

CORPORATION, S-CORPORATION, PARTNERSHIP, LLC, AND NONRESIDENT
WITHHOLDING FREQUENTLY ASKED QUESTIONS GENERAL QUESTIONS

Has Georgia adopted the provisions of the Job Creation and Worker Assistance Act of 2002 or the Jobs and Growth Tax Relief Reconciliation Act of 2003?

What is the due date for corporate returns?

What is the due date for the partnership return?

Does Georgia accept the Federal extension?

If I only want to extend the Georgia income tax return, does Georgia have its own extension available?

Who must file a Georgia income tax return?

Where do I file my Georgia Returns? (See the question below for the address to mail if you claim credits)

Where do I file my Georgia Returns if credits were claimed on Schedule 9 or 10 of Form 600, Schedule 10 or 11 of Form 600S, or Schedule 2 of Form 700?

How do I amend a Georgia return?

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What number goes in line 1 of Schedule 1 of the Georgia 600?

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Is it possible to have a Georgia NOL and not a Federal NOL?

Is it possible to have a Federal NOL and not a Georgia NOL?

What is Georgia's treatment for net operating loss carryforwards when c-corporations merge?

A corporation that is a member of an affiliated group is sold and becomes a member of a new affiliated group. The IRS requires the corporation to file two short period returns so that each can be included on different consolidated returns. For Georgia purposes the

corporation is filing separate returns (not as part of a consolidated return). How should they file with Georgia?

A corporation that is a member of an affiliated group is merged into another corporation. The new corporation is part of a different affiliated group. The IRS requires the corporation that was merged to file a short period return for the period before the merger but since it is filing as a member of a consolidated group the return is not due until the 15th day of the third month following the end of the consolidated group's year end. For Georgia purposes the corporation is filing separate returns (not as part of a consolidated return). How should they file with Georgia?

Does having an employee in Georgia create NEXUS (requiring the corporation, or the shareholders in the case of an s-corporation, to pay Georgia income taxes) for a company based in another state which sells tangible personal property?

I file a Form 1120-H with the Federal government. What form should I file with Georgia?

Apportionment and Allocation of Income for Corporations, Partnerships and Limited Liability Companies

What code section and regulation provide guidance in this area?

What number should be used for the "everywhere gross receipts figure" for a company which manufactures, produces, or sells tangible personal property?

What number should be used for the "everywhere gross receipts figure" for a company where the business income is derived principally from business other than the manufacturing, production, or sale of tangible personal property?

How does Georgia source gross receipts for a company which manufactures, produces, or sells tangible personal property?

How does Georgia source gross receipts where the business income is derived principally from business other than the manufacturing, production, or sale of tangible personal property?

Does Georgia recognize Internal Revenue Code Section 338(h)(10) elections by c-corporations and/or s-corporations for state income tax purposes? How would the state treat the gain/loss arising from a section 338(h)(10) election?

Net Worth Tax for Corporations

What is the tax rate for net worth tax?

What dates should I use on the corporate return under net worth tax beginning and ending dates?

How is the net worth tax determined for a short-period income tax return?

How is the net worth tax determined for an initial or final return?

How can I file the initial net worth tax return two and one half months after incorporation when the IRS has not issued my FEI #?

How are a Qualified Subchapter S Subsidiary (QSSS) and its parent treated for Georgia Net worth tax purposes?

Is a disregarded single member LLC subject to the Georgia net worth tax?

Is an LLC who files as a partnership subject to Georgia Net Worth tax?

Is an LLC who files as a corporation subject to Net Worth tax in Georgia?

How is net worth tax determined on a corporation incorporated in Georgia that does business both inside and outside the state?

The property factor for income tax apportionment and net worth tax apportionment are computed differently. What kinds of property are included in the net worth apportionment?

Does a corporation have to file a net worth return on Form 600 or 600S even if the corporate income tax portion of the return does not have to be filed?

Can a BEST credit be applied towards the net worth tax?

What is meant by "foreign" corporation?

