

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

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

TABLE OF CONTENTS

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

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. Other provisions and conditions regarding student scholarship organizations and the qualified education expense credit are set forth in O.C.G.A. § 48-7-29.16 and Chapter 2A of Title 20.

(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 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.

(f) "Expenditure of Funds" means the expenditure of lawful money of the United States and does not include other intangible assets such as stocks, bonds, etc.

(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, concerning their participation as an SSO.

(b) The Department of Education will maintain on its website a current list of all SSOs that have provided 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. The audit shall be completed and the audit report issued within 120 days after the end of the SSO's fiscal year.

(b) The audit report must verify that the SSO has complied with all requirements of O.C.G.A. § 20-2A-2.

(c) As is required by O.C.G.A. § 20-2A-3, the annual audit report shall be submitted to the Department of Revenue on or before the January 12 date following completion of the audit report.

(5) Calendar Year Report.

(a) The calendar year report shall be submitted by the SSO by January 12. Form "IT-QEE-SSO2" shall be the form used to submit the report. The report shall be submitted electronically in the manner specified by the Department.

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

(c) The report shall include the following:

1. The total number and dollar value of individual contributions and qualified education expense credits preapproved, individual contributions include contributions made by those filing income tax returns as single, head of household, married filing separate, and married filing joint;

2. The total number and dollar value of corporate and trust contributions and qualified education expense credits preapproved;

3. The total number and dollar value of scholarships awarded to eligible students;

4. The total number of families of scholarship recipients who fall within each quartile of Georgia adjusted gross income (as defined and reported by the Department on the Department's website) and the average number of dependents of families of scholarship recipients for each quartile. For scholarships awarded in a particular calendar year, the SSO shall use the prior calendar year's Georgia adjusted gross income and dependent information of the families of scholarship recipients. The Department of Revenue shall post such quartile ranges for the prior calendar year by December 15 of a particular year.

i. For example. For the 2013 calendar year Form “IT-QEE-SSO2” which is due on January 12, 2014, the SSO shall use the 2012 calendar year Georgia adjusted gross income and dependent information of the families of scholarship recipients. The Department shall post such 2012 calendar year quartile information by December 15, 2013.

5. 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

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

(d) The Department of Revenue shall post on its website the information received from each SSO under subparagraphs (c)(1.) through (c)(4.) of this paragraph.

(6) Examples of the Timing of Reports.

(a) An SSO’s first year begins on January 1, 2013, and ends on December 31, 2013. By January 12, 2014, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2013. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2014. The audit report submitted on or before January 12, 2015, will include the results of the audit for the year ending December 31, 2013.

(b) An SSO’s first fiscal year begins on May 1, 2013, and ends on April 30, 2014. By January 12, 2014, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2013. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2014. The audit report

submitted on or before January 12, 2015, will include the results of the audit for the fiscal year ending April 30, 2014.

(c) An SSO's first fiscal year begins on December 1, 2013, and ends on November 30, 2014. By January 12, 2014, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2013. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2014. By January 12, 2015, they must submit the required calendar year report for the calendar year that ended December 31, 2014. No audit report will need to be submitted for this second year since the due date for completing the audit report falls after the deadline of January 12, 2015. The audit report submitted on or before January 12, 2016, will include the results of the audit for the fiscal year ending November 30, 2014.

(7) Failure of the Audit Report to Verify or Failure to Submit the Audit Report as Required under O.C.G.A. § 20-2A-2. Notwithstanding O.C.G.A. §§ 20-2A-7, 48-2-15, 48-7-60, 48-7-61 and paragraph (8) of this regulation, if the audit report submitted by the SSO fails to verify: that the SSO obligated its annual revenue received from donations for scholarships or tuition grants as required under O.C.G.A. § 20-2A-2; that obligated revenues were designated for specific student recipients within the time frame required under O.C.G.A. § 20-2A-2; and that all obligated and designated revenue distributed to a qualified school or program for the funding of multiyear scholarships or tuition grants complied with this regulation; then the Department shall post on its website the details of such failure to verify. If the audit report is not submitted by the required time, the SSO shall be deemed to have failed all three of the requirements. Until the noncompliant SSO submits an amended audit (or the required audit report in the case of a failure to submit the audit report by the required time), which to the satisfaction of the Department

contains the verifications required under O.C.G.A. § 20-2A-2, the Department shall not preapprove any contributions to the noncompliant SSO.

