

House Bill 1585

By: Representatives Blackmon of the 146th, Stinson of the 150th, Crawford of the 89th,
Williamson of the 112th, Ballard of the 147th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to imposition, rate, computation, exemptions, and credits regarding income taxes,
3 so as to provide for a tax credit for donations to nonprofit corporations that provide housing
4 to cancer care patients; to provide for taxpayer certification of tax credits; to provide for
5 sunsets of the tax credit and carry-forward period; to provide for applicability; to provide for
6 pursuit of remedies; to provide for rules and regulations; to provide for definitions; to provide
7 for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
11 imposition, rate, computation, exemptions, and credits regarding income taxes, is amended
12 by adding a new Code section to read as follows:

13 "48-7-29.29.

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

15 (1) 'Cancer' means bladder, blood, brain, breast, cervical, esophageal, intestinal, kidney,
16 lymphatic, lung, prostate, rectal, respiratory tract, skin, testicular, and thyroid cancer;
17 leukemia; multiple myeloma; or non-Hodgkin's lymphoma.

18 (2) 'Cancer care' means any medical treatment for cancer that meets or exceeds the
19 established standard of care.

20 (3) 'Cancer housing accommodations' means temporary lodging for minor patients
21 receiving cancer care and their parents or legal guardians.

22 (4) 'Division' means the Division of Family and Children Services of the Department of
23 Human Services.

24 (5) 'Qualified contributions' means the preapproved contribution of funds made during
25 the taxable year by a taxpayer to a qualified organization under the terms and conditions
26 of this Code section.

27 (6) 'Qualified expenditures' means expenditures made by a qualified organization for
28 cancer housing accommodations; provided, however, that such term shall not include any
29 expenditures for which the qualified organization has received or is eligible to receive
30 reimbursement from the division.

31 (7) 'Qualified organization' means an organization that provides cancer housing
32 accommodations, is exempt from taxation under Section 501(c)(3) of the federal Internal
33 Revenue Code, and has been certified and listed by the division pursuant to subsection
34 (d) of this Code section.

35 (b)(1) The aggregate amount of tax credits allowed under this Code section shall not
36 exceed \$10 million per calendar year, and no more than \$5 million of such aggregate
37 amount shall be allowed for corporations or other entities not provided for in
38 subparagraphs (A) through (C) of paragraph (2) of this subsection.

39 (2) Subject to the aggregate limit provided in paragraph (1) of this subsection and the
40 limitations of subsections (c), (d), and (n) of this Code section, each taxpayer shall be

41 allowed a credit against the tax imposed by this chapter for qualified contributions, as
42 follows:

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

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

47 (C) Anything to the contrary notwithstanding, in the case of an individual taxpayer
48 who is a member of a limited liability company duly formed under state law, a
49 shareholder of a Subchapter 'S' corporation, or a partner in a partnership, the actual
50 amount of qualified contributions it made; provided, however, that tax credits pursuant
51 to this paragraph shall only be allowed for the portion of the income on which such tax
52 was actually paid by such member of the limited liability company, shareholder of a
53 Subchapter 'S' corporation, or partner in a partnership; or

54 (D) In the case of a corporation or other entity not provided for in subparagraphs (A)
55 through (C) of this paragraph, the actual amount of qualified contributions made.

56 (c) For the period beginning on January 1 and ending on June 30 of each year, a taxpayer
57 shall not be allowed a credit for contributions, and the commissioner shall not preapprove
58 any contributions, that exceed the following limits:

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

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

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

64 (4) In the case of a corporation or other entity not provided for in paragraphs (1) through
65 (3) of this subsection, 30 percent of such entity's income tax liability.

66 (d) For the period beginning on July 1 and ending on December 31 of each year, to the
67 extent that the aggregate amounts of tax credits authorized by subsection (b) of this Code

68 section have not been reached, the commissioner shall preapprove, deny, or prorate
69 additional requested amounts on a first come, first served basis and shall provide notice to
70 such taxpayer and the qualified organization of such preapproval, denial, or proration.

71 (e) A taxpayer that is preapproved for a tax credit allowed pursuant to this Code section
72 and that does not make a qualified contribution of the total preapproved amount shall be
73 allowed such credit in an amount not to exceed 95 percent of the amount of the qualified
74 contribution actually made by the taxpayer.

75 (f) The commissioner shall establish a page on the department's public website for the
76 purpose of implementing this Code section. Such page shall contain, at a minimum:

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

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

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

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

82 and

83 (5) The information received by the department from each qualified organization
84 pursuant to paragraph (1) of subsection (j) except for division (j)(1)(B)(iv) of this Code
85 section.

86 (g)(1) The division shall establish and maintain a web based application process for the
87 purpose of certifying qualified organizations. At a minimum, such application created
88 by the division shall include an agreement submitted by the applicant to fully comply
89 with the terms and conditions of this Code section.

90 (2)(A) Subject to the requirements of this subsection, the division shall certify any
91 applicant as a qualified organization upon successful completion of such application
92 process and shall decertify an organization that fails to maintain the requirements to be
93 a qualified organization or that the division determines to have violated any other law.

