

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

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

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**560-7-8-.50 Conservation Tax Credit.**

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(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-29.12.

(2) **Coordination of Agencies.** The Department of Natural Resources is the state agency responsible for determining that the qualified donation under O.C.G.A. § 48-7-29.12 is suitable for two conservation purposes and meets the additional requirements provided by O.C.G.A. § 48-7-29.12(c). The State Properties Commission is the state agency responsible for approving the appraisal amount submitted or for recommending a lower appraisal amount based on its review.

(3) **Definition.** “Tax parcel” means adjacent or contiguous real property with common ownership valued as a unit by the county tax assessor.

(4) **Credit Amount.** Except as otherwise provided in this regulation, a taxpayer shall be granted a tax credit for each qualified

donation under O.C.G.A. § 48-7-29.12 in an amount not to exceed the lesser of: \$500,000, or 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.

(a) Credit Amount for a Partnership. If the taxpayer is a partnership, the partnership shall be granted a tax credit for each qualified donation of real property for conservation purposes in an amount not to exceed the lesser of: \$500,000, or 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.

(5) **Per Taxpayer Credit Limitation.** The credit amount allowed under paragraph (4) of this regulation shall be further limited for each taxpayer for a taxable year and shall not exceed the following amounts:

(a) Entity Limit. \$500,000 for an entity with respect to tax liability determined under O.C.G.A. § 48-7-21. This limit applies to a return filed by a C-Corporation, S-Corporation with an entity level income tax liability, and to each return filed by partners in a partnership where such partners are C-Corporations or S-Corporations with an entity level income tax liability.

(b) Other Limit. \$250,000 with respect to tax liability deter-

mined under O.C.G.A. § 48-7-20. This limit applies to a return filed by an individual or a married couple filing a joint return, a return filed by a trust or an estate, and each return filed by partners in a partnership, members of a limited liability company, and shareholders of an S-Corporation where such partners, members, or shareholders are individuals, trusts, or estates.

1. Example 1 of Credit Amount and Per Taxpayer Credit Limitations. A taxpayer donates real property for conservation purposes. The taxpayer is a partnership composed of two partners: Partner A owns 60% and is an S-Corporation (with no entity level income tax liability) composed of one individual shareholder, shareholder C; Partner B owns 40% and is an individual taxpayer. The fair market value of the donated property, which is not effected by a sale of property for less than fair market value, is \$5 million. The credit amount for the partnership is \$500,000 (because \$500,000 is less than \$1,250,000, which is 25 percent of the fair market value). Partner A's (an S-Corporation) credit amount is \$300,000. Shareholder C's credit amount is \$250,000 (due to an individual credit limit of \$250,000). Partner B's (individual taxpayer) credit amount is \$200,000.

2. Example 2 of Credit Amount and Per Taxpayer Credit Limitations. A taxpayer donates real property for conservation purposes. The taxpayer is a limited liability company treated as a partnership for tax purposes, composed of three individual members: Member A owns 80 percent, members B and C each own 10 percent. The fair market value of the donated property, which is not effected by a sale of property for less than fair market value, is \$3 million. The credit amount for the limited liability company is \$500,000 (because \$500,000 is less than \$750,000, which is 25 percent of the fair market value). Member A's credit amount is \$250,000 (due to an individual credit limit of \$250,000). The cre-

dit amount for Members B and C is \$50,000.

(6) **Qualified Donation Limitation.** Only one qualified donation may be made with respect to any real property that was, in the five years prior to the year of the 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. There must be five years between each donation year in the case of a phased easement. For example, a donation is made in year 1. The five intervening years are years two through six. A donation would be allowed in year seven. This is allowed even when the evidence of the easement might remain as part of the same deed filing because once the easement is contributed its value is removed and it then is not part of the same tax parcel of record.

(7) **Claiming the conservation tax credit.** Any taxpayer seeking to claim the conservation tax credit must submit Form IT-CONSV, certification(s) from DNR, a copy of the State Property Commission's determination, and the appraisal of the donated property with the taxpayer's Georgia tax return in the tax year in which the qualified donation occurred.

(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 ten years' tax liability (five years' tax liability for credits earned in taxable years beginning before January 1, 2008). However, the amount in excess of the annual dollar limits specified in paragraph (5) of this regulation shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by, reallocated to, or transferred or sold to any other taxpayer.

(9) **Joint Tenancy, Tenancy in Common, and Similar Groups.** When owners of real property included in a joint tenancy, tenancy in common, or similar group make a qualified donation, the tax credits will be allocated to each owner based on that owner's ownership percentage of the donated real property.

