

House Bill 424 (COMMITTEE SUBSTITUTE)

By: Representatives Williamson of the 115th, Martin of the 49th, Smith of the 133rd, Newton of the 123rd, and Rhodes of the 120th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
2 income taxes, so as to provide for tax credits for certain contributions made by taxpayers to
3 certain foster child support organizations; to provide for definitions; to provide for an
4 aggregate annual limit; to provide for terms and conditions; to provide for applications and
5 certifications; to provide for the revocation of qualified status; to provide for audits; to
6 provide for certain penalties; to require annual reporting; to provide for the discretion to refer
7 certain acts to the Attorney General for investigation and prosecution; to provide for
8 promulgation of rules and regulations; to provide for related matters; to provide for an
9 effective date and applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
13 is amended by adding a new Code section to read as follows:

14 "48-7-29.24.

15 (a) As used in this Code section, the term:

16 (1) 'Aging foster children' means:

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- 17 (A) Foster children aged 16 through 18 that would benefit based on projected status at
18 age 18, as determined by the division; and
- 19 (B) Former foster children up to and including age 21, or age 25 if legally possible,
20 who have not been adopted or reunited with families.
- 21 (2) 'Aging-out program' means a program with the primary function of supporting aging
22 foster children.
- 23 (3) 'Division' means the Division of Family and Children Services of the Department of
24 Human Services.
- 25 (4) 'Foster child support organization' means:
- 26 (A) The aging-out program of the Technical College System of Georgia Foundation;
27 (B) The aging-out program of the University System of Georgia Foundation, provided
28 that such program is certified by the Governor's Office of Planning and Budget as an
29 aging-out program; or
- 30 (C) Any domestic nonprofit corporation which maintains nonprofit status under
31 Section 501(c)(3) of the Internal Revenue Code and tax exempt status under Code
32 Section 48-7-25, that has the primary function of:
- 33 (i) Operating an aging-out program or operating as or supporting a Georgia licensed
34 child-placing agency; or
- 35 (ii) Disbursing funds directly to one or more of the entities identified in
36 subparagraphs (A) or (B) or division (C)(i) of this paragraph.
- 37 (5) 'Qualified contributions' means the preapproved contribution of funds made during
38 the taxable year by a taxpayer to a qualified organization under the terms and conditions
39 of this Code section.
- 40 (6) 'Qualified expenditures' means expenditures made by a qualified organization for:
- 41 (A) The costs associated with tuition waivers granted pursuant to Code Section
42 20-3-660;

43 (B) Wraparound services for individuals attending a public postsecondary educational
44 institution under a waiver granted pursuant to Code Section 20-3-660; or

45 (C) Mentorship services provided to aging foster children, provided that no mentor
46 shall be compensated in excess of \$100.00 per month for an aging foster child or
47 \$500.00 per year for any aging foster child.

48 (7) 'Qualified organization' means a foster child support organization that has been
49 certified and listed by the division pursuant to subsection (d) of this Code section.

50 (8) 'Wraparound services' means services provided directly to aging foster children to
51 support their education through postsecondary education services, housing services,
52 vocation services, medical services, counseling services, mentorship services, nutrition
53 services, transportation services, or up to \$150.00 per month in direct cash payments for
54 use on personal necessities.

55 (b)(1) The aggregate amount of tax credits allowed under this Code section shall not
56 exceed \$20 million per calendar year.

57 (2) Subject to the aggregate limit provided in paragraph (1) of this subsection and the
58 limitations of subsection (b.1) of this Code section, each taxpayer shall be allowed a
59 credit against the tax imposed by this chapter for qualified contributions made by the
60 taxpayer on or after January 1, 2023, as follows:

61 (A) In the case of a single individual or a head of household, the actual amount of
62 qualified contributions made;

63 (B) In the case of a married couple filing a joint return, the actual amount of qualified
64 contributions made;

65 (C) Anything to the contrary contained in subparagraph (A) or (B) of this paragraph
66 notwithstanding, in the case of an individual taxpayer who is a member of a limited
67 liability company duly formed under state law, a shareholder of a Subchapter 'S'
68 corporation, or a partner in a partnership, the actual amount of qualified contributions
69 it made; provided, however, that tax credits pursuant to this paragraph shall only be

70 allowed for the portion of the income on which such tax was actually paid by such
71 member of the limited liability company, shareholder of a Subchapter 'S' corporation,
72 or partner in a partnership; or

73 (D) A corporation or other entity not provided for in subparagraphs (A) through (C)
74 of this paragraph shall be allowed a credit against the tax imposed by this chapter, for
75 qualified contributions in an amount not to exceed the actual amount of qualified
76 contributions made.