(8) Failure to Report and Confidentiality. Any SSO that does not submit the audit report or the calendar year report as required under this regulation or receives a qualified opinion or a disclaimer on their audit report from an independent certified public accountant or otherwise fails to comply with the requirements of Chapter 2A of Title 20 shall be given written notice of their failure and shall have 90 days from receipt of such notice to correct all deficiencies.

(a) If the SSO fails to correct all deficiencies within 90 days of receipt of notice from the Department, such SSO shall:

1. Be immediately removed from the Department of Education's list of approved SSOs.

2. Be required to cease all operations as an SSO and transfer all scholarship account funds to a properly operating SSO within 30 calendar days of receipt of notice from the Department of removal from the approved list; and

3. Have all applications for preapproval of tax credits under O.C.G.A. § 48-7-49.16 rejected by the Department on or after the date that the Department of Education removes the SSO from its list of approved SSOs.

(b) Except for information reported under subparagraphs (c)(1.) through (c)(4.) of paragraph (5) of this regulation and any failure to report and verify under paragraph (7) of this regulation, all information or reports provided by SSOs to the Department shall be confidential taxpayer information, governed by O.C.G.A. §§ 48-2-15, 48-7-60, and 48-7-61.

(9) Credit Limitations for Individuals and Corporations.

The amount of qualified education expense credit granted to a taxpayer shall not exceed:

(a) For an individual taxpayer, except as otherwise provided in this paragraph, the 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.

(b) For an individual taxpayer filing a married filing separate return, the credit is limited to the lesser of the actual amount expended or \$1,250.00 per tax year.

(c) For an individual taxpayer who is a member of a limited liability company duly formed under state law (including a member who owns a single member limited liability company that is disregarded for income tax purposes), a shareholder of a Subchapter 'S' corporation, or a partner in a partnership, the credit is limited to the lesser of the actual amount expended or \$10,000 per tax year, whichever is less; provided, however, that the tax credits shall only be allowed for the Georgia income on which such tax was actually paid by such member of a limited liability company, shareholder of a Subchapter 'S' corporation, or partner in a partnership. If the individual taxpayer is a member, partner, or shareholder in more than one pass through entity, the total credit allowed cannot exceed \$10,000; the individual taxpayer decides which pass through entities to include when computing Georgia income for purposes of the qualified education expense credit. All Georgia income, loss, and expense from the taxpayer selected pass through entities will be combined to determine Georgia income for purposes of the qualified education expense credit. Such combined Georgia income shall be multiplied by 6% to determine the tax that was actually paid. If the taxpayer is filing a joint return, the taxpayer's spouse may also claim a credit for their ownership

interests and shall separately be eligible for a credit as provided in this subparagraph. If the taxpayer(s) chooses to be preapproved pursuant to this subparagraph, for all purposes of claiming the credit they shall be subject to the provisions of this subparagraph and shall not be entitled to claim any other amounts provided in O.C.G.A. § 48-7-29.16 and this regulation. If the taxpayer is preapproved for an amount that exceeds the amount that is calculated as allowed when the return is filed, the excess amount cannot be claimed by the taxpayer and cannot be carried forward.

1. Example: Taxpayer, an individual taxpayer, is the sole shareholder of A, Inc, an S corporation, Taxpayer is also a 50% partner, in BC Company, a partnership, and Taxpayer is also a 20% member of a limited liability company, XYZ Company, which is taxed as a partnership. Taxpayer requests preapproval for the qualified education expense credit for calendar year 2013 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates that the taxpayer's Georgia income from A, Inc. is \$120,000, and that Taxpayer's share of Georgia income from BC Company is \$60,000, Taxpayer chooses not to include any income from XYZ Company when estimating Georgia income for purposes of the qualified education expense credit; therefore the Department preapproves Taxpayer for \$10,000 qualified education expense credit (since \$10,000 is less than \$10,800 (6% of \$180,000)). Taxpayer makes a \$10,000 donation to the SSO within 60 days of receiving preapproval from the Department and before the end of 2013. When Taxpayer files Taxpayer's 2013 Georgia income tax return, Taxpayer received a salary from A, Inc. of \$50,000 and A, Inc's actual Georgia income is \$60,000; Taxpayer's actual share of Georgia income from BC Company is \$20,000 and Taxpayer received a guaranteed payment from BC Company of \$15,000; Taxpayer's actual share of Georgia income from XYZ Company is \$5,000 (the Taxpayer can choose to include this company even though it was not considered at the time of preapproval), Taxpayer can only claim \$9,000 qualified

education expense credit (which is 6% of the \$150,000 actual income from Taxpayer's selected pass through entities), and the extra \$1,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$9,000 qualified education expense credit claimed but not used on the taxpayer's 2013 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(d) For a corporate or fiduciary taxpayer, the credit is limited to the lesser of the actual amount expended or 75 percent of the corporation's or fiduciary's income tax liability. A fiduciary cannot pass-through the credit to its beneficiaries.

