



Bart L. Graham  
Commissioner

State of Georgia  
**Department of Revenue**

Suite 15300  
1800 Century Boulevard  
Atlanta, Georgia 30345  
(404) 417-2100

**NOTICE**

**RE: Adoption of new Rule 560-7-8-.47 "Qualified Education Expense 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-.47, entitled "Qualified Education Expense Credit."

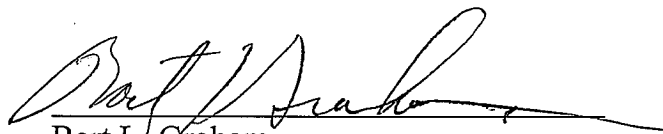
Attached with this notice are the exact copy and synopsis of the proposed Rule. The proposed Rule is being adopted under the authority of O.C.G.A. §§ 48-2-12 and 48-7-29.16.

The Department of Revenue shall consider the adoption of the above referenced Rule at 10:00 a.m. on July 21, 2008 in Suite 15200 of the Department's headquarters at 1800 Century Blvd NE Atlanta, GA 30345-3205.

The Department must receive all comments regarding the above referenced proposed Rule from interested persons and parties no later than 10:00 a.m. July 21, 2008. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to [regcomments@dor.ga.gov](mailto:regcomments@dor.ga.gov). Facsimile comments must be sent to (404) 417-6651. **Please reference "Notice Number IT-2008-3" on all comments.**

**The Department encourages all to comment and will give thorough consideration to all comments received.**

Dated: June 18, 2008

  
Bart L. Graham  
Commissioner  
Georgia Department of Revenue

# **SYNOPSIS**

## **GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION**

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

#### **560-7-8-.47 Qualified Education Expense Credit**

The purpose of proposed Rule 560-7-8-.47 is to provide guidance regarding the administration of O.C.G.A. § 48-7-29.16, which provides for a qualified education expense credit.

Paragraph (1) provides the purpose of the regulation.

Paragraph (2) provides definitions of the terms “Qualified Education Expense Credit”, “Fiscal Year”, “Calendar Year Report”, “Audit Report”, and “SSO” (Student Scholarship Organization).

Paragraph (3) provides for the coordination of the Department of Revenue and the Department of Education in administering the statute.

Paragraph (4) provides guidance concerning the required audit report to be performed by an independent certified public accountant. Included is guidance regarding the contents and timing of the audit. The audit content includes: verification that the Student Scholarship Organization (“SSO”) meets the statutory requirements to qualify as an SSO, and verification of the accuracy of the annual calendar year report that the SSO must submit. If the SSO does not meet the statutory qualification requirements, then the credits will be disallowed.

Paragraph (5) provides guidance concerning the contents of the annual calendar year report, which must be prepared on a calendar year basis regardless of the fiscal year of the Student Scholarship Organization.

Paragraph (6) provides guidance concerning the timing of the reports. This is necessary since the statute could be read to require an audit report before the date the audit is due.

Paragraph (7) provides guidance regarding preapproval. Included is guidance regarding the preapproval request process, and information on the allocation of the \$50 million calendar year limit on the day such limit is exceeded. The preapproval form, Form “IT-QEE-TP1”, should not be filed until the contributor’s recipient SSO is listed on the Department of Education’s website. If the contributor’s recipient SSO is not listed at the time that the Department of Revenue attempts to verify the SSO’s listing, the Department of Revenue will deny the request. If at a later date the contributor’s recipient SSO becomes listed, a new Form “IT-QEE-TP1” must be filed by the contributor with the Department of Revenue.

If the request is granted, the Department will return the form to the contributor with the amount

of credit that is preapproved. If the SSO or the contributor does not meet the requirements of the statute, or the \$50 million annual credit limit has been reached, then the credit will be denied. If the credit is preapproved but then later denied upon audit, then the credit claimed will be disallowed on the contributor's return.

Paragraph (8) provides guidance regarding the letter of confirmation.

Paragraph (9) prescribes the form needed to claim the credit on the contributor's return.

Paragraph (10) provides for the treatment of credit carryovers.

Paragraph (11) provides that the contributor must add back to Georgia taxable income the amount of any federal charitable contribution deduction taken on a federal return for which a Georgia qualified education expense credit is allowed.

Paragraph (12) provides guidance regarding a pass-through entity which claims the credit. The credit limitations will be applied separately to the shareholders, partners, or members, who will receive their respective allocations of credit based on their profit/loss percentage. The paragraph also provides the timing for when the credit may be claimed by the shareholders, partners, or members.

Paragraph (13) provides the effective date of the regulation.

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

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

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**560-7-8-.47 Qualified Education Expense Credit.**

(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of O.C.G.A. § 48-7-29.16, which provides a credit for qualified education expenses.

(2) **Definitions for purposes of O.C.G.A. § 48-7-29.16, Chapter 2A of Title 20, and this regulation.**

(a) "Qualified Education Expense Credit" means the credit allowed pursuant to O.C.G.A. § 48-7-29.16.

(b) "Fiscal Year" means the taxable year of the SSO.