77 (b.1) For the period beginning on January 1 and ending on June 30 of each year, an
78 individual taxpayer shall not be allowed credit for contributions, and the commissioner
79 shall not preapprove any contributions, that exceed the following limits:

80 (1) In the case of a single individual or a head of household, \$2,500.00;

81 (2) In the case of a married couple filing a joint return, \$5,000.00;

82 (3) In the case of an individual who is a member of a limited liability company duly
83 formed under state law, a shareholder of a Subchapter 'S' corporation, or a partner in a
84 partnership, \$5,000.00; or

85 (4) In the case of a corporation or other entity not provided for in paragraphs (1) through
86 (3) of this subsection, 10 percent of such entity's income tax liability.

87 (c) Not later than October 1, 2022, the commissioner shall establish a page on the
88 department's website for the purpose of implementing this Code section. Such page shall
89 contain, at a minimum:

90 (1) A link to the division's web based application for certification as a qualified
91 organization as provided for in subsection (d) of this Code section;

92 (2) The current list of all qualified organizations;

93 (3) The total amount of tax credits remaining and available for preapproval for each year;

94 (4) A web based method for taxpayers seeking the preapproval status for contributions;

95 and

96 (5) The information received by the department from each qualified organization
97 pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv) of this Code
98 section.

99 (d)(1) The division shall establish and maintain a web based application process for the
100 purpose of certifying foster child support organizations as qualified organizations. At a
101 minimum such application created by the division shall include an agreement submitted
102 by the applicant to fully comply with the terms and conditions of this Code section.

103 (2) The division shall certify any valid foster child support organization as a qualified
104 organization upon successful completion of such application process.

105 (3) The division shall certify any foster child support organization operating as a Georgia
106 licensed child-placing agency as a qualified organization within ten days of receipt of a
107 written request or application.

108 (4) The division shall accept a first round of applications for certification as qualified
109 organizations by October 1, 2022, and shall certify and notify such applicants of the
110 division's decision on or before November 30, 2022. Thereafter the division shall
111 establish a process for rolling applications and certifications.

112 (e)(1) Prior to making a contribution to any qualified organization, the taxpayer shall
113 electronically notify the department, in a manner specified by the commissioner, of the
114 total amount of contribution that such taxpayer intends to make to such qualified
115 organization.

116 (2) Within 30 days after receiving a request for preapproval of contributions, the
117 commissioner shall preapprove, deny, or prorate requested amounts on a first come, first
118 served basis and shall provide notice to such taxpayer and the qualified organization of
119 such preapproval, denial, or proration. Such notices shall not require any signed release
120 or notarized approval by the taxpayer. The preapproval of contributions by the
121 commissioner shall be based solely on the availability of tax credits subject to the

122 aggregate total limit established under paragraph (1) of subsection (b) of this Code
123 section.

124 (3) Within 60 days after receiving the preapproval notice issued by the commissioner
125 pursuant to paragraph (2) of this subsection, the taxpayer shall contribute the preapproved
126 amount to the qualified organization or such preapproved contribution amount shall
127 expire. The commissioner shall not include such expired amounts in determining the
128 remaining amount available under the aggregate limit for the respective calendar year.

129 (f)(1) Each qualified organization shall issue to each contributor a letter of confirmation
130 of contribution, which shall include the taxpayer's name, address, tax identification
131 number, the amount of the qualified contribution, the date of the qualified contribution,
132 and the total amount of the credit allowed to the taxpayer.

133 (2) In order for a taxpayer to claim the tax credit allowed under this Code section, all
134 such applicable letters as provided for in paragraph (1) of this subsection shall be attached
135 to the taxpayer's tax return. When the taxpayer files an electronic return such
136 confirmation shall only be required to be electronically attached to the return if the
137 Internal Revenue Service allows such attachments to be affixed and transmitted to the
138 department. In any such event, the taxpayer shall maintain such confirmation and such
139 confirmation shall only be made available to the commissioner upon request.

140 (3) The commissioner shall allow tax credits for any preapproved contributions made to
141 a qualified organization at the time the contributions were made if such organization was
142 a qualified organization at the time of the commissioner's preapproval of the contributions
143 and the taxpayer has otherwise complied with this Code section.