1. Example: Taxpayer, a Corporation, requests preapproval for the qualified education expense credit for calendar year 2013 by submitting Form IT-QEE-TP1. On Form IT-QEE-TP1, Taxpayer estimates its income tax liability for the 2013 tax year to be \$100,000; therefore the Department preapproves Taxpayer for \$75,000 qualified education expense credit for calendar year 2013. Taxpayer makes a \$75,000 donation to the SSO within 60 days of receiving preapproval from the Department and before the end of 2013. When Taxpayer files their 2013 Georgia income tax return, Taxpayer's income tax liability for tax year 2013 is \$80,000, Taxpayer can only claim \$60,000 of qualified education expense credit (which is 75% of their actual income tax liability for tax year 2013), and the extra \$15,000 cannot be claimed by Taxpayer and cannot be carried forward. Any amount of the \$60,000 qualified education expense credit claimed but not used on the taxpayer's 2013 Georgia income tax return shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability.

(e) Pass-through entities are not allowed the qualified education expense credit.

(10) **Credit Cap.** In no event shall the total amount of tax credits allowed under O.C.G.A. § 48-7-29.16 exceed \$58 million per calendar year.

(11) **Reporting the Availability of the Credit.** The Department shall post on its website the current amount of qualified education expense credits available.

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

(a) The taxpayer must electronically submit Form IT-QEE-TP1 through the Georgia Tax Center to request preapproval of the qualified education expense credit from the Department of Revenue. The Department will not preapprove any qualified education expense credit where the Form IT-QEE-TP1 is submitted or filed in any other manner. Each SSO shall be registered with the Department to facilitate the web-based preapproval process for Form IT-QEE-TP1.

(b) The contributor should not submit Form IT-QEE-TP1 to 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 submitted by the contributor to the Department of Revenue.

(c) The electronic 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 or fiduciary, 75% of the estimated income tax liability the corporation or fiduciary expects for the tax year of the corporation or fiduciary 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. 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 date the Form IT-QEE-TP1 is electronically submitted shall be used to determine such first-come, first-served basis.

(e) The Department will notify each taxpayer and the taxpayer's selected SSO of the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QEE-TP1 was received.

(f) On the day any Form IT-QEE-TP1 is received for a calendar year that causes the calendar year limit in paragraph (10) of this regulation to be reached, then the remaining tax credits shall be allocated among the applicants who submitted the Form IT-QEE-TP1 on the day the calendar year limit was exceeded on a pro rata basis based upon the amounts otherwise allowed by O.C.G.A. § 48-7-29.16 and this regulation. Only credit amounts on Form IT-QEE-TP1(s) received on the day the calendar year limit was exceeded shall be allocated on a pro rata basis.

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

(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) Notwithstanding any laws to the contrary, the Department shall not take any adverse action against donors to SSOs if the

Commissioner preapproved a donation for a tax credit prior to the date the SSO is removed from the Department of Education list pursuant to O.C.G.A. § 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to the donor's compliance with O.C.G.A. § 48-7-29.16(f)(3).

(j) Once the calendar year limit 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. If any Form IT-QEE-TP1 is received after the calendar year limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(13) **Letter of Confirmation.** Form IT-QEE-SSO1 shall be provided by the SSO to the taxpayer to confirm the contribution.

(14) **Claiming the Credit.** A taxpayer claiming the qualified education expense credit, unless indicated otherwise by the Commissioner, must submit the Form IT-QEE-SSO1 and Form IT-QEE-TP2 with the taxpayer's Georgia tax return when the qualified education expense credit is claimed.

(15) **E-filing Attachment Requirements.** If a taxpayer claiming the credit electronically files their tax return, the Form IT-QEE-SSO1 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 taxpayer 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 taxpayer and made available upon request by the Commissioner.