94 (B) After receiving certification pursuant to this subsection, each qualified organization
95 shall annually demonstrate to the division's satisfaction that it continues to maintain the
96 requirements to be a qualified organization, and shall annually submit to the division
97 a copy of such organization's most recent annual audit.

98 (3) The division shall certify any applicant as a qualified organization within ten days
99 of receipt of a written request or application.

100 (4) The division shall establish a process for rolling applications and certifications
101 consistent with the requirements of this Code section.

102 (h)(1) Prior to making a contribution to any qualified organization, the taxpayer shall
103 electronically notify the department, in a manner specified by the commissioner, of the
104 total amount of contribution that such taxpayer intends to make to such qualified
105 organization.

106 (2) Within 30 days after receiving a request for preapproval of contributions, the
107 commissioner shall preapprove, deny, or prorate requested amounts on a first come, first
108 served basis and shall provide notice to such taxpayer and the qualified organization of
109 such preapproval, denial, or proration. Such notices shall not require any signed release
110 or notarized approval by the taxpayer. The preapproval of contributions by the
111 commissioner shall be based solely on the availability of tax credits subject to the
112 aggregate total limit established under paragraph (1) of subsection (b) of this Code
113 section.

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

119 (i)(1) Each qualified organization shall issue to each contributor a letter of confirmation
120 of contribution, which shall include the taxpayer's name, address, tax identification

121 number, the amount of the qualified contribution, the date of the qualified contribution,
122 and the total amount of the credit allowed to the taxpayer.

123 (2)(A) In order for a taxpayer to claim the tax credit allowed under this Code section,
124 all such applicable letters as provided for in paragraph (1) of this subsection shall be
125 attached to the taxpayer's tax return provided for in Code Section 33-8-6.

126 (B) If the taxpayer files an electronic return, such confirmation shall only be required
127 to be electronically attached to the return if the Internal Revenue Service allows such
128 attachments to be affixed and transmitted to the department. In any such event, the
129 taxpayer shall maintain such confirmation and such confirmation shall only be made
130 available to the commissioner upon request.

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

135 (j)(1) Each qualified organization shall annually submit to the department no later than
136 July 15 of each year:

137 (A) A complete copy of its IRS Form 990 including applicable attachments, or for any
138 qualified organization that is not required by federal law to file an IRS Form 990, such
139 organization shall submit to the commissioner equivalent information on a form
140 prescribed by the commissioner; provided, however, that, if the organization's IRS
141 Form 990 is not prepared by the filing deadline, the organization shall provide such
142 form at the same time it submits such form to the Internal Revenue Service; and

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

146 (i) The total number and dollar value of individual contributions and tax credits
147 approved. Individual contributions shall include contributions made by those filing

148 income tax returns as a single individual or head of household and those filing joint
149 returns;

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

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

153 (iv) A list of contributors, including the dollar value of each contribution and the
154 dollar value of each approved tax credit; and

155 (v) An accounting of the funds withheld from qualified contributions demonstrating
156 that no more than 20 percent of such funds were withheld from qualified
157 expenditures, as required by subparagraph (m)(1)(A) of this Code section.

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

163 (k) By April 1 of each year, each qualified organization shall post on its public website in
164 a prominent place:

165 (1) A copy of its prior year's annual financials containing the total amount of funds
166 received from all sources relative to the amount of qualified contributions it received and
167 the total amount and a description of how such contributions were utilized; and

168 (2) A certification, signed by the chief executive officer of the qualified organization and
169 attested to by an independent accounting firm, which substantially complies with the
170 following statement:

171 'I hereby certify that:

172 (A) The organization has materially complied with the requirements of
173 subparagraph (m)(1)(A) of O.C.G.A. Section 48-7-29.29 in that no more than 20

174 percent of qualified contributions received by [the qualified organization] were
175 retained by, withheld by, or otherwise paid to the organization; and
176 (B) The description of how [the qualified organization] utilized the qualified
177 contributions is true and correct.'

178 (l)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified
179 contributions to any particular purpose or for the direct benefit of any particular
180 individual.

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

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

190 (m)(1) Each qualified organization shall use at least 80 percent of the funds received by
191 it from qualified contributions to make qualified expenditures. Each qualified
192 organization shall maintain accurate and current records of all expenditures of such funds
193 and provide such records to the commissioner upon his or her request. In no event shall
194 a qualified organization retain for its own use or apply to its overhead or administrative
195 expenses more than 20 percent of the funds received pursuant to this Code section.

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

200 (3) Upon failure to correct all deficiencies within 90 days, the department shall revoke
201 the qualified organization's status as a qualified organization and such entity shall be
202 immediately removed from the department's list of organizations. All applications for
203 preapproval of tax credits for contributions to such qualified organization under this Code
204 section made on or after the date of such removal shall be rejected.

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

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

213 (2) In no event shall the total amount of the tax credit used under this Code section for
214 a taxable year exceed the taxpayer's income tax liability or state tax liability owed
215 pursuant to Code Section 33-8-4. Any unused tax credit shall be allowed the taxpayer
216 against the succeeding three years' tax liability. No such credit shall be allowed the
217 taxpayer against prior years' tax liability.

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

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

227 (q) The commissioner shall promulgate rules and regulations necessary to implement and
228 administer the provisions of this Code section."

229 **SECTION 2.**

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