

**From:** Jim Kelly <jkellyiii@georgiaheart.org>

**Sent:** Wednesday, August 14, 2019 9:19 AM

**Subject:** Proposed Georgia DOR Rule Benefits Pass-Through Business Owners

Dear Georgia HEART Supporter:

On June 13, 2019, the U.S. Department of the Treasury announced final rules and additional guidance on the federal income tax treatment of payments made to qualified charities under state and local tax credit programs. Generally, the final rules deny taxpayers a federal charitable deduction for contributions to qualified charities in cases where the taxpayers receive a state income tax credit. However, in Item #7 in the Summary of Comments Section, on page 27 of the [IRS Final Regulations](#), the Treasury Department and IRS confirmed that, in accordance with long-standing precedent, when appropriate, “taxpayers engaged in a trade or business may be permitted an Internal Revenue Code (“IRC”) Section 162 [ordinary and necessary business expense] deduction for amounts paid to charitable organizations in some circumstances.”

In the line of court cases cited by the IRS in support of this treatment (*Marquis v. Commissioner*, 49 T.C. 695 (1968), et al.), payments made by a pass-through business entity with the reasonable expectation of financial return commensurate with the amount paid will qualify for a federal business expense deduction. As a result, with the assistance of their tax or financial advisors, Georgia taxpayers who own interests in pass-through business entities should consider whether their businesses are able to make payments to RHOs which constitute ordinary and necessary business expenses that are fully deductible for federal income tax purposes.

Since the issuance of the Final Regulations, Georgia HEART staff have been closely communicating with the Georgia Department of Revenue (the “DOR”) to facilitate this tax treatment of payments by pass-through entities and to ensure the proper outcome at both the state and federal levels. As a result, on August 13, 2019, the DOR published its [Proposal to amend Rule 560-7-8-.57](#) (the “Proposed Amendment”) relating to the Georgia Rural Hospital Organization Expense Credit Program. In the Proposed Amendment, in cases where a pass-through entity makes a payment to a RHO that is deductible as a business expense under IRC Section 162, when the pass-through entity has no income tax liability of its own, the RHO tax credits will be earned by its members, shareholders, or partners based on their profit/loss percentage at the end of the tax year and the applicable maximum limits of Georgia law, which, from January 1 to June 30 of each year is the lesser of the amount actually expended or \$10,000, and, on or after July 1, so long as RHO tax credits remain available, is unlimited.

As of August 1, 2019, approximately \$27 million of 2019 RHO tax credits remain available.

According to the Proposed Amendment, although it is the pass-through entity that makes the expenditure to the RHO and takes the federal business expense deduction, all RHO tax credit forms (preapproval, claiming, and reporting) will be filed in the name of its members, shareholders, or partners and the RHO tax credit can only be applied against the shareholders', members', or partners' tax liability on their income tax returns. The pass-through entity shall provide all necessary information to the RHO (or, in the case of Georgia HEART participating RHOs, through Georgia HEART), so that the preapproval, claiming, and reporting forms can be filed in the names of its members, shareholders, or partners.

Georgia HEART appreciates the DOR's willingness to amend Rule 560-7-8-.57 to facilitate the taking of a federal business expense deduction (at the business entity level) and a state RHO tax credit (at the individual owner level) with respect to payments made by pass-through business entities to RHOs. To our knowledge, the DOR's effort to align the federal and state income tax treatment in such cases is nationally unprecedented and, therefore, deserving of appreciation and support.

The DOR will consider the adoption of the Proposed Rule at 10:00 a.m. on Wednesday, September 18, 2019 in Suite 15200 of the DOR's headquarters at 1800 Century Blvd. NE, Atlanta, GA 30345. Any persons or parties interested in submitting written comments regarding the Proposed Rule may do so on or before the Hearing Date in the manner set forth in the Proposed Rule.

Best,

Jim

Jim Kelly  
General Counsel  
Georgia HEART Hospital Program, LLC  
3740 Davinci Court, Suite 375  
Peachtree Corners, GA 30092  
Direct: 770-370-4221  
[jkellyiii@georgiaheart.org](mailto:jkellyiii@georgiaheart.org)  
[www.georgiaheart.org](http://www.georgiaheart.org)