

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

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

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560-7-8-.65 Timber Tax Credit.

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(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the income tax credit under O.C.G.A. § 48-7-40.36.

(2) **Coordination of Agencies.** The Commissioner shall be authorized to consult with the Georgia Forestry Commission as necessary to administer the timber tax credit.

(3) **Definitions.**

(a) The term “timber casualty loss” as used in this regulation means the amount of the diminution of value included in the computation of the casualty loss deduction for such casualty losses claimed and allowed pursuant to Section 165 of the Internal Revenue Code of 1986 as casualty losses incurred by a taxpayer between October 9, 2018, and December 31, 2018, as a result of damage to or destruction of eligible timber property caused by Hurricane Michael.

(b) The terms “disaster area”, “eligible timber property”, and “timber”, as used in this regulation shall have the same meaning as in O.C.G.A. § 48-7-40.36.

(4) **Credit Amount.** A taxpayer shall be allowed a tax credit in an amount equal to 100 percent of such taxpayer’s timber casualty loss; provided that the credit amount shall not exceed the number of taxpayer’s affected acres of eligible timber property in such disaster areas multiplied by \$400. The credit shall be computed and claimed separately for each county with eligible timber property.

(5) **Credit Cap.** In no event shall the total amount of tax credits allowed under O.C.G.A. § 48-7-40.36 exceed \$200 million.

(6) **Preapproval.** Any taxpayer seeking preapproval to claim the tax credit under O.C.G.A. § 48-7-40.36 must submit the appropriate forms to the Department as provided in this paragraph.

(a) **Mandatory Electronic Preapproval Application.** A taxpayer shall electronically submit Form IT-TIM-AP through the Georgia Tax Center between March 1, 2019, and May 31, 2019 for the first round of preapprovals. The Department will not preapprove any taxpayer where Form IT-TIM-AP is submitted or filed in any other manner. A separate Form IT-TIM-AP must be submitted for each county with eligible timber property.

(b) **Notification of Complete or Incomplete Application for First Round.** Applications shall be reviewed in the order of receipt and the Department shall provide notice to each taxpayer within 30 days of receipt whether such taxpayer’s electronic Form IT-TIM-AP is complete or incomplete. Such notice shall be provided by

letter or through the Georgia Tax Center.

(c) Notification for Preapproval Applications Submitted During First Round. For preapproval applications submitted during the first round, March 1, 2019 through May 31, 2019, the Department will notify each taxpayer, that submitted a properly completed and timely submitted application, of the tax credits approved and allocated to such taxpayer by June 30, 2019.

(d) Allocation of Tax Credit for First Round. In the event the credit amounts on applications filed with the Commissioner between March 1, 2019 and May 31, 2019, exceed the maximum aggregate limit of tax credits under paragraph (5) of this regulation, then the tax credits shall be allocated among the taxpayers who filed a properly completed and timely submitted application through the Georgia Tax Center on a pro rata basis based on amounts otherwise allowable under O.C.G.A. § 48-7-40.36 and this regulation.

(e) Mandatory Electronic Preapproval Applications for the Second Round, if Applicable. If on July 1, 2019, the Commissioner has not preapproved tax credits in the amount of \$200 million, the Commissioner shall accept and review a second round of electronic Form IT-TIM-APs. A taxpayer seeking to claim the tax credit under O.C.G.A. § 48-7-40.36 shall electronically submit Form IT-TIM-AP through the Georgia Tax Center between July 1, 2019 and December 31, 2019. A separate Form IT-TIM-AP must be submitted for each county with eligible timber property.

(f) Notification of Complete or Incomplete Application for Second Round, if Applicable. Applications shall be reviewed in the order of receipt and the Department shall provide notice to each taxpayer within 30 days of receipt whether such taxpayer's

electronic Form IT-TIM-AP is complete or incomplete. Such notice shall be provided by letter or through the Georgia Tax Center.

(g) Notification for Preapproval Applications Submitted During Second Round, if Applicable. For preapproval applications submitted during the second round, July 1, 2019 through December 31, 2019, the Department will notify each taxpayer, that submitted a properly completed and timely submitted application, of the tax credits approved and allocated to such taxpayer by January 31, 2020.

