

House Bill 1090 (COMMITTEE SUBSTITUTE)

By: Representatives Newton of the 127th, Wiedower of the 121st, Gullett of the 19th, Crowe of the 118th, and Hutchinson of the 106th

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 expand the tax credit for contributions to foster child support
3 organizations to allow such organizations to include as qualified expenditures wraparound
4 and mentorship services for justice involved youth; to expand the wraparound services that
5 are qualified expenditures; to provide for such tax credits to be used by certain insurance
6 companies against certain tax liability; to provide for conditions and limitations; to provide
7 for reporting requirements; to remove the prohibition of allowing such a tax credit for
8 qualified contributions that were utilized as a deduction or exemption from taxable income;
9 to provide for definitions; to provide for information sharing and limitations thereof; to
10 provide for related matters; to provide for an effective date and applicability; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
15 is amended by revising Code Section 48-7-29.24, relating to tax credits for contributions to
16 foster child support organizations, as follows:

H. B. 1090 (SUB)

17 "48-7-29.24.

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

19 (1) 'Aging foster children' means:

20 ~~(A) Foster children aged 16 through 18 that would benefit based on projected status at~~
21 ~~age 18, as determined by the division; and~~

22 ~~(B) Former former foster children up to and including age 21, or age 25 if legally~~
23 ~~possible, who have not been adopted or reunited with families were:~~

24 ~~(A) In foster care for at least six months after reaching the age of 14 and who have not~~
25 ~~been or were not adopted or reunited with family prior to reaching the age of 18;~~

26 ~~(B) Adopted after reaching the age of 14; or~~

27 ~~(C) In foster care for at least six months after reaching the age of 14 and:~~

28 ~~(i) Meet the definition of "homeless children and youths" pursuant to 42 U.S.C.~~
29 ~~Section 11434a(2), the McKinney-Vento Homeless Assistance Act; or~~

30 ~~(ii) Qualify by reason of low income for the Supplemental Nutrition Assistance~~
31 ~~Program.~~

32 (2) 'Aging-out program' means a program with the primary function of supporting aging
33 foster children and justice involved youth.

34 ~~(2.1) 'Business enterprise' means any insurance company or the headquarters of any~~
35 ~~insurance company required to pay the tax provided for in Code Section 33-8-4.~~

36 (3) 'Division' means the Division of Family and Children Services of the Department of
37 Human Services.

38 (4) 'Foster child support organization' means:

39 (A) The aging-out program of the Technical College System of Georgia Foundation;

40 (B) The aging-out program of the University System of Georgia Foundation, provided
41 that such program is certified by the Governor's Office of Planning and Budget as an
42 aging-out program; or

43 (C) Any domestic nonprofit corporation which maintains nonprofit status under
 44 Section 501(c)(3) of the Internal Revenue Code and tax exempt status under Code
 45 Section 48-7-25, that has the primary function of:

46 (i) Operating an aging-out program or operating as or supporting a Georgia licensed
 47 child-placing agency; or

48 (ii) Disbursing funds directly to one or more of the entities identified in
 49 subparagraphs (A) or (B) or division (C)(i) of this paragraph.

50 (4.1) 'Justice involved youth' means children and youth between the ages of 18 and 21
 51 who:

52 (A) Were previously or are currently committed to the Department of Juvenile Justice
 53 pursuant to a court order as authorized by paragraph (11) of subsection (a) of Code
 54 Section 15-11-601; and

55 (B) As a result of such commitment, have been previously placed or are currently
 56 placed in a nonsecure facility or community setting.

57 (4.2) 'Mentorship services' means support services directly provided to an aging foster
 58 child or justice involved youth by a mentor, such as role modeling, informal counseling,
 59 guiding, motivating, and sharing time together.

60 (5) 'Qualified contributions' means the preapproved contribution of funds made during
 61 the taxable year by a taxpayer or business enterprise to a qualified organization under the
 62 terms and conditions of this Code section.

63 (6) 'Qualified expenditures' means expenditures made by a qualified organization for:

64 (A) The costs associated with tuition waivers granted pursuant to Code Section
 65 20-3-660;

66 (B) Wraparound services for ~~individuals~~ aging foster children and justice involved
 67 youth who are:

68 (1) Enrolled in attending a public postsecondary educational institution ~~under a~~
 69 ~~waiver granted pursuant to Code Section 20-3-660; or~~

70 (2) Enrolled in a program to obtain a high school diploma or its equivalent;

71 (3) Enrolled in a recognized vocational school; or

72 (4) Participating in a registered apprenticeship program, provided that the participant
 73 and the organization for which the participant is an apprentice document that the
 74 participant is compliant with the rules of the apprenticeship program.