(16) **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 five years' tax liability. However, any amount in excess of the credit amount limits in paragraph (9) of this regulation shall not be eligible for carry forward to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(17) 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.

(a) If a taxpayer's itemized deductions are limited federally (and therefore for Georgia purposes) because their Federal Adjusted Gross Income exceeds a certain amount, the taxpayer is only required to add back to Georgia taxable income that portion of the federal charitable deduction that was actually deducted pursuant to the following formula. The federal charitable deduction that must be added back to Georgia taxable income shall be the amount of the federal charitable contribution relating to the qualified education expense credit multiplied by the following ratio. The numerator is the amount of the itemized deductions subject to limitation and allowed as itemized deductions after the limitation is applied. The denominator is the total itemized deductions that are subject to limitation before the limitation is applied.

1. For example. A taxpayer has a \$2,500 charitable contribution relating to the qualified education expense credit and has property taxes of \$1,500 both of which are subject to limitation. The taxpayer also has investment interest expense of \$10,000 (which is not limited). Accordingly, the taxpayer's total itemized deductions before limitation are \$14,000. After applying the federal limitation, the taxpayer is allowed \$13,000 in itemized deductions. As such only \$3,000 (\$13,000 less the \$10,000 investment interest expense which is not limited) of the original \$4,000 charitable deduction and property taxes are allowed to be deducted. Applying the ratio from the subparagraph above, the taxpayer must add back \$1,875 of the charitable contribution to their Georgia taxable income ($\$2,500 \times (\$3,000 / \$4,000)$).

(18) Scholarships.

(a) For all scholarships including multi-year scholarships, the SSO shall deliver the scholarship check directly to the qualified school or program selected as a result of the private choice of the parent or guardian of the child to whom the scholarship was awarded. The parent or guardian of the student shall come to such qualified school or program and restrictively endorse the check to such qualified school or program for deposit into the account of such qualified school or program as is required by O.C.G.A. § 20-2A-5. Such qualified school or program shall not be allowed to endorse the check over to a different qualified school or program.

(b) In the event an SSO awards a multi-year scholarship, the SSO may disburse the entire scholarship at the time the scholarship is awarded.

(c) For all scholarships including multi-year scholarships, the qualified school or program shall separately account for each scholarship awarded. Additionally, the income earned on the portion of the scholarship which has not yet been applied to tuition

shall be separately accounted for and shall be used to provide tuition for such eligible student. The scholarship shall be applied to tuition on the same due dates as the general population of students of such school.

(d) In making a multi-year distribution to a qualified school or program, the SSO shall require that if the designated student becomes ineligible or for any other reason the qualified school or program elects not to continue disbursement of the multi-year scholarship or tuition grant to the designated student for all the projected years, then the qualified school or program shall immediately return the remaining funds to the SSO and the income earned on such portion. Upon receipt of such returned scholarship, such SSO shall allocate and obligate such money for scholarships or tuition grants on or before the end of the following calendar year; 100% of such returned money (including the remaining funds and the income earned on such portion) shall be allocated and obligated. Once a qualified school or program receives such returned money and such income earned on such returned money, 100% of such amounts received shall be used for an eligible student.

1. Once the student scholarship organization designates obligated revenues for specific student recipients, in the case of multiyear scholarships or tuition grants for which the student scholarship organization distributes the obligated and designated revenues to a qualified school or program annually rather than the entire amount, if the designated student becomes ineligible or for any other reason the student scholarship organization elects not to continue disbursement for all years, then the student scholarship organization shall designate any remaining previously obligated revenues for a new specific student recipient on or before the end of the following calendar year.

(19) **Designation of Contributions.** The tax credit shall not be allowed if the taxpayer directly or indirectly designates the

taxpayer's qualified education expense for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer.

(a) In soliciting contributions, an SSO shall not represent, or direct a qualified school or program to represent, that in exchange for contributing to the SSO, a taxpayer shall receive a scholarship for the direct benefit of any particular individual, whether or not such individual is a dependent of the taxpayer. Their status as an SSO shall be revoked for any such organization which violates this subparagraph and as such the SSO shall be removed from the Department of Education's list of approved SSOs and the Department shall not preapprove any contributions to such SSO.

(20) **Effective Date.** This rule is applicable to years beginning on or after January 1, 2013. Years beginning before January 1, 2013 will be governed by the regulations of Chapter 560-7 as they existed before January 1, 2013 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

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