144 (g)(1) Each qualified organization shall annually submit to the department no later than
145 May 15 of each year:

146 (A) A complete copy of its IRS Form 990 including applicable attachments, or for any
147 qualified organization that is not required by federal law to file an IRS Form 990, such

148 organization shall submit to the commissioner equivalent information on a form
149 prescribed by the commissioner; and

150 (B) A report detailing the contributions received during the calendar year pursuant to
151 this Code section on a date determined by, and on a form provided by, the
152 commissioner which shall include:

153 (i) The total number and dollar value of individual contributions and tax credits
154 approved. Individual contributions shall include contributions made by those filing
155 income tax returns as a single individual or head of household and those filing joint
156 returns;

157 (ii) The total number and dollar value of corporate contributions and tax credits
158 approved;

159 (iii) The total number and dollar value of all qualified expenditures made; and

160 (iv) A list of contributors, including the dollar value of each contribution and the
161 dollar value of each approved tax credit.

162 (2) Except for the information published in accordance with subsection (c) of this Code
163 section, all information or reports relative to this Code section that were provided by
164 qualified organizations to the department shall be confidential taxpayer information,
165 governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information
166 relates to the contributor or the qualified organization.

167 (h) By April 1 of each year each qualified organization shall publicly post on its website
168 in a prominent place a copy of its prior year's annual budget containing the total amount
169 of funds received from all sources relative to the amount of qualified contributions it
170 received and the total amount and a description of how such contributions were utilized.

171 (i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified
172 contributions to any particular purpose or for the direct benefit of any particular
173 individual.

174 (2) A taxpayer that operates, owns, or is a subsidiary of an association, organization, or
175 other entity that contracts directly with a qualified organization shall not be eligible for
176 tax credits allowed under this Code section for contributions made to such qualified
177 organization.

178 (3) In soliciting contributions, no person shall represent or direct that, in exchange for
179 making qualified contributions to any qualified organization, a taxpayer shall receive any
180 direct or particular benefit. The status as a qualified organization shall be revoked for any
181 qualified organization determined to be in violation of this paragraph and shall not be
182 renewed for at least two years.

183 (j)(1)(A) Each qualified organization shall use at least 80 percent of the funds received
184 by it from qualified contributions to make qualified expenditures. Each qualified
185 organization shall maintain accurate and current records of all expenditures of such
186 funds and provide such records to the commissioner upon his or her request.

187 (B) No foster child support organization that meets only the definition of such term as
188 provided in division (a)(4)(C)(ii) of this Code section shall retain more than 2.5 percent
189 of qualified contributions for itself for any reason and shall only serve to pass all of its
190 qualified contributions to one or more qualified organizations that are foster child
191 support organization as such term is defined in subparagraphs (a)(4)(A), (a)(4)(B), or
192 division (a)(4)(C)(i) of this Code section.

193 (2) A qualified organization that fails to comply with any of the requirements under this
194 Code section shall be given written notice by the department of such failure to comply
195 by certified mail and shall have 90 days from the receipt of such notice to correct all
196 deficiencies.

197 (3) Upon failure to correct all deficiencies within 90 days, the department shall revoke
198 the foster child support organization's status as a qualified organization and such entity
199 shall be immediately removed from the department's list of organizations. All
200 applications for preapproval of tax credits for contributions to such foster child support

201 organization under this Code section made on or after the date of such removal shall be
202 rejected.

203 (4) Each foster child support organization that has had its status revoked and has been
204 delisted pursuant to this Code section, shall immediately cease all expenditures of funds
205 received relative to this Code section, and shall transfer all of such funds that are not yet
206 expended, to a properly operating qualified organization within 30 calendar days of its
207 removal from the department's list of qualified organizations.

208 (k)(1) No credit shall be allowed under this Code section to a taxpayer for any amount
209 of qualified contributions that were utilized as deductions or exemptions from taxable
210 income.

211 (2) In no event shall the total amount of the tax credit under this Code section for a
212 taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be
213 allowed the taxpayer against the succeeding five years' tax liability. No such credit shall
214 be allowed the taxpayer against prior years' tax liability.

215 (l) The chairperson of the House Appropriations Committee and the chairperson of the
216 Senate Committee on Appropriations shall have the authority to request an audit
217 concerning this Code section as a whole or of any one or more qualified organizations. The
218 commissioner, the state auditor, each qualified organization, each aging-out program, and
219 the director of division shall cooperate to the full extent necessary to conduct such audits.

220 (m) At the discretion of the commissioner or the director of the division, any suspected
221 misuse of funds contributed or expended pursuant to this Code section shall be forwarded
222 to the Attorney General for investigation and prosecution.

223 (n) The commissioner shall promulgate rules and regulations necessary to implement and
224 administer the provisions of this Code section."

225 **SECTION 2.**

226 This Act shall become effective on July 1, 2022, and shall be applicable to taxable years
227 beginning on or after January 1, 2023.

228 **SECTION 3.**

229 All laws and parts of laws in conflict with this Act are repealed.