(h) Allocation of Tax Credit for Second Round, if Applicable. In the event the credit amounts on applications filed with the Commissioner between July 1, 2019 and December 31, 2019 when aggregated with amounts preapproved in the first round, exceed the maximum aggregate limit of tax credits under paragraph (5) of this regulation, then the tax credits preapproved in the second round shall be allocated among the taxpayers who filed a properly completed and timely submitted application through the Georgia Tax Center in the second round on a pro rata basis based on amounts otherwise allowable under O.C.G.A. § 48-7-40.36 and this regulation.

(i) In the event it is determined that taxpayer has not met all the requirements of O.C.G.A. § 48-7-40.36 and this regulation, then the amount of the credit 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 credit has already been used by the taxpayer.

(7) **Required Reporting by Taxpayer when 90 percent requirement is met.** Each taxpayer that receives preapproval for the timber tax credit, must certify to the Department the replanting of timber in a quantity projected to yield at maturity at least 90 percent of the value of the timber casualty loss claimed. Such 90 percent requirement shall be computed and must be met separately for all eligible timber property in a county. The taxpayer must report to the Department the preapproval certificate number, the street address or addresses and parcel number or numbers where the replanting occurred, the county where the replanting occurred, the dollar amount of the projected yield at maturity, and any other information that may be requested by the Commissioner. Such information shall be submitted electronically through the Georgia Tax Center when the taxpayer completes the replanting of timber in a quantity projected to yield at maturity at least 90 percent of the value of the timber casualty loss claimed. Until the taxpayer submits the required reporting, the credit cannot be sold by the taxpayer and cannot be utilized by anyone.

(8) **Claiming the Credit.** A taxpayer that has received preapproval from the Department, and has submitted the required reporting under paragraph (7) of this regulation must claim the timber tax credit on their applicable Georgia income tax return even if the credit is sold or transferred.

(a) **Refundable credit.** The total amount of timber tax credit claimed in a taxable year may exceed the taxpayer's income tax liability. Such tax credits allowed in excess of a taxpayer's income tax liability shall be refundable to such taxpayer.

(9) **Carry forward.** Any timber tax credit that is claimed but not used or refunded in a taxable year shall be allowed to be carried forward for ten years from the close of the taxable year in

which the credits are claimed.

(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 (including refundability) by the individual partner beginning with the calendar 2020 tax year.

(11) Conditions and Limitations.

(a) In order to be eligible for the timber tax credit the taxpayer must own or lease the eligible timber property. If the eligible timber property is leased by the taxpayer, the taxpayer must be eligible to claim the federal casualty loss deduction for the eligible timber property and the owner of the property must not claim the credit.

(b) The credit shall be computed and claimed separately for each county with eligible timber property.

(c) Taxpayer must use their aggregate diminution of value for all eligible timber property in a county when calculating their timber casualty loss for the timber tax credit.

(d) The timber tax credit shall be claimed in the taxable year in which the taxpayer first completes the replanting of timber for a county in a quantity projected to yield at maturity at least 90 percent of the value of the timber casualty loss claimed. Such timber shall be planted within the same county in which the eligible timber property was being grown when the timber casualty loss was incurred but may be planted in a different location in such county. Timber market conditions as of October 8, 2018, shall be used for the purposes of establishing projected value.

(e) The timber tax credit must be claimed in a taxable year ending on or before December 31, 2024.

(f) Any Department of Revenue audit triggered by a taxpayer's use or transfer of the timber tax credit will require the taxpayer to reimburse the Department of Revenue for all costs associated with the audit, provided that such amount shall not exceed the value of the credits claimed by the taxpayer. The Department of Revenue will inform the taxpayer that the audit is a timber tax credit audit and thus subject to this provision prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this provision.

(12) Selling or Transferring the Timber Tax Credit. The taxpayer may sell or transfer in whole or in part any timber tax credit, previously claimed but not used by such taxpayer against its income tax and not refunded to such taxpayer, to a single Georgia taxpayer subject to the following conditions:

(a) The taxpayer may only make a one-time sale or transfer of the timber tax credits earned.