75 (C) Mentorship services provided to aging foster children and justice involved youth,
 76 provided that such expenditures shall not include:

77 (1) Compensation for a single mentor which exceeds ~~no mentor shall be compensated~~
 78 ~~in excess of \$100.00~~ per month for an aging foster child or justice involved youth or
 79 ~~\$500.00~~ \$1,200.00 per year for any aging foster child or justice involved youth; or

80 (2) Payments made to employees of a qualified organization who perform duties
 81 other than providing mentorship services for the organization.

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

84 (8) 'Wraparound services' means services provided directly to aging foster children or
 85 justice involved youth to support their education through high school completion,
 86 vocational, and postsecondary education services, housing services, vocation services,
 87 medical services, counseling services, mentorship services, nutrition services,
 88 transportation services, ~~or~~ and up to ~~\$150.00~~ \$200.00 per month in direct cash payments
 89 for use on personal necessities.

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

92 (2) Subject to the aggregate limit provided in paragraph (1) of this subsection and the
 93 limitations of subsection (b.1) of this Code section, each:

94 (A) Taxpayer ~~taxpayer~~ shall be allowed a credit against the tax imposed by this chapter
 95 for qualified contributions ~~made by the taxpayer on or after January 1, 2023,~~ as follows:

96 ~~(A)(i)~~ In the case of a single individual or a head of household, the actual amount of
 97 qualified contributions made;

98 ~~(B)(ii)~~ In the case of a married couple filing a joint return, the actual amount of
 99 qualified contributions made;

100 ~~(C)(iii)~~ Anything to the contrary contained in subparagraph (A) or (B) of this
 101 paragraph notwithstanding, in the case of an individual taxpayer who is a member of
 102 a limited liability company duly formed under state law, a shareholder of a
 103 Subchapter 'S' corporation, or a partner in a partnership, the actual amount of qualified
 104 contributions it made; provided, however, that tax credits pursuant to this paragraph
 105 shall only be allowed for the portion of the income on which such tax was actually
 106 paid by such member of the limited liability company, shareholder of a Subchapter
 107 'S' corporation, or partner in a partnership; or

108 ~~(D)(iv)~~ A corporation or other entity not provided for in ~~subparagraphs (A)~~
 109 divisions (i) through (C) (iii) of this ~~paragraph~~ subparagraph shall be allowed a credit
 110 against the tax imposed by this chapter, for qualified contributions in an amount not
 111 to exceed the actual amount of qualified contributions made.

112 (B) Business enterprise shall be allowed a credit against the tax imposed by Code
 113 Section 33-8-4 in an amount equal to its qualified contributions.

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

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

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

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

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

124 (b.2) For the period beginning on July 1 and ending on December 31 of each year, to the
125 extent that the total amount of tax credits authorized by subsection (b) of this Code section
126 has not been reached, the commissioner shall preapprove, deny, or prorate additional
127 requested amounts on a first come, first served basis and shall provide notice to such
128 taxpayer and the qualified organization of such preapproval, denial, or proration.

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

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

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

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

136 (4) A web based method for taxpayers or business enterprises seeking the preapproval
137 status for contributions; and

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

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

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

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

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

154 (e)(1) Prior to making a contribution to any qualified organization, the taxpayer or
155 business enterprise shall electronically notify the department, in a manner specified by
156 the commissioner, of the total amount of contribution that such taxpayer or business
157 enterprise intends to make to such qualified organization.

158 (2) Within 30 days after receiving a request for preapproval of contributions, the
159 commissioner shall preapprove, deny, or prorate requested amounts on a first come, first
160 served basis and shall provide notice to such taxpayer or business enterprise and the
161 qualified organization of such preapproval, denial, or proration. Such notices shall not
162 require any signed release or notarized approval by the taxpayer or business enterprise.
163 The preapproval of contributions by the commissioner shall be based solely on the
164 availability of tax credits subject to the aggregate total limit established under paragraph
165 (1) of subsection (b) of this Code section.

166 (3) Within 60 days after receiving the preapproval notice issued by the commissioner
167 pursuant to paragraph (2) of this subsection, the taxpayer or business enterprise shall
168 contribute the preapproved amount to the qualified organization or such preapproved
169 contribution amount shall expire. The commissioner shall not include such expired
170 amounts in determining the remaining amount available under the aggregate limit for the
171 respective calendar year.

172 (f)(1) Each qualified organization shall issue to each contributor a letter of confirmation
173 of contribution, which shall include the taxpayer's or business enterprise's name, address,

174 tax identification number, the amount of the qualified contribution, the date of the
175 qualified contribution, and the total amount of the credit allowed to the taxpayer or
176 business enterprise.

