

O.C.G.A. § 48-7-29.12

GEORGIA CODE
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*** Current Through the 2011 Regular Session ***
*** Annotations Current Through July 8, 2011 ***

TITLE 48. REVENUE AND TAXATION
CHAPTER 7. INCOME TAXES
ARTICLE 2. IMPOSITION, RATE, AND COMPUTATION; EXEMPTIONS

O.C.G.A. § 48-7-29.12 (2011)

§ 48-7-29.12. (For effective date, see note.) Tax credit for qualified donation of real property; carryover of credit; appraisals; transfer of credit; penalty

(a) As used in this Code section, the term:

(1) "Fair market value" means the value of the donated property established by a property appraisal or appraisals meeting the requirements of Section 170 of Title 26 of the United States Code, to be submitted in such manner as the commissioner may by regulation require.

(2) "Qualified donation" means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; to the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code of 100 percent of all right, title, and interest in the entire parcel of donated real property, which donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; to the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code of an interest in real property which qualifies as a conservation easement under paragraph (4) of Code Section 12-6A-2. Any real property which is otherwise required to be dedicated pursuant to local government regulations or ordinances or to increase building density levels shall not be eligible as a qualified donation under this Code section. Any real property which is used for or associated with the playing of golf or is planned to be so used or associated shall not be eligible as a qualified donation under this Code section.

(3) "Eligible donor" means any person who owns an interest in a qualified donation.

(4) "Related person" has the meaning provided by Code Section 48-7-28.3.

(5) "Substantial valuation misstatement" means a valuation such that the value of any property claimed on any return of tax imposed under this chapter, or on any claim for refund of such tax, is 150 percent or more of the amount determined to be the correct amount of such valuation.

(b) (1) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or Code Section 48-7-21 for each qualified donation of real property for conservation purposes.

(2) Except as otherwise provided in paragraph (3) of this subsection and in subsection (d) of this Code section, such credit shall be limited to an amount not to exceed the lesser of \$500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(3) Except as otherwise provided in subsection (d) of this Code section, in the case of a taxpayer whose net income is determined under Code Section 48-7-23, the aggregate total credit allowed to all partners in a partnership shall be limited to an amount not to exceed the lesser of \$1 million, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(c) No tax credit shall be allowed under this Code section unless the taxpayer files with the taxpayer's income tax return a copy of a certification by the Department of Natural Resources that the donated property is suitable for conservation purposes. The Board of Natural Resources shall promulgate any rules and regulations necessary to implement and administer this subsection, including, but not limited to, policies to guide the determination of whether or not donated property is suitable for conservation purposes. A final determination by the Department of Natural Resources with respect to the suitability of donated property for conservation purposes shall be subject to review and appeal under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) (1) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. In no event shall the total amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section exceed \$250,000.00 with respect to tax liability determined under Code Section 48-7-20 or \$500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding ten years' tax liability. However, the amount in excess of such annual dollar limits shall not be eligible for carryover to the taxpayer's succeeding

years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) Only one qualified donation may be made with respect to any real property that was, in the year prior to donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel.

(d.1) (For effective date, see note.) Any tax credits under this Code section earned by a taxpayer and previously claimed but not used by such taxpayer against such taxpayer's income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

(1) The transferor shall submit to the department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such transferor's tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the department;

(2) Failure to comply with this subsection shall result in the disallowance of the tax credit until the taxpayer is in full compliance;

(3) In no event shall the amount of the tax credit under this subsection claimed and allowed for a taxable year exceed the transferee's income tax liability. Any unused credit may be carried forward to subsequent taxable years provided that the transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned; and

(4) A transferee shall have only such rights to claim and use the tax credit that were available to the transferor at the time of the transfer. To the extent that such transferor did not have rights to claim and use the tax credit at the time of the transfer, the department shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against the transferor.

(e) (1) Whenever:

(A) Any person prepares an appraisal of the value of property and knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund claiming a tax credit under this Code section; and

(B) The claimed value of the property on a return or claim for refund

which is based on such appraisal results in a substantial valuation misstatement with respect to such property for purposes of claiming a tax credit under this Code section,

then such person shall pay a penalty in the amount determined under paragraph (2) of this subsection.

(2) The amount of the penalty imposed under paragraph (1) of this subsection on any person with respect to an appraisal shall be equal to the lesser of:

(A) The greater of:

(i) Twenty-five percent of the difference between the amount of the tax credit claimed on the taxpayer's return or claim for refund and the amount of the tax credit to which the taxpayer is actually entitled, to the extent the difference is attributable to the misstatement described in subparagraph (e)(1)(B) of this Code section; or

(ii) One thousand dollars; or

(B) One hundred twenty-five percent of the gross income received by the person described in subparagraph (e)(1)(A) of this Code section for the preparation of the appraisal.

(3) No penalty shall be imposed under paragraph (1) of this subsection if the person establishes to the satisfaction of the commissioner that the value established in the appraisal was more likely than not the proper value.

(4) Except as otherwise provided, the penalty provided by this subsection shall be in addition to any other penalties provided by law. The amount of any penalty under this subsection shall be assessed within three years after the return or claim for refund with respect to which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such penalty shall be begun after the expiration of such period. Any claim for refund of an overpayment of the penalty assessed under this subsection shall be filed within three years from the time the penalty was paid.

(f) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section.

HISTORY: Code 1981, § 48-7-29.12, enacted by Ga. L. 2006, p. 351, § 1/HB 1107; Ga. L. 2008, p. 101, § 1/HB 1274; Ga. L. 2011, p. 297, § 3/HB 346.