



Everything You Need to Know About the Timber Tax Credit

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**The Georgia Society
of CPAs**

On November 17, 2018, Governor Deal signed into law 2018 H.B. 4EX, allowing for economic relief for timber farmers affected by Hurricane Michael. Specifically, the new law, which is codified as Section 48-7-40.36 of the Official Code of Georgia, provides a refundable income tax credit for timber producers who sustained damage to timber property caused by the storm. In a nutshell, eligible persons are allowed to apply for preapproval to obtain some portion of \$200 million of credits that have been earmarked by the General Assembly to provide relief for the damaged timber. Applications will need to be submitted between March 1, 2019, and May 31, 2019. If less than \$200 million is allocated during this initial application period, a second round of applications will be accepted between July 1, 2019 and December 31, 2019.

If approved, the taxpayer will claim the credit at a later date when the timber is replanted. The credit is unique among Georgia credits in that it is a refundable credit. On January 10, the Department of Revenue released a proposed regulation, Rule 560-7-8-.65, providing additional guidance for the administration of the credit.¹ Although new forms have not yet been released, the proposed regulation states the credit will be applied for electronically using Form IT-TIM-AP.

Calculation of the Credit

The new timber credit is equal to 100 percent of a taxpayer's timber casualty loss incurred between October 9, 2018, and December 31, 2018, as a result of damage caused by Hurricane Michael.² The credit is, however, capped at \$400 per affected acre.³ To be eligible for the timber credit, the timber must be:

- Located in one of the following 28 counties: Baker, Bleckley, Brooks, Calhoun, Clay, Colquitt, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Grady, Laurens, Lee, Lowndes, Miller, Mitchell, Pulaski, Randolph, Seminole, Sumter, Terrell, Thomas, Tift, Turner, Wilcox, or Worth;
- Grown as part of a trade or business or a transaction entered into for profit as of October 8, 2018; and
- Grown primarily for the commercial production of food, wood, or wood fiber products.⁴

The term "timber casualty loss" for purposes of the credit is defined by reference to the amount of diminution of value included in the computation of the casualty loss deduction under

Section 165 of the Internal Revenue Code. For federal income tax purposes, the casualty loss is capped at the lesser of the (1) diminution in value or (2) the adjusted basis of the lost or damaged property.⁵

Because much of the damaged timber may have little or no adjusted basis for federal income tax purposes, affected taxpayers may wrongly conclude that they are not eligible for the Georgia credit due to their having recognized no actual casualty loss for federal income tax purposes. This concern is unfounded due to the fact the credit is not based on the amount of casualty loss actually claimed for federal tax purposes, but rather is based on the amount of diminution of value "included in the computation" of the federal casualty loss deduction. However, taxpayers ineligible for the federal casualty loss deduction due to asset basis limitations must still complete and include with their federal income tax returns Form 4684, even if the form will show a zero deduction for federal purposes. This is required to establish and document the diminution in value for Georgia tax purposes.

Example 1. Taxpayer has 1,000 acres of eligible timber affected by Hurricane Michael. Taxpayer determines the diminution in value of the damaged timber is \$900,000; however, the aggregate adjusted basis of the trees affected is \$250,000. In calculating his casualty loss deduction pursuant to I.R.C. § 165, Taxpayer would compare the amount of diminution in value to the adjusted basis of the trees and claim a loss of \$250,000. For purposes of the Georgia timber credit, however, the Taxpayer would base the credit on the \$900,000 diminution in value since that was the amount "included in the computation" of the casualty loss, even though a lesser deduction is actually claimed for federal income tax purposes. Note, however, that in the immediate case, Taxpayer's Georgia credit is subject to the further limitation of \$400 per acre. Accordingly, Taxpayer's actual Georgia credit amount would be \$400,000, or 1,000

¹Much of this article draws from the proposed rule published on January 10, 2019. Note that the proposed rule is subject to change, and the Department of Revenue will take comments on the proposed rule until February 13, 2019. See Ga. Dep't of Rev., Notice IT-2019-1 (Jan. 10, 2019), for more information.

²O.C.G.A. § 48-7-40.36(c)(1).