(10) **Add Back Federal Deduction.** For qualified donations made in taxable years beginning on or after January 1, 2013, no credit shall be allowed under O.C.G.A. § 48-7-29.12 with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution.

(a) Example 1. A taxpayer claims a \$100,000 charitable deduction on their federal return. The taxpayer is allowed a \$25,000 state tax credit ( $\$100,000 \times 25\%$ ). The taxpayer must add back \$100,000 of the charitable contribution deduction on their Georgia return.

(b) Example 2. A taxpayer claims a \$100,000 charitable deduction on their federal return in year 1 but due to federal limitations is only allowed to deduct \$25,000 in year 1 and \$75,000 in year 2. The taxpayer is allowed a \$25,000 state tax credit ( $\$100,000 \times 25\%$ ). The taxpayer must add back \$25,000 in year 1 and \$75,000 in year 2 of the charitable contribution deduction on their Georgia returns.

(c) Example 3. A taxpayer claims a \$2,000,000 charitable deduction on their federal return. The taxpayer computes a \$500,000 state tax credit ( $\$2,000,000 \times 25\%$ ) before considering the per taxpayer credit limitation. After considering the per taxpayer credit limitation, the taxpayer is allowed a \$250,000 state tax credit. The taxpayer must add back \$1,000,000 of the charitable contribution deduction on their Georgia return ( $\$250,000 / 25\%$ ).

(d) Example 4. A taxpayer claims a \$2,000,000 charitable deduction on their federal return in year 1 but due to federal limitations is allowed to deduct \$750,000 in year 1 and \$1,250,000 in year 2. The taxpayer computes a \$500,000 state tax credit ( $\$2,000,000 \times 25\%$ ) before considering the per taxpayer credit limitation. After considering the per taxpayer credit limitation, the taxpayer is allowed a \$250,000 state tax credit. The taxpayer must add back a total of \$1,000,000 of the charitable contribution deduction on their Georgia returns ( $\$250,000 / 25\%$ ). The taxpayer must add back \$750,000 in year 1 and \$250,000 in year 2 on their Georgia returns.

(11) **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, 2014. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2014 tax year.

(12) **Selling or Transferring the Conservation Tax Credit.** Beginning on January 1, 2012, a taxpayer may sell or transfer in whole or in part any conservation tax credit, previously claimed but not used by such taxpayer against its income tax, to another Georgia taxpayer subject to the following conditions:

(a) For qualified donations made in taxable years beginning on or after January 1, 2013, the taxpayer may only make a one-time sale or transfer of conservation tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee. For example, taxpayer 1 earns a \$50,000 credit in year 1. In year 2 they sell \$20,000 of the credit to taxpayer 2. In year 3 they are allowed to sell the remaining \$30,000 of the credit to taxpayer 3. However, both taxpayer 2 and taxpayer 3 are not allowed to resell the credit since the credit can only be sold one-time.

(b) The conservation tax credit may be transferred before the tax return is filed by the taxpayer. However, the amount transferred cannot exceed the amount of the credit which will be claimed and not used on the income tax return of the transferor.

(c) 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 conservation tax credit.

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

(e) The carry forward period of the conservation tax credit for the transferee will be the same as it was for the taxpayer. This credit may be carried forward to apply to the taxpayer's succeeding ten years' tax liability (five years' tax liability for credits earned in taxable years beginning before January 1, 2008). For example: The taxpayer sells a conservation tax credit on May 15, 2013. This credit is based on a donation from calendar 2013 tax year. The credit may be claimed by the transferee on the 2013, 2014, 2015,

2016, 2017, 2018, 2019, 2020, 2021, 2022, or 2023 return and the carry forward period for this credit will expire on December 31, 2023. This carry forward treatment applies regardless of whether it is being claimed by the taxpayer or the transferee.

(f) A transferee shall have only such rights to claim and use the conservation 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.

**(13) How to sell or transfer the tax credit.**

(a) The taxpayer may sell or transfer the conservation tax credit directly to a Georgia taxpayer. A pass-through entity may make an election to sell or transfer the unused conservation tax credit earned in a taxable year at the entity level. However, the amount of the credit that may be sold by a pass-through entity cannot exceed the amount that the shareholders, members, or partners would be allowed pursuant to paragraph (5) of this regulation for the year the qualified donation is made. To the extent the pass-through entity makes the election to sell the conservation tax credit at the entity level, the credit does not pass through to the shareholders, members, or partners. The elected amount is then subtracted proportionally from the amount each shareholder, member, or partner would receive.