(c) "Calendar Year Report" means the annual report that must be prepared on a calendar year basis and that is required to be submitted to the Department of Revenue by January 12 as required by O.C.G.A. § 20-2A-3.

(d) "Audit Report" means the annual report that is prepared by an independent certified public accountant after completing the annual audit that is required by O.C.G.A. § 20-2A-2.

(e) "SSO" means a student scholarship organization as defined in O.C.G.A. § 20-2A-1.

**(3) Coordination of Agencies.**

(a) Each SSO must annually submit notice to the Department of Education, in accordance with the Department of Education's guidelines, of the SSO's participation as a SSO.

(b) The Department of Education will maintain on its website a current list of all SSOs which have provided such notice.

**(4) Annual Audit Report.**

(a) O.C.G.A. § 20-2A-2 requires that an annual audit be conducted by an independent certified public accountant. Such audit shall be completed and the audit report issued within 120 days after the end of the SSO's fiscal year.

(b) Such audit report must certify that for the SSO's fiscal year, the SSO has met all the requirements of O.C.G.A. § 20-2A-2 and is a SSO as defined in O.C.G.A. § 20-2A-1.

(c) Such audit report shall also certify that the calendar year report which was submitted to the Department of Revenue pursuant to O.C.G.A. § 20-2A-3 was correct. If it was not correct, all discrepancies found must be noted in the audit report.

(d) As is required by O.C.G.A. § 20-2A-3, such annual audit report shall be submitted to the Department of Revenue by the January 12 which follows directly after the date the audit report is completed.

(e) In the event the audit report shows that the SSO did not meet all the requirements of O.C.G.A. § 20-2A-2 and or is not a SSO as defined in O.C.G.A. § 20-2A-1, Qualified Education Expense Credits allowed to contributors of such SSO shall be retroactively disallowed.

**(5) Calendar Year Report.**

(a) Such report shall be submitted by the SSO by January 12. Form "IT-QEE-SSO2" shall be the form used to submit the report.

(b) Such report shall be prepared on a calendar year basis regardless of the fiscal year of the SSO.

(c) Such report shall include the following:

1. The total number and dollar value of contributions and Qualified Education Expense Credits preapproved;

2. A list of donors (which includes the donor's name and address), including the dollar value of each donation and the dollar value of each preapproved Qualified Education Expense Credit; and

3. A copy of the audit conducted pursuant to O.C.G.A. § 20-2A-2.

**(6) Timing of Reports.**

(a) For example, a SSO's first fiscal year begins on January 1, 2008 and ends on December 31, 2008. By January 12, 2009, the SSO must submit the required calendar year report for the calendar year which ended December 31, 2008. No audit report will need to be submitted for this first year since the due date for completing

the audit report falls after the January 12, 2009 deadline. The audit report submitted on or before January 12, 2010, will include the results of the audit for the fiscal year ending December 31, 2008. The audit report will also include the results of the audit of the calendar year report for the calendar year ending December 31, 2008.

(b) For example, a SSO's first fiscal year begins on May 1, 2008 and ends on April 30, 2009. By January 12, 2009, the SSO must submit the required calendar year report for the calendar year which ended December 31, 2008. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the January 12, 2009 deadline. The audit report submitted on or before January 12, 2010, will include the results of the audit for the fiscal year ending April 30, 2009. The audit report will also include the results of the audit of the calendar year report for the calendar year ending December 31, 2008.

(c) For example, a SSO's first fiscal year begins on December 1, 2008 and ends on November 30, 2009. By January 12, 2009, the SSO must submit the required calendar year report for the calendar year which ended December 31, 2008. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the January 12, 2009 deadline. By January 12, 2010 they must submit the required calendar year report for the calendar year which ended December 31, 2009. No audit report will need to be submitted for this second year since the due date for completing the audit report falls after the January 12, 2010 deadline. The audit report submitted on or before January 12, 2011, will include the results of the audit for the fiscal year ending November 30, 2009. The audit report will also include the results of the audit of the calendar year report for the calendar year ending December 31, 2008.

**(7) Preapproval of the Contribution.**

(a) Form "IT-QEE-TP1" shall be used to request preapproval of the Qualified Education Expense Credit from the Department of Revenue. The Form "IT-QEE-TP1" shall be attached to the taxpayer's return when it is filed.

(b) O.C.G.A. § 20-2A-6 requires the Department of Education to maintain a list of SSO's on its website that have provided notice to that agency in accordance with Department of Education guidelines. The contributor should not file Form "IT-QEE-TP1" with the Department of Revenue until the contributor's recipient SSO is listed on the Department of Education's website. If the contributor's recipient SSO is not listed on the website at the time that the Department of Revenue attempts to verify the SSO's listing, the Department of Revenue shall deny the request. If at a later date the contributor's recipient SSO becomes listed, it will be necessary for a new Form "IT-QEE-TP1" to be filed by the contributor with the Department of Revenue.

(c) Form "IT-QEE-TP1" shall include the following information:

1. The name of the SSO listed on the Department of Education's website to which the contribution will be made. The SSO should be listed on the Department of Education's website before the Form "IT-QEE-TP1" is filed with the Department of Revenue.