³*Id.*

⁴O.C.G.A. § 48-7-40.36(b).

⁵Treas. Reg. § 1.165-7(b).

acres at \$400 per acre (see below for possible proration if the overall \$200 million cap is exceeded).

Claiming the Credit

There are two prerequisites to claiming the credit. First, the taxpayer must obtain preapproval from the Department of Revenue for a specified amount of credit. Second, the taxpayer must replant the damaged timber and give notice to the Department of Revenue that such replanting has occurred.⁶ Time limitations are placed on both steps, and both requirements must be performed for each county in which the taxpayer has eligible timber property.⁷

Preapproval Applications

To secure a portion of the \$200 million credit, a taxpayer must electronically submit its preapproval application, Form IT-TIM-AP, through the Georgia Tax Center (GTC) between March 1, 2019, and May 31, 2019.⁸ A separate Form IT-TIM-AP must be submitted for each county with affected timber.⁹ Once received, the Department has until June 30, 2019, to reject or approve the application.¹⁰ If approved, the Department will issue an approval certificate to the taxpayer.¹¹ Note that the statute also imposes a thirty (30) day deadline from the time the application is submitted for the Department to notify the taxpayer whether or not his/her application is complete. Pass-through entities must file their own applications, and the approved credits will pass-through to their respective partners.¹²

The aggregate amount of tax credits that can be approved for all applicants is limited to \$200 million. If more than \$200 million of eligible credits are applied for, the proposed regulation provides that the cap will be prorated between the applicants based on amounts otherwise allowable.¹³ Because of the pro rata method of allocation, no consideration is given to the timing of the application (i.e., early applicants are on equal footing with applicants who file applications on the deadline).

Finally, if the aggregate amount of credits approved does not exceed the \$200 million cap, a second round of preapproval applications will be accepted between July 1, 2019, and December 31, 2019, for the remaining available credits.¹⁴

Replanting Requirement

After preapproval, a taxpayer is not eligible to claim the credit until the year in which the taxpayer replants the timber. In order to claim the credit, the taxpayer must replant the timber in an amount that is projected to yield at maturity at least 90 percent

⁶O.C.G.A. § 48-7-40.36(d), (f).

⁷Prop. Ga. R. & Regs. 560-7-8-.65(11).

⁸O.C.G.A. § 48-7-40.36(c), (d); Prop. Ga. R. & Regs. 560-7-8-.65(6).

⁹Prop. Ga. R. & Regs. 560-7-8-.65(6)(a).

¹⁰*Id.*

¹¹*Id.*

¹²Prop. Ga. R. & Regs. 560-7-8-.65(10).

¹³O.C.G.A. § 48-7-40.36(d), (e); Prop. Ga. R. & Regs. 560-7-8-.65(6).

¹⁴O.C.G.A. § 48-7-40.36(d), (e); Prop. Ga. R. & Regs. 560-7-8-.65(6).

¹⁴O.C.G.A. § 48-7-40.36(d.1).



of the value of the timber casualty loss claimed.¹⁵ The 90 percent requirement must be computed and separately met for each county and must be measured based on market conditions as of October 8, 2018.¹⁶

It is not necessary for the timber to be replanted on the same property, but it must be replanted in the same county.¹⁷

Additionally, there are no requirements that the same type of timber be replanted. For example, a pecan farmer could plant a different variety of pecan tree; or forego pecans altogether for another type of timber.

Example 2. Taxpayer reports a diminution of value of \$100,000 resulting from damage to a pecan orchard in Clay County; and another \$200,000 for an orchard in Dooly County. Assume Taxpayer receives approval for a \$100,000 credit for the Clay County damages, and approval for a \$200,000 credit for the Dooly County damages. To claim any portion of the approved credits, Taxpayer must replant enough timber to project a \$90,000 yield at maturity in Clay County; and a \$180,000 yield at maturity in Dooly County.

Example 3. Same facts as Example 2; however, Taxpayer receives approval for only \$40,000 in credits for the Clay County orchard due to the \$400 per acre cap. Even though the credit is for less than the full, reported diminution in value, Taxpayer must replant enough timber in Clay County to project a \$90,000 yield at maturity before he/she can claim any of the \$40,000 credit attributable to that county.

