RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-4
NET TAXABLE INCOME (INDIVIDUAL)

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(1) The Georgia taxable net income of an individual shall be computed pursuant to O.C.G.A. § 48-7-27.

(2) There shall be added to "net income" the amount of deductions reflected therein which resulted from transactions occurring in years in which the individual was not subject to Georgia income tax. Such deductions shall include but not be limited to, contribution carryovers, capital loss carryovers, and net operating loss carryovers.

(3) Net Operating Losses

(a) An appropriate adjustment shall be made to such "net income" for a net operating loss carryover.

(b) For any taxable year in which the taxpayer claims a net operating loss deduction on the Federal income tax return, the amount of such deduction shall be added back to "net income". There shall be allowed as a separate deduction from "net income" an amount equal to the aggregate of the Georgia net operating loss carryovers to such year, plus the Georgia net operating loss carrybacks to such year.

(c) For any taxable year in which the taxpayer has a Federal net operating loss, the Georgia net operating loss for such taxable year shall be computed by making the same adjustments to the Federal net operating loss that are made to Federal adjusted gross income to determine Georgia taxable net income. In the case of nonresident individuals, trusts, and estates doing business both within and without Georgia, the loss attributable to operations within Georgia shall be computed as provided in O.C.G.A. § 48-7-30. The term "Georgia net operating loss" shall mean the loss computed as provided in this subparagraph. In the event the net Georgia adjustments completely offset the federal net operating loss, there shall be no Georgia net operating loss for the taxable year, and any excess of net Georgia adjustments over the Federal net operating loss shall constitute Georgia taxable net income.

(d) The procedural sequence of taxable years to which a Georgia net operating loss may be carried back or carried over, and the number of years for which a net operating loss may be carried back or carried over, shall be the same as provided in the Internal Revenue Code as adopted for Georgia purposes. The extent to which Georgia adopts the Internal Revenue Code is set forth in the definition of "Internal Revenue Code" in O.C.G.A. § 48-1-2. The terms "Georgia net operating loss carryback" and "Georgia net operating loss carryover" shall mean the Georgia net operating loss carried back or carried over in the manner and for the number of years as provided in this subparagraph.

(e) In the event the taxpayer elects to forgo the carryback period for the federal net operating loss as allowed under the Internal Revenue Code, the taxpayer shall also forgo the carryback period for Georgia purposes. If the taxpayer does not elect to forgo the carryback period for the federal net operating loss, the election to forgo the net operating loss period shall not be allowed for Georgia purposes. If the taxpayer does not have a federal net operating loss, the taxpayer may make an irrevocable election to forgo the carryback period for the Georgia net operating loss, provided that an affirmative statement is attached to the Georgia return for the year of

the loss. Such election must be made on or before the due date for filing the income tax return for the taxable year wherein the loss was incurred, including any extensions which have been granted.

(f) Claim for Refund.

1. In the event the taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback, a net operating loss carryback adjustment claim for refund will be filed on Form 500-NOL and in accordance with O.C.G.A. § 48-7-21(b)(10.1)(E). The taxpayer must file such claim for refund within three years after the due date for filing the income tax return for the taxable year wherein the loss was incurred (including any extensions which have been granted) as prescribed in O.G.C.A. § 48-7-21(b)(10.1)(E). Such claim for refund shall constitute a claim for credit or refund for purposes of O.C.G.A. § 48-2-35. Within a period of ninety (90) days from the last day of the month in which such claim for refund is filed, the Commissioner shall make, to the extent he or she deems practicable in such period, an examination of the claim for refund to determine the amount of tax decrease attributable to such carryback adjustment upon the basis of the claim for refund and the examination. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety (90) day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund made within such ninety (90) day period shall be without interest as provided in O.C.G.A. § 48-7-21(b)(10.1)(E) and shall be subject to further examination as provided in subparagraph (3)(f)3.

2. If such claim for refund contains errors of computation which the Commissioner deems cannot be corrected within such ninety (90) day period or which contains material omissions, the Commissioner may disallow without further action any such claim for refund. Alternatively, the Commissioner may request that the taxpayer correct such errors or omissions. In either case, the date upon which the taxpayer later corrects such errors or omissions shall

be considered the filing date for the claim for refund for purposes of the aforementioned (90) day no interest period.

3. The Commissioner may further examine, subject to the applicable statute of limitations, such claim for refund at a later time and assess as necessary.

(g) The provisions of Sections 108, 381, 382, and 384 of the Internal Revenue Code of 1986, as amended, as they relate to net operating losses also apply for Georgia purposes. These shall be applied as provided in O.C.G.A. § 48-7-21(b)(10.1)(D) and the regulations thereunder.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-27