in paragraph (7) of this regulation shall not be eligible for carryforward to the taxpayer's succeeding years' tax liability, nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(17) **Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § 48-7-29.25(k) provides that no qualified law enforcement donation credit shall be allowed under O.C.G.A. § 48-7-29.25 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 law enforcement donation credit is allowed under O.C.G.A. § 48-7-29.25.

(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 deducted. 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 law enforcement 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 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) X ($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 the direct benefit of any particular individual.

(20) **Direct Contracts.** The tax credit shall not be allowed for contributions made to a qualified law enforcement foundation 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 law enforcement foundation or its affiliated local law enforcement unit.

(21) **Soliciting Contributions.** In soliciting contributions, a law enforcement foundation shall not represent or direct a local law enforcement unit to represent that, in exchange for contributing to the law enforcement foundation, a taxpayer shall receive a direct or particular benefit.

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

(a) Any qualified law enforcement foundation that fails to comply with the requirements under O.C.G.A. § 48-7-29.25 shall be given written notice of its failure and have 90 days from receipt of such notice to correct all deficiencies.

(b) If the qualified law enforcement foundation fails to correct all deficiencies within 90 days of receipt of notice from the Department, such qualified law enforcement foundation shall:

1. Have its status as a qualified law enforcement foundation revoked and be immediately removed from the Department's list of approved qualified law enforcement foundations;

2. Have all applications for preapproval of tax credits under O.C.G.A. § 48-7-29.25 rejected by the Department on or after the date that the Department removes the qualified law enforcement foundation from its list of approved qualified law enforcement foundations; and

3. Be required to cease all operations as a qualified law enforcement foundation and transfer all contribution funds that are not yet expended to a properly operating qualified law enforcement foundation within 30 days of receipt of notice from the Department of removal from the approved list.

(c) Notwithstanding subparagraphs (a) and (b), any qualified law enforcement foundation that fails to comply with the requirements under O.C.G.A. § 48-7-29.25(i)(3) and paragraph (21) of this regulation shall have its status as a qualified law enforcement foundation revoked and shall not be renewed as a qualified law enforcement foundation for at least two years from the date of the revocation.

1. The law enforcement foundation shall be removed from the Department's list of approved qualified law enforcement foundations, and the Department shall not preapprove any contributions to such law enforcement foundation.

(23) **Effective Date.** This regulation shall be 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, 48-7-29.25.

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 or physician no longer qualifies as a rural health care professional or the fifth taxable year that the dentist or physician is allowed the credit under O.C.G.A. § 48-7-29.26.

(d) “Rural physician credit” means the credit provided under O.C.G.A. § 48-7-29.

(3) **Credit Amount.**

(a) A dentist or physician qualifying as a rural health care professional after May 15, 2024, shall be allowed a credit against the tax imposed by O.C.G.A. § 48-7-20 in the amount of $5,000 for each 12-month period of employment as a rural health care professional. The credit may be claimed each year for up to five taxable years as long as the dentist or physician continues to qualify as a rural health care professional.

1. The credit amount as provided in subparagraph (3)(a) shall be prorated on a monthly basis using 30-day periods for the first year of qualification as a rural health care professional.

(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 through December 31, 2024. The dentist worked as a rural health care professional for 202 days for the first year of qualification as a rural

health care professional. The dentist is eligible for a prorated credit amount of $2,500 based on six (6) months of employment as a rural health care professional.

2. The credit amount as provided in subparagraph (3)(a) shall be prorated on a monthly basis using 30-day periods for the final year of qualification as a rural health care professional.

(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:

2024 = $2,500
2025 = $5,000
2026 = $5,000
2027 = $5,000
2028 = $2,917

(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 returns to practice 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 taxable years of the rural health care professional credit and the rural physician credit combined.

(d) In no event shall the amount of the tax credit exceed the taxpayer's income tax liability, and any unused tax credit shall not be allowed to be carried forward to apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(5) **Credit Cap.** In no event shall the aggregate amount of tax credits allowed for rural health care professionals exceed $2 million per taxable year.