Are homeowners associations liable for the net worth tax?

S-Corporations

Does Georgia have its own K-1?

Who gets the benefit of tax credits earned by s-corporations?

Where do I deduct separately stated expenses (Section 179, charitable contributions, investment expenses etc.) on the s-corporation Form 600S?

If we file as a s-corporation with the IRS, how do we file with Georgia?

If a composite return is being filed on behalf of nonresident shareholders of a s-corporation, is it necessary to have the consent agreements attached to the corporate return (Form 600S)?

For income tax purposes, does Georgia follow the Federal treatment for a Qualified Subchapter S Subsidiary (QSSS)?

Does your state accept an Employee Stock Option Plan (ESOP) as a shareholder for a s-corporation?

How is an ESOP shareholder in a s-corporation taxed?

Can you carry back or carry forward a loss from a year when the corporation was not recognized as a s-corporation in Georgia to a year when it is recognized as a s-corporation in Georgia?

Does having an employee in Georgia create NEXUS (requiring the corporation, or the shareholders in the case of an s-corporation, to pay Georgia income taxes) for a company based in another state which sells tangible personal property?

Partnerships

Where do I deduct separately stated expenses (Section 179, charitable contributions, investment expenses etc.) on the partnership Form 700?

How should guaranteed payments be treated on the partnership return?

Does a partnership have to pay net worth tax?

Does Georgia have its own K-1?

Who gets the benefit of tax credits earned by partnerships?

Limited Liability Companies

How is an LLC classified in Georgia?

In 1999, Tennessee expanded the type of entities that are subject to the Franchise and Excise tax. In addition to s-corporations, it now includes limited liability companies, limited partnerships, etc. A Georgia resident, who is a shareholder in an s-corporation operating in a state that does not recognize the s-election, can make an adjustment for this income on schedule 1, line 9, of Form 500 if the tax is paid by the corporation. Does this adjustment also apply to a member of a limited liability company (treated as a partnership) or a partner of a limited partnership when the limited liability company or the limited partnership pays the Tennessee Franchise and Excise tax?

Does an LLC have to pay net worth tax?

Withholding on Distributions and Composite Returns for Nonresident Shareholders, Partners, and Members of S-Corporations, Partnerships and Limited Liability Companies

What code section and regulation provide guidance in this area?

Are s-corporations, partnerships, and limited liability companies subject to a withholding tax of 4% from the distributions paid or credited to its nonresident shareholders, partners, or members under Georgia Code Section 48-7-129?

How is this tax reported and paid to Georgia?

When an entity has met the withholding requirement for a nonresident shareholder, partner, or member, must the shareholder, partner, or member still file a Georgia income tax return?

Can the shareholder, partner, or member file estimated tax payments in order to relieve the entity from the responsibility of the withholding requirement?

Are distributions paid or credited to shareholders, partners, or members who are exempt organizations subject to withholding?

Are distributions paid or credited to shareholders, partners, or members who are insurance companies subject to withholding under Georgia Code Section 48-7-129?

A shareholder's, partner's, or member's distributions that were paid or credited total more than \$1,000.00 per year, but its I.R.C. Section 179 deduction will make its Georgia taxable income less than this amount. Is withholding required?

Subsection (c) of Georgia Code Section 48-7-24 provides an exemption from Georgia income taxation for a nonresident member who receives income from a resident limited partnership or similar nontaxable entity which derives income exclusively from buying, selling, dealing in, and holding securities on its own behalf and not as a broker. Do the withholding requirements of Georgia Code Section 48-7-129 apply to distributions paid or credited in this situation?

Does subsection (c) of Georgia Code Section 48-7-24 apply to a family limited partnership?

Does Georgia allow the filing of a composite return for the nonresident shareholders, partners, or members of a s-corporation, partnership, or LLC?

Is it necessary to get pre approval before filing a composite return?

If a composite return is being filed on behalf of nonresident shareholders of a s-corporation, is it necessary to have the consent agreements attached to the corporate return (Form 600S)?