1. Example: Taxpayer 1 receives preapproval, Taxpayer 1 completes the replanting of timber in a quantity projected to yield at maturity at least 90 percent of the value of the timber casualty loss claimed in year 1 and submits the required reporting in year 1. Taxpayer 1 claims \$100,000 credit on Taxpayer 1's year 1 income tax return. In year 1, Taxpayer 1 sells \$100,000 of the credit to taxpayer 2. Taxpayer 2 is not allowed to resell the credit since the credit can only be sold one-time.

2. Example: Taxpayer receives preapproval, Taxpayer completes the replanting of timber in a quantity projected to yield at maturity at least 90 percent of the value of the timber casualty loss claimed in 2020, and submits the required reporting in 2020. Taxpayer claims \$900,000 timber tax credit in 2020 (on Taxpayer's 2020 income tax return). In tax year 2020 taxpayer uses \$100,000 of the timber tax credit against its income tax liability. In tax year 2022, the taxpayer sells \$600,000 of the timber tax credit claimed in 2020. The remaining \$200,000 of timber tax credit claimed in tax year 2020 cannot be sold.

(b) The timber tax credit may be transferred before the tax return is filed by the taxpayer provided the credit has been earned. However, the amount transferred cannot exceed the amount of the credit which will be claimed and not used or refunded on the income tax return of the transferor. The credit is considered earned when the credit has been preapproved by the Department, the taxpayer completes the replanting of timber in a quantity projected to yield at maturity at least 90 percent of the value of the timber casualty loss claimed, and the taxpayer submits the required reporting under paragraph (7) of this regulation.

(c) The timber tax credit must be sold for a minimum of 60 percent of the credit amount.

(d) 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 timber 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 (12)(d)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.

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

(f) The carry forward period of the timber tax credit for the transferee will be the same as it was for the taxpayer. Any timber tax credit that is claimed but not used or refunded in a taxable year shall be allowed to be carried forward for ten years from the close of the taxable year in which the credits are claimed. For example: the taxpayer sells the timber tax credit on February 1, 2020. The taxpayer met the requirement for the credit in 2019 and claimed

the credit on taxpayer's calendar year 2019 return. The credit may be claimed by the transferee on their 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028 or 2029 return. And the carry forward period for this tax credit will expire on December 31, 2029. This credit carry forward treatment applies whether the credit is being utilized by the taxpayer or the transferee.

(g) The total amount of timber tax credit allowed in a taxable year may exceed the transferee's income tax liability. Such tax credits allowed in excess of a transferee's income tax liability shall be refundable to such transferee.

(h) A transferee shall only have such rights to claim and use the timber 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.

(i) In the event of recapture, reduction, disallowance, or other failure related to the timber tax credit, the Department may pursue the taxpayer or the transferee. The transferee's recourse shall not be against the Department.

(13) **How to Sell or Transfer the Timber Tax Credit.** The taxpayer may sell or transfer the timber tax credit directly to a single Georgia taxpayer. A pass-through entity may make an election to sell the timber tax credit claimed in a taxable year at the entity level. If the pass-through entity makes the election to sell the timber 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 (13) 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 each then sell their respective timber tax credit to a single 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. A pass-through entity that purchases a credit 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 taxpayer, which claims the timber tax credit being sold ends; or during any later tax year before the 10 year carry forward period associated with the tax credit ends as provided in subparagraph (13)(c) 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 the elected year. For example, if a calendar year partnership is buying the credit earned by a taxpayer in calendar 2019 tax year, and elects to use the credit for such year, then only partners who have a profit/loss percentage as of the end of the 2019 tax year may receive their respective amount of the timber 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. As early as the transferee's tax year in which the income tax year of the taxpayer, which claims the timber tax credit associated with the credit being sold, ends; or

2. During any later tax year before the ten year carry forward period associated with the tax credit ends.

(i). Example. Taxpayer receives preapproval in 2019 from the Department to claim the credit in 2020, and taxpayer meets the 90 percent replanting and reporting requirements of the credit in February 2020. Taxpayer sells the timber tax credit on June 15, 2020; and Taxpayer claims but does not use the credit on their calendar 2020 income tax return. The transferee is a calendar year taxpayer. The credit may be claimed by the transferee on its calendar 2020 tax year return (the transferee's tax year in which the income tax year of the selling taxpayer ends) or on the transferee's 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, or 2030 return (before the ten year carry forward associated with the tax credit ends on December 31, 2030).

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.36.