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

181 (B) If ~~When~~ the taxpayer files an electronic return, such confirmation shall only be
182 required to be electronically attached to the return if the Internal Revenue Service
183 allows such attachments to be affixed and transmitted to the department. In any such
184 event, the taxpayer shall maintain such confirmation and such confirmation shall only
185 be made available to the commissioner upon request.

186 (C) With respect to a business enterprise's tax return provided for in Code Section
187 33-8-6, the Commissioner of Insurance is authorized to promulgate rules and
188 regulations regarding the manner in which such letters of confirmation of donations
189 shall be filed in the case of tax returns filed electronically.

190 (3) The commissioner shall allow tax credits for any preapproved contributions made to
191 a qualified organization at the time the contributions were made if such organization was
192 a qualified organization at the time of the commissioner's preapproval of the contributions
193 and the taxpayer or business enterprise has otherwise complied with this Code section.

194 (g)(1) Each qualified organization shall annually submit to the department no later than
195 ~~May 15~~ July 15 of each year:

196 (A) A complete copy of its IRS Form 990 including applicable attachments, or for any
197 qualified organization that is not required by federal law to file an IRS Form 990, such
198 organization shall submit to the commissioner equivalent information on a form
199 prescribed by the commissioner; provided, however, that, if the organization's IRS

200 Form 990 is not prepared by the filing deadline, the organization shall provide such
201 form at the same time it submits such form to the Internal Revenue Service; and

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

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

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

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

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

214 (v) An accounting of the funds withheld from qualified contributions demonstrating
215 that no more than 20 percent of such funds were withheld from qualified
216 expenditures, as required by subparagraph (j)(1)(a) of this Code section.

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

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

226 (i)(1) A taxpayer or business enterprise shall not be allowed to designate or direct the
227 taxpayer's or business enterprise's qualified contributions to any particular purpose or for
228 the direct benefit of any particular individual.

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

233 (3) In soliciting contributions, no person shall represent or direct that, in exchange for
234 making qualified contributions to any qualified organization, a taxpayer or business
235 enterprise shall receive any direct or particular benefit. The status as a qualified
236 organization shall be revoked for any qualified organization determined to be in violation
237 of this paragraph and shall not be renewed for at least two years.

238 (j)(1)(A) Each qualified organization shall use at least 80 percent of the funds received
239 by it from qualified contributions to make qualified expenditures. Each qualified
240 organization shall maintain accurate and current records of all expenditures of such
241 funds and provide such records to the commissioner upon his or her request. In no
242 event shall a qualified organization retain for its own use or apply to its overhead or
243 administrative expenses more than 20 percent of the funds received pursuant to this
244 Code section.

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

251 (2) A qualified organization that fails to comply with any of the requirements under this
252 Code section shall be given written notice by the department of such failure to comply

253 by certified mail and shall have 90 days from the receipt of such notice to correct all
254 deficiencies.

255 (3) Upon failure to correct all deficiencies within 90 days, the department shall revoke
256 the foster child support organization's status as a qualified organization and such entity
257 shall be immediately removed from the department's list of organizations. All
258 applications for preapproval of tax credits for contributions to such foster child support
259 organization under this Code section made on or after the date of such removal shall be
260 rejected.

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

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

268 ~~(2) In no event shall the total amount of the tax credit under this Code section for a~~
269 ~~taxable year exceed the taxpayer's income tax liability or such business enterprise's state~~
270 ~~insurance premium tax liability owed pursuant to Code Section 33-8-4. Any unused tax~~
271 ~~credit shall be allowed the taxpayer or business enterprise against the succeeding five~~
272 ~~years' tax liability. No such credit shall be allowed the taxpayer or business enterprise~~
273 ~~against prior years' tax liability.~~

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

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

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

285 **SECTION 2.**

286 Said chapter is further amended by revising Code Section 48-7-60, relating to confidentiality
287 of tax information, exceptions, authorized inspection by certain officials, furnishing
288 information to local tax authorities, furnishing information to nonofficials, conditions, and
289 effect of Code section, by adding a new subsection to read as follows:

290 "(d.1) The commissioner shall be authorized in his or her sole discretion to share
291 information necessary to efficiently administer and enforce the provisions of this chapter
292 for the purpose of tax credit administration when another state agency has statutory
293 authority to administer such tax credits. Any confidential information furnished pursuant
294 to this Code section shall retain its character as confidential and privileged information.
295 Any person who divulges confidential information obtained pursuant to this Code section
296 shall be subject to the same penalties as provided under Code Section 48-7-61 for unlawful
297 divulgence of confidential taxpayer information."

298 **SECTION 3.**

299 This Act shall become effective on July 1, 2024, and shall be applicable to all taxable years
300 beginning on or after January 1, 2024.

301 **SECTION 4.**

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