Must all nonresident shareholders, partners, or members be included on the composite return?

A nonresident is included in the entity's composite return, and also files a separate Georgia income tax return. Can they receive credit for the composite income tax paid by the entity on their behalf?

How should "tiered" situations be handled for withholding and composite returns?

How are net operating losses computed on a composite return?

General Questions

Has Georgia adopted the provisions of the Job Creation and Worker Assistance Act of 2002 or the Jobs and Growth Tax Relief Reconciliation Act of 2003?

Please [click here](#) for more information.

What is the due date for corporate returns?

The corporate income tax return is due on or before the 15th day of the 3rd month following the close of the taxable year. The corporate net worth tax return must be filed on or before the fifteenth day of the third month following the beginning of the corporation's taxable period. Both the income tax and net worth tax are reported on the same form, Form 600 or 600S.

What is the due date for the partnership return?

The partnership return is due on or before the 15th day of the 4th month following the close of the taxable year.

Does Georgia accept the Federal extension?

Georgia accepts the Federal extension to extend the due date for filing the return. Attach a copy of the Federal extension to the Georgia return when it is filed.

If I only want to extend the Georgia income tax return, does Georgia have its own extension available?

Yes, the Georgia extension Form IT-303 is available and provides up to a six-month extension. Georgia law prohibits the granting of an extension of over 6 months from the due date of the return.

Who must file a Georgia income tax return?

Every corporation, partnership, and LLC doing business or owning property in Georgia. Additionally, every partnership or LLC being treated as a partnership, which has partners or members which are domiciled in Georgia, must file a Georgia income tax return.

Where do I file my Georgia Returns? (See the question below for the address to mail if you claim credits)

The c-corporation return (Form 600) is mailed to: Georgia Income Tax Division P.O. Box 740397 Atlanta, GA 30374-0397 The s-corporation return (Form 600S) is mailed

to:Georgia Income Tax Division P.O. Box 740391 Atlanta, GA 30374-0391 The partnership return (Form 700) is mailed to:Georgia Income Tax Division P.O. Box 740315 Atlanta, GA 30374-0315

Where do I file my Georgia Returns if credits were claimed on Schedule 9 or 10 of Form 600, Schedule 10 or 11 of Form 600S, or Schedule 2 of Form 700?

The c-corporation return (Form 600) is mailed to: Georgia Income Tax Division P.O. Box 49431 Atlanta, GA 30359-1431 The s-corporation return (Form 600S) is mailed to:Georgia Income Tax Division P.O. Box 49431 Atlanta, GA 30359-1431 The partnership return (Form 700) is mailed to:Georgia Income Tax Division P.O. Box 49431 Atlanta, GA 30359-1431

How do I amend a Georgia return?

To file an amended Georgia return, check the "amended return" box on the front of the return. A c-corporation should use Form 600, a s-corporation should use Form 600S, and a partnership should use Form 700. Attach an explanation of any changes made. Show the computations in detail. If the change involves an item of income, deduction, or credit that you were required to support with a form or schedule on your original return, attach the corrected form or schedule.

What are the reporting requirements as the result of an IRS audit?

When there is an IRS change, the taxpayer has 180 days to report the change to the Department of Revenue on an amended return. A complete copy of the Federal change must be included with the amended return. If the taxpayer fails to notify the Department of the change, the Department has five years from the date the report is received from the IRS to issue an assessment. A taxpayer who fails to notify the Commissioner within 180 days forfeits any Georgia refund as a result of the audit if the normal statute of limitations has passed. However, for tax years beginning on or after January 1, 1987, 90% of any overpayment can be applied to a balance due for another year that is a result of the same IRS audit.

If I close my business, should I notify the Department of Revenue?

You are required to file a final return. Check the box marked "final return" on the face of the income tax return. A corporate return is due on or before the 15th day of the third month after the date of dissolution and a partnership return is due on or before the 15th day of the fourth month after the date of the dissolution. For a corporation, there is no net worth tax due on the final return.

