

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 560-7
INCOME TAX DIVISION**

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

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(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of the tax credit under O.C.G.A. § 48-7-29.21.

(2) **Definitions.** As used in this regulation, the terms "qualified education donation" and "recipient" shall have the same meaning as in O.C.G.A. § 48-7-29.21.

(3) **Credit Amount.** The amount of qualified education donation tax credit allowed a taxpayer shall be as follows:

(a) For an individual taxpayer, the credit amount shall not exceed \$1,000, or the actual amount donated, whichever is less.

(b) For an individual taxpayer filing married filing separate, the credit amount shall not exceed \$1,250, or the actual amount donated, whichever is less.

(c) For individual taxpayers filing married filing joint, the credit

amount shall not exceed \$2,500, 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 \$10,000 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 \$10,000; 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 2022 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1, Taxpayer estimates that the taxpayer's Georgia income from A, Inc. is \$120,000, and that Taxpayer's share of Georgia income from BC Company is \$60,000, Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified education donation tax credit; therefore the Department preapproves Taxpayer for \$10,000 qualified education donation tax credit (since \$10,000 is less than \$10,350 (5.75% of \$180,000)), the applicable marginal tax rate for 2022 is 5.75%. Taxpayer makes a \$10,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of 2022. When Taxpayer files Taxpayer's 2022 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 \$8,625 qualified education donation tax credit (which is 5.75% of the \$150,000 actual income from Taxpayer's selected pass-through entities), and the extra \$1,375 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$8,625 qualified education donation tax credit claimed but not used on the taxpayer's 2022 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(e) For a corporation taxpayer, fiduciary taxpayer, an S corporation that makes the election to pay tax at the entity level under O.C.G.A. § 48-7-21, or a partnership that makes the election to pay tax at the entity level under O.C.G.A. § 48-7-23, the credit amount shall not exceed 75 percent of the corporation's, fiduciary's, electing S corporation's, or electing partnership's income tax liability, or the actual amount donated, whichever is less. A fiduciary cannot pass through the credit to its beneficiaries.

1. Example: Taxpayer, a corporation, requests preapproval for the qualified education donation tax credit for calendar year 2022 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1 Taxpayer's intended contribution for 2022 is \$100,000; and Taxpayer's estimated income tax liability for the 2022 tax year is \$100,000; therefore the Department preapproves Taxpayer for \$75,000 qualified education donation tax credit for calendar year 2022. Taxpayer makes a \$75,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of 2022. When Taxpayer files their 2022 Georgia income tax return, Taxpayer's income tax liability for tax year 2022 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 2022), 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 2022 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 2022 by electronically submitting Form IT-QED-TP1 through the Georgia Tax Center. On Form IT-QED-TP1 Taxpayer's intended contribution for 2022 is \$100,000; and Taxpayer's estimated income tax liability for the 2022

tax year is \$100,000; therefore the Department preapproves Taxpayer for \$75,000 qualified education donation tax credit for calendar year 2022. Taxpayer makes a \$75,000 donation to the recipient within 60 days of receiving preapproval from the Department and before the end of 2022. When Taxpayer files their 2022 Georgia income tax return, Taxpayer's income tax liability for tax year 2022 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 2022), 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 2022 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 per calendar year.

(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 15 days of the contribution.

(7) **Claiming the Credit.** A taxpayer claiming the qualified education donation tax credit, unless indicated otherwise by the Commissioner, must submit Form IT-QED-TP2 with the taxpayer's Georgia tax return when the qualified education donation tax credit is claimed. A software program's Form IT-QED-TP2 that is electronically filed with the Georgia income tax return in the manner specified by the Department satisfies this requirement.

(8) **Carry Forward.** 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 (3) 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.

(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, 2026.

(13) **Effective Date.** This regulation shall be applicable to years beginning on or after January 1, 2023. Years beginning before January 1, 2023 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2023 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.21.