



GEORGIA CHANGES PROCESS FOR TAX CREDITS FOR COMPANIES PERFORMING R&D ACTIVITIES IN THE STATE

On February 7, 2018, the Georgia Department of Revenue released revised regulations on Rule 560-7-8-.42 of the Rules and Regulations of the State of Georgia. These revised regulations, regarding certain filing procedures of the Georgia Form IT-WH Notice of Intent, affect all companies eligible to use Georgia Research Tax Credits to offset their Georgia payroll tax withholding liabilities.

BACKGROUND

The Georgia Research Tax Credit is available to business enterprises that pay employees or third parties to develop, or try to develop, a product, process, software, technique, invention or formula, for example, by trying to make it better, faster, cheaper or greener. A tax credit is allowed for a business enterprise that has qualified research expenses in Georgia in a taxable year exceeding a base amount, provided that the business enterprise for the same taxable year claims and is allowed a research credit under Section 41 of the IRS Code of 1986, as amended; taxpayers are to attach Form 6765, the form on which the federal research credit is reported.

Defined in GA 560-7-80.46, the term "business enterprise" means any corporation, partnership, LLC, sole proprietorship, other business entity or the headquarters of such business entity that is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism or research and development, and it excludes all child-care businesses and retail businesses.

The Georgia payroll tax withholding offset is available to all business enterprises for which research tax credit exceeds 50 percent of the company's remaining Georgia net income tax liability after all other credits have been applied. Approved amounts are treated as a credit against future withholding payments. This election has the effect of converting a deferred income tax benefit to an "above the line" financial statement benefit.

The revised regulations contain three major changes to the process that a business enterprise must follow when electing to apply its excess credits against its quarterly or monthly withholding payments:

1. The Form IT-WH must now be filed by the business enterprise within 30 days after the due date of the Georgia income tax return (including extensions) or within 30 days after the filing of a timely filed Georgia income tax return—whichever occurs first.
2. The Form IT-WH may only be filed electronically through the Georgia Tax Center.
3. The Georgia Department of Revenue now has 120 days from the receipt of the company's Form IT-WH to make the determination of the amount of credit eligible to be used against a taxpayer's payroll withholding.

The new amended regulations will be applicable to taxable years beginning on or after January 1, 2017. Taxable years beginning before January 1, 2017, will be governed by the regulations of Chapter 560-7 as it was worded before January 1, 2017.

INSIGHTS

The revised regulations present eligible businesses a more accessible and streamlined process for electing to apply their excess research tax credits against payroll tax withholding.

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