If a company has to file a short period Federal income tax form, does it have to file a short period Georgia income tax return?

Yes. However, please see the exception for mergers and acquisitions in the C-Corporations section below.

What U.S. Government interest is deductible from Federal income?

Interest from Direct Federal Obligations (such as Treasury Bonds & Notes) and other interest that is specifically exempt by Federal statute are not taxed by Georgia (including dividends received from mutual funds that derive income from these sources). Any amount exempted must be reduced by any expenses directly attributable to the production of the interest or dividend income. The interest can not be from third party obligations such as Federal National Mortgage Association (F.N.M.A.), Government National Mortgage Association (G.N.M.A.), etc.

What municipal interest has to be added to Federal income?

Interest received from non-Georgia municipal bonds and dividends received from mutual funds that derive income from non-Georgia municipal bonds must be added to Federal income if it is not already included.

What types of taxes have to be added to Federal income?

Any taxes on, or measured by, net income or net profits paid or accrued within the taxable year imposed by the authority of the United States or any foreign country, and by any state (except the state of Georgia) or by any territory, county, school district, municipality, or other tax subdivision of any state, territory, or foreign country to the extent such taxes are deducted in determining Federal taxable income. In general, these are taxes based upon income.

General Business Credits

How do I obtain more information on business credits?

For a detailed listing of available incentives and credits, please [click here](#).

Can a BEST credit be applied towards the net worth tax?

No.

Who gets the benefit of tax credits earned by s-corporations?

Usually the benefits are passed through to the shareholders.

Who gets the benefit of tax credits earned by partnerships?

Usually the benefits are passed through to the partners.

How can I find out about new legislation regarding future business tax credits?

Please [click here](#) to see new legislation.

Registration, Tax Clearance Letters, etc.

How does a company register to file Georgia Income Taxes?

First, a corporation, limited liability company, limited partnership, and limited liability partnership must contact the Secretary of State to see about incorporating/registering. The Secretary of State can be reached at (404) 656-2817 or www.sos.state.ga.us. For income tax purposes, Georgia uses the Federal Employer's Identification (FEI) number, which is assigned by the Internal Revenue Service. However, the company will need to contact the Georgia Department of Revenue's Centralized Taxpayer Registration section to get a Sales & Use Tax ID, Withholding Tax ID, and other ID's necessary to operate in Georgia. The Centralized Taxpayer Registration section can be reached at (404) 417-4490. Forms to register can be downloaded by [clicking here](#).

What section of the Georgia Department of Revenue administers withholding on employees?

The Withholding section of the Income Tax Division administers withholding on employees. They can be reached at (404) 417-3210.

My corporation is incorporated in another state, must I register with the Georgia Secretary of State?

Contact the Georgia Secretary of State at (404) 656-2817 or www.sos.state.ga.us for more information.

How do I obtain a Certificate of Good Standing for my corporation?

Certificates of Good Standing are issued by the Secretary of State, please contact them at (404) 656-2817 or www.sos.state.ga.us.

How do I obtain a Tax Clearance letter for corporate income and net worth taxes?

A written request on corporate letterhead/stationery, signed by an officer of the corporation can be mailed or faxed to: Georgia Income Tax Division Corporate Income

Tax 1800 Century Center Boulevard, NE Suite 10322 Atlanta, GA 30345 Fax 404-417-2426 The request letter needs to contain: Name and Federal Identification Number of the corporation. Name and phone number of a contact person. Address to mail the tax clearance letter to, if different from the address DOR has on file. Authorization for the tax clearance letter to be picked up by courier, if applicable. Authorization for the tax clearance letter to be faxed to someone, if applicable. Additional questions about corporate tax clearance letters should be directed to 404-417-2436.

How do I obtain an income tax clearance letter for a partnership or an LLC that is treated as a partnership?

Tax clearance letters are not issued for these entities since the partnership return is filed for information purposes only and no tax is due or payable.

How do I obtain an income tax withholding clearance letter?