1. Example: A taxpayer donates real property for conservation purposes. The taxpayer is a partnership composed of two partners: Partner A owns 75% and is an S-Corporation (with no entity level income tax liability) composed of two individual shareholders, shareholder C (75% ownership) and shareholder D (25% ownership); Partner B owns 25% and is an individual taxpayer. The fair

market value of the donated property, which is not effected by a sale of property for less than fair market value, is \$5 million. The credit amount for the partnership is \$500,000 (because \$500,000 is less than \$1,250,000, which is 25 percent of the fair market value). Partner A's (an S-Corporation) credit amount is \$375,000. Shareholder C's credit amount is \$250,000 (reduced from the \$281,250 by the per taxpayer credit limitation), and Shareholder D's credit amount is \$93,750. Partner B's (individual taxpayer) credit amount is \$125,000. The taxpayer sells \$225,000 of the credit at the partnership level which leaves \$243,750 that will flow though. Shareholder C's credit is reduced by \$120,000 ( $\$250,000 / \$468,750 \times \$225,000$ ) and therefore is entitled to a credit of \$130,000. Shareholder D's credit is reduced by \$45,000 ( $\$93,750 / \$468,750 \times \$225,000$ ) and therefore is entitled to a credit of \$48,750. Partner B's credit is reduced by \$60,000 ( $\$125,000 / \$468,750 \times \$225,000$ ) and therefore is entitled to a credit of \$65,000.

(b) 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.

(c) Pass-Through Entity. The taxpayer may be structured as a pass-through entity. To the extent the pass-through entity does not make an 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 and as provided in this regulation. The shareholders, members, or partners may then sell their respective conservation tax credit to a Georgia taxpayer.

(d) Transferee Pass-through Entity. The taxpayer, or its shareholders, members, or partners, may sell or transfer the credit to a

pass-through entity. The pass-through entity shall elect on behalf of its shareholders, members or partners which year the credit shall be passed through to its shareholders, members or partners (as provided in subparagraph (13)(e) 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 such elected year. For example, if a calendar year partnership is buying the credit earned by a taxpayer in the calendar year 2013 tax year and elects to use the credit in such year, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2013 tax year in which the credit was established. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the conservation tax credit.

(e) 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 pursuant to O.C.G.A. § 48-2-35 as provided in subparagraphs 1. through 3. below, and provided that unused conservation tax credits earned in taxable years beginning before January 1, 2012 can only be claimed by the transferee in a taxable year beginning on or after January 1, 2012:

1. In the transferee's tax year in which the income tax year of the taxpayer, which generates and claims the conservation tax credit for the qualified donation associated with the credit being sold, ends; or

2. During any later tax year before the ten year carry forward period (five year carry forward period for credits earned in taxable

years beginning before January 1, 2008) associated with the tax credit ends.

(i) Example: A taxpayer makes a qualified donation and claims the conservation tax credit in calendar year 2013. The taxpayer sells the conservation tax credit to a Georgia taxpayer in calendar 2014 tax year. The transferee Georgia taxpayer may claim the purchased conservation tax credit on either their 2013 return (transferee's tax year in which the income tax year of the taxpayer transferor ends) or their 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, or 2023 return (during any later tax year before the ten year carry forward associated with the tax credit ends).

3. The transferee's tax credit amount cannot exceed the limits in paragraph (5) of this regulation in the year in which the qualified donation was made. Any tax credit amount that exceeds the limits in paragraph (5) of this regulation for the year in which the qualified donation was made cannot be claimed or transferred by the transferee in any tax year.

(i) Example: In 2013, an individual taxpayer makes a qualified donation, after applying the limits in paragraph (5) of this regulation the taxpayer claims the conservation tax credit for \$250,000 on their joint tax return. In 2015, this taxpayer purchases \$100,000 conservation tax credit from a qualified donation made in 2013. Since this taxpayer has already met the limits in paragraph (5) of this regulation for 2013, the taxpayer cannot claim the \$100,000 conservation tax credit in any tax year.

(14) **Effective Date.** This regulation as amended shall be applicable to taxable years beginning on or after January 1, 2013. Taxable years beginning before January 1, 2013 will be governed by the regulations of Chapter 560-7 as they exist before January 1,

**Chapter 560-7-8**

**Returns and Collections**

2013 in the same manner as if the amendments set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.12.