



Current Tax Status of the Georgia Qualified Education Expense and Georgia Rural Hospital Organization Credit Programs

Between now and year-end, Georgia taxpayers have the opportunity to offset their 2019 Georgia income tax liabilities by contributing to two state income tax credit programs: The Georgia Qualified Education Expense ("QEE") Credit program, which supports scholarships for pre-k-12 students, and the Georgia Rural Hospital Organization ("RHO") Credit program, which supports rural hospitals throughout the state. In exchange for contributing to either or both programs, taxpayers can receive a 100 percent credit against their Georgia income taxes.

Although, under IRS regulations, individual donors to these programs may no longer take a federal charitable income tax deduction, final regulations adopted in June 2019 make it clear that *there is no financial cost for contributing to these programs in lieu of paying Georgia income tax liabilities*.

In addition, certain taxpayers who desire to support qualified pre-k-12 educational opportunities for families or enhance access to rural health care instead of otherwise paying their Georgia income taxes may obtain a financial benefit by doing so.

First, under IRS "safe-harbor" guidance, so-called "C" corporations are permitted to claim both a state income tax credit and a federal ordinary and necessary business expense deduction for contributing under these programs.

Second, under long-standing IRS authority, pass-through entities that make ordinary and necessary business payments to qualified scholarship organizations or rural hospitals generally may claim a federal business expense deduction rather than a charitable contribution deduction for the payments. Businesses should consult with their tax advisors to determine if this could apply in their circumstances. To qualify as an allowable business expense, the payment must be directly related to the taxpayer's trade or business and made with a reasonable expectation of financial return commensurate with the amount of the transfer, and the taxpayer should contemporaneously document the business and financial rationale for making the payment.

Pursuant to new rulings by the Georgia Department of Revenue ("DOR"), the owners of pass-through entities making ordinary and necessary business payments to qualified scholarship organizations or rural hospitals may apply for a QEE Credit and/or RHO Credit equal in amount to their share of the business payment as determined by their profit/loss percentage at the end of the tax year. Thus, the taxpayer may thereby receive 1) the benefit of the federal business expense deduction available to the pass-through entity (which reduces the amount of federal income the taxpayer recognizes for tax purposes) and 2) a 100% Georgia income tax credit.

Pass-through owners may apply for a QEE Credit for up to \$10,000. However, since it is after June 30, there is *no limit* on the amount of the RHO Credit for which the owner of an interest in a pass-through entity may apply, so long as the owner's Georgia income tax liability attributable to his or her share of income from the pass-through entity equals or exceeds the credit amount. The Georgia DOR will not permit taxpayers to calculate their Georgia income tax based on federal taxable income as reduced by the federal business expense deduction and receive a Georgia income tax credit for the same expenditure. Therefore, owners of pass-through entities will need to add the amount of their federal business expense deduction back to their Georgia taxable income.

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The U.S. Department of Treasury has announced that it is working on new regulations to explain in detail the availability of a business expense deduction in cases where pass-through entities make payments to scholarship organizations or rural hospitals for which they receive a state income tax credit, such as payments made for marketing, promotional, business development, and goodwill purposes.

Any tax advice contained herein is not intended or written to be used, and it cannot be used, by a client or any other person or entity for the purpose of avoiding penalties that may be imposed on any taxpayer. The above information is general in nature and should not be relied upon for any specific tax implication or investment decision. Actual results may differ, and readers are cautioned not to place reliance on these general observations. Consult with your advisor or counsel before undertaking any specific action.

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