State of Georgia

Lynnette T. Riley
Commissioner

Department of Revenue

Legal Affairs & Tax Policy
1800 Century Blvd., N.E., Suite 15107
Atlanta, Georgia 30345
(404) 417-6649

Frank M. O'Connell
Director

NOTICE
IT-2015-5

RE: Adoption of new Rule 560-7-8-.55 "Basic Skills Education Tax Credit."

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-7-8 of the Rules and Regulations of the State of Georgia by adopting new Rule 560-7-8-.55, entitled "Basic Skills Education Tax Credit."

Attached with this notice are the exact copy and synopsis of the proposed Rule. The proposed Rule is being adopted under the authority of O.C.G.A. §§ 48-2-12 and 48-7-41.

The Department of Revenue shall consider the adoption of the above referenced Rule at 10:00 a.m. on Tuesday, October 6, 2015 in Suite 15200 of the Department's headquarters at 1800 Century Blvd NE Atlanta, GA 30345.

The Department must receive all comments regarding the above referenced proposed Rule from interested persons and parties no later than 10:00 a.m. on Tuesday, October 6, 2015. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-2293. **Please reference "Notice Number IT-2015-5" on all comments.**

Dated: September 1, 2015

Lynnette T. Riley
Commissioner
Georgia Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-8
RETURNS AND COLLECTIONS

560-7-8-.55
Basic Skills Education Tax Credit.

The purpose of proposed Rule 560-7-8-.55 is to provide guidance concerning the implementation and administration of the basic skills education tax credit under O.C.G.A. § 48-7-41.

Paragraph (1) provides the purpose for the regulation.

Paragraph (2) provides for the coordination of the Department of Revenue and the Technical College System of Georgia, Office of Adult Education in administering the credit.

Paragraph (3) provides the definitions.

Paragraph (4) provides the credit amount for the basic skills education tax credit.

Paragraph (5) specifies the per employer credit limitation and that the credit has no carry forward.

Paragraph (6) specifies the credit cap.

Paragraph (7) explains the preapproval process and how to claim the credit.

Paragraph (8) provides the e-filing attachment requirements.

Paragraph (9) specifies how pass-through entities utilize the credit.

Paragraph (10) provides the sunset date for the basic skills education tax credit.

Paragraph (11) provides the effective date for the regulation.

RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-8
RETURNS AND COLLECTIONS

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560-7-8-.55 Basic Skills Education Tax Credit.

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560-7-8-.55 Basic Skills Education Tax Credit.

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-41.

(2) **Coordination of Agencies.** The Technical College System of Georgia, Office of Adult Education is the state agency responsible for certifying that the employer has met the requirements of O.C.G.A. § 48-7-41.

(3) **Definitions.** As used in this regulation, the terms "adult basic skills education", "approved adult basic skills education program", "basic skills education test", "employee", "employer", "employer provided", and "employer sponsored" shall have the same meaning as in O.C.G.A. § 48-7-41.

(4) **Credit Amount.** An employer who provides or sponsors an approved adult basic skills education program shall be allowed a tax credit in the amount of:

(a) Four hundred dollars for each employee who passes the basic skills education test that was paid for by the employer in a taxable year; or

(b) Twelve hundred dollars for each employee who successfully completes an approved adult basic skills education program consisting of at least 40 hours of training while the employee is being compensated at his or her normal rate of pay, and passes the basic skills education test that was paid for by the employer in a taxable year.

(c) An employee can only be included in subparagraph (a) or subparagraph (b); the same employee cannot be included in both subparagraphs.

(5) **Per Employer Credit Limitation and No Carry Forward**. The credit amounts allowed under paragraph (4) of this regulation shall be further limited for each employer and shall not exceed $100,000.00 per calendar year. No unused portion of the tax credits shall be allowed the employer against succeeding years' tax liability.

(6) **Credit Cap**. The total amount of tax credits preapproved under paragraph (7) of this regulation shall not exceed $1 million per calendar year.

(7) **Preapproval and Claiming the Credit**. Before requesting preapproval from the Department, the employer should apply for pre-certification of the employer's program from the Technical College System of Georgia, Office of Adult Education to ensure that the employer's program meets the requirements of O.C.G.A. § 48-7-41. Any employer seeking preapproval to claim tax credits under paragraph (4) of this regulation, must submit the appropriate

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forms to the Department through the Georgia Tax Center as provided in this paragraph.

(a) Application. An employer seeking preapproval to claim the tax credits under paragraph (4) of this regulation must electronically submit Form IT-BE-AP through the Georgia Tax Center. An employer may request preapproval from the Department before meeting the requirements of paragraph (4) of this regulation, such employer must estimate their credit amounts on Form IT-BE-AP. The amount of tax credit claimed by the employer on the employer's applicable Georgia income tax return must be based on the actual number of employees that pass the adult basic skills education test or the actual number of employees that complete an approved adult basic skills education program and pass the basic skills education test and cannot exceed the amount preapproved. If the employer 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 employer or utilized in any manner.

(b) Notification. The Department will notify each employer and the Office of Adult Education of the tax credits preapproved or denied to such employer, within forty-five (45) days from the date the Form IT-BE-AP was submitted through the Georgia Tax Center.

(c) Allocation of Tax Credit. The Commissioner shall allow the tax credits under paragraph (4) of this regulation on a first-come, first-served basis. The date the Form IT-BE-AP is electronically submitted shall be used to determine such first-come, first-served basis.

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(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 employers who submitted Form IT-BE-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. § 48-7-41, 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 credit cap is reached for a calendar year, employers who meet the requirements of paragraph (4) of this regulation during such calendar year shall no longer be eligible for a credit under O.C.G.A. § 48-7-41. If any Form IT-BE-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.

(f) After receiving preapproval from the Department and after the requirements of paragraph (4) of this regulation are complete, the employer must receive final certification from the Technical College System of Georgia, Office of Adult Education. An employer claiming the tax credits under paragraph (4) of this regulation must attach an approved Form IT-BE-AP, Form IT-BE, and final certification from the Technical College System of Georgia, Office of Adult Education to its Georgia income tax return for each year in which the credit is claimed.

(g) In the event it is determined that the employer has not met all the requirements of O.C.G.A. § 48-7-41 and this regulation, then the amount of credits shall not be approved or the approved credits shall be retroactively denied. With respect to such denied

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credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(h) No employer shall receive a credit if the employer requires that the employee reimburse or pay the employer for the cost of attending the adult basic skills education program or taking the basic skills education test.

(8) **E-Filing Attachment Requirements**. If an employer claiming the credit electronically files their tax return, the Form IT-BE-AP and final certification from the Technical College System of Georgia 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 employer 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 employer and made available upon request by the Commissioner.

(9) **Pass-Through Entities.** When the employer 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, 2016. The partnership passes the credit to a calendar year

partner. The credit is available for use by the individual partner beginning with the calendar 2016 tax year.

(10) **Sunset Date**. O.C.G.A. § 48-7-41, the basic skills education tax credit, shall be repealed on January 1, 2020.

(11) **Effective Date**. This regulation shall be applicable to taxable years beginning on or after January 1, 2016.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-41.

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