Example 4. Same facts as Example 2; however, Taxpayer decides not to replant in Clay County (or decides not to replant sufficient timber in that county to meet the requisite projected yield requirements.) In this case, Taxpayer can still claim the \$200,000 in approved credits associated with the Dooly County damages assuming he/she replants timber with the projected \$180,000 yield in that county. If, at a later date, the Taxpayer does replant the requisite timber in Clay County, he/she will be eligible to claim the available credit that was approved for that county.

Example 5. Same facts as Example 2; however, Taxpayer elects to replant timber with an aggregate projected yield of \$300,000 in Brooks County, another eligible county. In this case, Taxpayer is not able to claim any of his/her preapproved credits since the timber must be replanted in the same county where the reported damages occurred.

Once replanted, the taxpayer must submit a report through the GTC setting forth the preapproval certificate number; county and address where replanting occurred; dollar amount of the projected yield at maturity; and any other information requested by the Department.¹⁸ Failure to submit this report will prevent the taxpayer from claiming the pre-approved credit.

Lastly, the credits must be claimed on or before December 31, 2024.¹⁹ Accordingly, there is a time limit imposed on the taxpayer's ability to conduct the requisite replanting.

Transferability and Carryover of Credits

Similar to a limited number of other Georgia credits, the timber credits can be sold to a third party.²⁰ Presumably the rationale for making an otherwise refundable credit transferable is to provide taxpayers the opportunity to expedite the monetization of the credit; thereby lessening the economic cost of replanting the lost timber. Note that the credits may not be sold for less than sixty cents (60¢) on the dollar, and a taxpayer may only sell the credit once to a single other Georgia taxpayer.²¹ No later than thirty (30) days after selling the credits, the taxpayer must file Form IT-TRANS through the Georgia Tax Center.²²

The statute directs that the credits cannot be sold until they are claimed.²³ According to the proposed regulation, a taxpayer can sell his/her credit once notification of the replanting has been given to the Department of Revenue through GTC.²⁴ As such, it is

¹⁵O.C.G.A. § 48-7-40.36(f)(1).

¹⁶Prop. Ga. R. & Regs. 560-7-8-.65(7)

¹⁷O.C.G.A. § 48-7-40.36(f)(1); Prop. Ga. R. & Regs. 560-7-8-.65(11)(d).

¹⁸Prop. Ga. R. & Regs. 560-7-8-.65(7).

¹⁹O.C.G.A. § 48-7-40.36(e)(3).

²⁰O.C.G.A. § 48-7-40.36(h).

²¹O.C.G.A. § 48-7-40.36(h)(6); Prop. Ga. R. & Regs. 560-7-8-.65(12).

²²Prop. Ga. R. & Regs. 560-7-8-.65(12)(d).

²³O.C.G.A. § 48-7-40.36(h).

²⁴Prop. Ga. R. & Regs. 560-7-8-.65(12)(b).

not necessary that the taxpayer have actually claimed the credit on his/her return; however, the regulation does make it clear that a taxpayer who has previously sold a credit must still claim the credit on his/her return.

Interestingly, the law does allow for any unused credits to be carried forward ten years; however, it is unclear what situation would result in a carryforward of credits since the credit is refundable.²⁵

Conclusion

Tax practitioners advising pecan and other timber farmers affected by Hurricane Michael in southwest Georgia would do well to quickly educate their clients on the potential availability of this new credit, as there are strict time limitations on the

approval process, and it may take the affected taxpayer some time to make a determination of the diminution in value of their property. Providing support for the value of the claimed loss could be key, and accountants should be prepared to help their clients determine what documentation should be collected. Lastly, advisors must remember that while the calculation of the credit is tied to the computation of the federal casualty loss, it is not based on the amount of the claimed federal loss, and therefore can be claimed even when the federal casualty loss is zero due to the absence of a positive basis in the asset.

²⁵O.C.G.A. § 48-7-40.36(g)(1).

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For questions and more information on the Timber Tax Credit, contact Don Cook, Vice President, Legislative Affairs, at dcook@gscpa.org or 404-504-2935.

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