

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

(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 property donated under O.C.G.A. § 48-7-29.12 is suitable for conservation purposes.

(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 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.

(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: \$1 million, 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, a return filed by an 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 determined 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 is an S-Corporation (with no entity level income tax liability) composed of two individual shareholders, shareholder C and shareholder D (each of

which owns 50%); Partner B is an individual taxpayer. Each partner has a 50 percent partnership interest. 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 \$1 million (because \$1 million is less than \$1,250,000, which is 25 percent of the fair market value). Partner A's (an S-Corporation) credit amount is \$500,000. Shareholder C's credit amount is \$250,000, and Shareholder D's credit amount is \$250,000. Partner B's (individual taxpayer) credit amount is \$250,000.

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 \$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 credit amount for Members B and C is \$75,000.

(6) **Qualified Donation Limitation.** 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. Qualified donations that are phased easements are allowed every other year. 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, and the appraisal of the donated property with the taxpayer's Georgia tax return in the tax year in which the qualified donation occurred. Form IT-CONSV must be submitted with the taxpayer's Georgia tax return each year in which the conservation tax credit is claimed.

(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. However, the amount in excess of the annual dollar limits specified in paragraph (5) 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.

(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) **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, 2009. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2009 tax year.

(11) **Effective Date.** This regulation is effective for taxable years beginning on or after January 1, 2008.

Authority O.C.G.A. Secs. 48-2-12, 48-7-29.12. **History.** Original Rule entitled "Conservation Tax Credit" adopted. F. Jan. 26, 2009; eff. Feb. 15, 2009.