(6) **Preapproval for the Credit.** All taxpayers must be preapproved to claim the rural health care professional credit and must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this paragraph.

(a) For each taxable year for which a taxpayer seeks to claim the rural health care professional credit, the taxpayer must electronically submit the preapproval application through the Georgia Tax Center to request preapproval from the Department. The Department will not preapprove any rural health care professional credit where the preapproval application is submitted or filed in any other manner.

(b) The preapproval application shall be submitted in the year following the taxable year for which the rural health care professional credit is sought.

1. Example. A taxpayer worked as a rural health care professional in 2024. The taxpayer will submit a preapproval application in 2025 to be preapproved for the 2024 rural health care professional credit.

(c) Each individual taxpayer must submit a preapproval application for his or her employment as a rural health care professional regardless of whether he or she files separately or jointly with another taxpayer.

(d) The preapproval application shall include the following information:

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

2. The county where the taxpayer worked as a rural health care professional;

3. The first day of employment as a rural health care professional;

4. The months of employment as a rural health care professional in the taxable year;

5. Whether the taxpayer worked as a rural physician or claimed the rural physician credit before May 15, 2024;

6. If applicable, the number of years the rural physician credit was claimed;

7. Whether the taxpayer worked in a non-rural county on or after May 15, 2024;

8. If applicable, the non-rural county where the taxpayer worked and the first and last day that the taxpayer worked in that non-rural county

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

10. Certification that all information contained on the preapproval application is true to his or her best knowledge and belief and is submitted for the purpose of obtaining preapproval from the Commissioner.

(e) The rural health care professional credit shall be allowed on a first-come, first-served basis. The date the preapproval application is electronically submitted shall be used to determine such first-come, first-served basis.

(f) The Department will notify each individual taxpayer of the tax credits preapproved and allocated to such taxpayer, along with the credit certificate number, within thirty (30) days from the date the preapproval application was received.

(g) On the day any preapproval application is received for a taxable year that causes the aggregate credit cap in paragraph (5) of this regulation to be reached, the remaining tax credits

shall be allocated among the applicants who submitted the preapproval application on the day the aggregate credit cap was exceeded on a pro rata basis based upon the amounts otherwise allowed by O.C.G.A. § 48-7-29.26 and this regulation. Only credit amounts on the preapproval application(s) received on the day the aggregate credit cap was exceeded shall be allocated on a pro rata basis.

(h) In the event it is determined that the individual taxpayer has not met all the requirements of O.C.G.A. § 48-7-29.26, then the amount of the rural health care professional credit shall not be preapproved or the preapproved rural health care professional credit shall be retroactively denied. With respect to such denied credit, tax, interest, and penalties shall be due if the rural health care professional credit has already been claimed.

(i) Once the aggregate credit cap is reached for a taxable year, taxpayers shall no longer be eligible for a credit pursuant to O.C.G.A. § 48-7-29.26 for such taxable year. If any preapproval application is received after the aggregate credit cap has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(7) **Claiming the Credit.** A taxpayer claiming the rural health care professional credit, unless indicated otherwise by the Commissioner, must claim the credit on Schedule 2 of the Georgia Form 500, Individual Income Tax Return. Each individual taxpayer must use the credit code 154 and include the credit certificate number for the credit. If both taxpayers are claiming the credit on a married filing joint return, then both credit certificate numbers must be included on the return.

(8) **List of Rural Counties.** The list of rural counties for purposes of the rural health care professional credit is provided on the following webpage: https://dor.georgia.gov/listing-rural-counties-purposes-rural-physician-credit.

(9) **Sunset Date.** O.C.G.A. § 48-7-29.26, the rural health care professional credit, shall be repealed on December 31, 2029.

(10) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, 2024.

Authority: O.C.G.A. §§ 48-2-12, 48-7-29.26.