2. The taxpayer identification number of the SSO to which the contribution will be made.

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



4. The type of taxpayer.
5. If the contributor is an individual, the filing status.
6. If the contributor is an individual filing a joint return, the name and identification number of the joint filer.
7. The intended contribution amount.
8. If the contributor is a corporation, 75% of the estimated income tax liability the corporation expects for the tax year, of the corporation, in which the contribution will be made.
9. Tax year end of the contributor.
10. Calendar year in which the contribution will be made.
11. Any other information the Commissioner of the Department of Revenue may require.
12. If the contributor is a Subchapter S corporation for Georgia purposes, partnership, or limited liability company, such contributor must provide the information required by subparagraph (7)(c) of this regulation as well as the profit/loss percentage for the shareholders, partners, or members and the amount of the intended contribution allocated to each shareholder, partner, or member based on the profit/loss percentage.
13. Certification that all information contained on the Form "IT-QEE-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 Education Expense Credit shall be allowed on a first come, first served basis. The post mark date of the Form "IT-QEE-TP1" shall be used to determine such first come, first served basis.

(e) On the day Forms "IT-QEE-TP1" are received for a calendar year which cause the \$50 million calendar year limitation to be reached, then the remaining \$50 million calendar year limitation amount shall be allocated among the applicants which filed the Forms "IT-QEE-TP1" on such day on a pro rata basis based upon the amounts otherwise allowed by O.C.G.A. § 48-7-29.16.

(f) The contribution must be made by the taxpayer within 30 days of the date of the preapproval notice received from the Department and within the calendar year in which it was preapproved.

(g) In the event it is determined that the SSO has not met all the requirements of O.C.G.A. § 20-2A-2 and or is not a SSO as defined in O.C.G.A. § 20-2A-1, then the amount of the Qualified Education Expense Credit shall not be preapproved or the preapproved Qualified Education Expense Credit shall be retroactively denied for the contributions made during the SSO's fiscal year. With respect to such denied credit, tax and interest shall be due if the Qualified Education Expense Credit has already been claimed.

(h) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § 48-7-29.16, then the amount of the Qualified Education Expense Credit shall not be preapproved or the preapproved Qualified Education Expense Credit shall be retroactively denied. With respect to such denied

credit, tax and interest shall be due if the Qualified Education Expense Credit has already been claimed.

(i) Once the \$50 million calendar year limitation is reached for a calendar year, taxpayers shall no longer be eligible for a credit pursuant to O.C.G.A. § 48-7-29.16 for such calendar year. As such, all other Forms "IT-QEE-TP1" received for such calendar year shall be denied and shall not be reconsidered for approval at any later date.

(8) **Letter of Confirmation.** A copy of the approved Form IT-QEE-TP1 shall be sent by the contributor to the student scholarship organization along with the contribution. Form "IT-QEE-SSO1" shall be provided by the SSO to the taxpayer to confirm the contribution and shall be attached to the taxpayer's return when it is filed.

(9) **Computation of the Credit.** Unless indicated otherwise by the Commissioner, the Form "IT-QEE-TP2" shall be used by the taxpayer to claim the Qualified Education Expense Credit and shall be attached to the taxpayer's return when it is filed.

(10) **Carryover of the Credit.**

(a) For an individual taxpayer, the Qualified Education Expense Credit is limited to the lesser of the actual amount expended or the dollar amount provided in O.C.G.A. § 48-7-29.16. Any of this lesser amount (amount expended or the dollar limit) that exceeds the taxpayer's income tax liability may be used against the succeeding five years' tax liability.

(b) For a corporate taxpayer, the Qualified Education Expense Credit is limited to the lesser of the actual amount expended or 75 percent of the corporation's income tax liability. Any of this lesser

amount (amount expended or 75% of the corporation's income tax liability) that is not used may be used against the succeeding five years' tax liability.

**(11) Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § 48-7-29.16(h)(1) provides that no Qualified Education Expense Credit shall be allowed under O.C.G.A. § 48-7-29.16 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. Accordingly, the taxpayer must add back to Georgia taxable income that part of any federal charitable contribution deduction taken on a federal return for which a Georgia Qualified Education Expense Credit is allowed under O.C.G.A. § 48-7-29.16.

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

(a) A Subchapter S corporation for Georgia purposes, partnership, or limited liability company is entitled to the Qualified Education Expense Credit and therefore shall be entitled to pass through such credit to its shareholders, partners, or members. The O.C.G.A. § 48-7-29.16 credit limitations shall be applied separately to the shareholders, partners, or members.

(b) In the event the Qualified Education Expense Credit is passed through to shareholders, partners, or members, such credits shall be available for use as a credit in the shareholders', partners', or members' tax year in which the tax year of such Subchapter S corporation, partnership, or limited liability company ends. For example: A partnership earns the Qualified Education Expense Credit for its tax year ending January 31, 2009. The Qualified

Education Expense Credit is available for use by the individual partner beginning with the calendar 2009 tax year.

(c) The intended contribution amount shall be allocated to the shareholders, partners, and members based on their profit/loss percentage.

(13) **Effective Date.** This rule is applicable to taxable years beginning on or after January 1, 2008.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.16.

Proposed