RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-8
RETURNS AND COLLECTIONS

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560-7-8-.56 Historic Rehabilitation Tax Credit.

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(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 limitation. The amount of historic rehabilitation tax credit for a historic home shall not exceed $100,000.00 in any 120 month period.

(b) 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.

(c) Carry Forward. 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.

(d) Sale of the Historic Home. Except as provided in subparagraph (4)(e) of this regulation, in the event a historic rehabilitation tax credit for a historic home is claimed and allowed 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 for a historic home to the purchaser of such historic home. If a historic home for which a certified reha-

bilitation 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.

(e) 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.

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

(5) **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 (5)(j) of this regulation and paragraph (6) 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.

(d) Credit Carry Forward. 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 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 (5)(b) of this regulation, exceed $25 million per calendar year.

(f) Preapproval. For certified rehabilitations completed on or after January 1, 2017, any taxpayer seeking preapproval to claim the tax credits under subparagraph (5)(b) of this regulation must electronically submit Form IT-RHC-AP, including the information required by subparagraph (5)(f)1. of this regulation, 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, or transferred 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 and 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 was submitted through the Georgia Tax Center.

(h) Allocation of Tax Credit. The Commissioner shall allow the tax credit under subparagraph (5)(b) of this regulation 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. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in subparagraph (5)(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. Only credit amounts on applications received on the day the maximum aggregate limit was exceeded will be allocated on a pro rata basis.

(j) Priority for pro-rated applications and applications submitted after a calendar year cap is reached. Any 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 latter submission date. In such case, the taxpayer shall claim the credit in the taxable year that begins in such subsequent preapproved calendar year or as provided in paragraph (6) of this regulation. If the calendar year credit cap for all subsequent calendar years has been reached then the application shall be denied.

(k) Claiming the Historic Rehabilitation Tax Credit for Any Other Certified Structure. A taxpayer claiming the tax credits under subparagraph (5)(a) of this regulation shall attach to its Georgia income tax return for each year the credit is claimed 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 (5)(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.

(l) 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.

(m) 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.

(n) 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 (5)(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 one-time.

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 and transferee must jointly 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 (5)(n)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 the 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 carry forward 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 com-

pleted 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.

(o) 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 (5)(n)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 struc-

ture 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 (5)(o) 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, the pass-through entity 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 is buying the credit earned by a taxpayer in the calendar 2017 tax year and pre-approved by the Department for calendar year 2017, then all of 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 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 which 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 cal-

endar 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 (6), 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 may 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.

(p) 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 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 and 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 (5)(b).

1. For certified rehabilitations completed on or after January 1, 2017, any taxpayer that generates and claims the tax credit under subparagraph (5)(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 28 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 (5)(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 2 year period.

(6) **Completion of the Project.**

(a) For certified rehabilitations of any other certified structure earning more than $300,000 in historic rehabilitation tax credits under subparagraph (5)(b) of this regulation completed on or after January 1, 2017, the project must be placed in service within two years after the completion calendar year listed in the taxpayer's Form IT-RHC-AP. 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 (5)(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 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 (5)(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 February 28, 2021 Georgia income tax return.

(7) **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.

(8) **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 and 48-7-29.8.