RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-8
RETURNS AND COLLECTIONS

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560-7-8-.42 Tax Credit for Qualified Research Expenses.

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(1) **Purpose.** This rule provides guidance concerning the implementation and administration of the income tax credit under O.C.G.A. § 48-7-40.12.

(2) **Definitions.** As used in this regulation:

(a) **Base Amount.** The term "base amount" means the product of a business enterprise's Georgia gross receipts in the current taxable year and the average of the ratios of its aggregate qualified research expenses to Georgia gross receipts for the preceding three taxable years or 0.300, whichever is less; provided, however, that a business enterprise need not have had a positive taxable net income for the preceding three taxable years in order to claim the credit. "Georgia gross receipts" shall be the numerator of the gross receipts factor provided in subsection (d) of O.C.G.A. § 48-7-31. If a business enterprise had no Georgia gross receipts during any one or more of the three preceding tax years, the base amount shall be the product of the current year Georgia gross receipts and 0.300.

(b) **Business enterprise.** The term "business enterprise" shall have the same meaning as in Revenue Regulation 560-7-8-.46.

(c) **Qualified Research Expenses**. The term "qualified research expenses" means qualified research expenses for any business enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as amended, except that all wages paid and all purchases of services and supplies must be for research conducted within the State of Georgia.

(3) **Establishing Eligibility for the Credit**. A business enterprise that has qualified research expenses in Georgia in a taxable year exceeding a base amount, and for the same taxable year claims and is allowed a research credit under Section 41 of the Internal Revenue Code of 1986, as amended shall be eligible for the credit.

(4) **Credit Amount**. A business enterprise that has established eligibility for the research tax credit shall be allowed a tax credit equal to 10 percent of the excess of the qualified research expenses over the base amount. The credit taken in any one taxable year shall not exceed 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied.

(5) **Claiming the Credit**. For a business enterprise to claim the research tax credit, the business enterprise must submit Form IT-RD and Federal Form 6765, from the entity generating the credit, with its Georgia income tax return for each tax year in which the qualified research expenses were incurred.

(a) **Withholding tax**. A newly formed business enterprise, which is in its first five years of operations in this state, whose

credit amount exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under Code Section 48-7-103. The withholding tax benefit may only be applied against the withholding tax account used by the business enterprise for payroll. In the event the business enterprise is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company. A business enterprise must notify the commissioner each year of their irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such business enterprise. When this election is made, the excess research tax credit will not pass through to the shareholders, partners, or members of the business enterprise if the business enterprise is a pass-through entity.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the business enterprise's withholding tax liability, the business enterprise must file Revenue Form IT-WH at least thirty (30) days prior to the due date of the Georgia income tax return (including extensions) or at least thirty (30) days prior to the filing of the income tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit.

2. Review Period. The Department of Revenue has ninety (90) days from the date the income tax return claiming the tax credit is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the business enterprise stating the tax credit amount which may be applied against withholding and when the business enterprise may begin to claim the tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.

(6) **Carry Forward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward for ten years from the close of the taxable year in which the qualified research expenses were made.

(7) **Pass-through Entities.** When the business enterprise 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 business enterprise 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 shareholders, members, or partners may not claim any excess research tax credit against their withholding tax liabilities. 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, 2010. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2010 tax year.

(8) **Effective Date.** This regulation as amended shall be applicable to taxable years beginning on or after January 1, 2009. Tax-

able years beginning before January 1, 2009 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2009 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 48-7-40.12.