A tax clearance letter for withholding tax may be obtained by requesting it from the Withholding Tax Unit. The request must be in writing and signed by an officer or owner of the business. The letter may be faxed to (404) 417-2396 or mailed to the Income Tax Division, Withholding Tax Unit, P.O. Box 49432, Atlanta, Georgia 30359. Additional questions should be directed to (404) 417-2311.

C-Corporations

What is the corporate tax rate?

The corporate tax rate is 6 %.

Does Georgia have a minimum corporate income tax?

There is no minimum corporate income tax required. However, there is a minimum net worth tax of \$10.

Does Georgia require estimated tax payments?

Yes, if Georgia taxable income exceeds \$25,000.

Does Georgia require these payments to be submitted electronically?

Georgia law requires corporate estimated taxpayers with quarterly payments of \$10,000 or more to make those payments via electronic funds transfer. Additionally, you can now voluntarily participate in our electronic funds transfer program. For more information, please click [here](#), call (404) 417-2220 or 1-800-659-1855, or send an email to doreft@gatax.org.

What number goes in line 1 of Schedule 1 of the Georgia 600?

Federal Taxable Income, which is line 30 from the Federal 1120 Form.

How does Georgia treat a Net Operating Loss (NOL)?

Losses can be carried back two years (with special rules for farmers and casualty losses) and forward 20 years. An election made with the IRS to relinquish the entire carry back period and carry a loss forward is a binding election with Georgia. If the company has a separate company Georgia NOL and the Federal consolidated return has positive income the separate Georgia company has to carry the loss back unless they attach a written statement electing to forgo the carry back period. Alternatively they could also check Box 14, Schedule K of their pro forma Federal return they file with the Georgia return to forego the carry back period.

Is it possible to have a Georgia NOL and not a Federal NOL?

Yes, adjustments to Federal income could create a Georgia NOL.

Is it possible to have a Federal NOL and not a Georgia NOL?

Yes, adjustments to Federal income could change the income so that there was not a Georgia NOL.

What is Georgia's treatment for net operating loss carryforwards when c-corporations merge?

If both c-corporations before the merger are subject to taxation in Georgia, then the corporation with the net operating loss carry forward at the time of the merger, can carry forward its Georgia loss into the new entity if the business of the c-corporation with the loss is continued by the new entity. This is known as the "Continuity of Business Rule". If the c-corporation with the carry forward loss was not subject to taxation in Georgia, then it would not have a Georgia net operating loss.

A corporation that is a member of an affiliated group is sold and becomes a member of a new affiliated group. The IRS requires the corporation to file two short period returns so that each can be included on different consolidated returns. For Georgia purposes the corporation is filing separate returns (not as part of a consolidated return). How should they file with Georgia?

The Department will accept one full year return or they can file two short period returns. If two short period returns are filed, the due date for the first short period is the 15th day of the third month following the close of the short period (up to a six month extension is available, but late payment penalties and interest will accrue). If the taxpayer cannot file the return in time (due to lack of information), we recommend that sufficient payments be sent so that when the return is submitted, penalty and interest charges will not apply.

A corporation that is a member of an affiliated group is merged into another corporation. The new corporation is part of a different affiliated group. The IRS requires the corporation that was merged to file a short period return for the period before the merger but since it is filing as a member of a consolidated group the return is not due until the 15th day of the third month following the end of the consolidated group's year end. For Georgia purposes the corporation is filing separate returns (not as part of a consolidated return). How should they file with Georgia?

They should file a short year return. The due date is the 15th day of the third month following the close of the short period (up to a six month extension is available, but late payment penalties and interest will accrue). If the taxpayer cannot file the return in time (due to lack of information), we recommend that sufficient payments be sent so that when the return is submitted, penalty and interest charges will not apply.

Does having an employee in Georgia create NEXUS (requiring the corporation, or the shareholders in the case of an s-corporation, to pay Georgia income taxes) for a company based in another state which sells tangible personal property?

Yes. In general having an employee in Georgia does create NEXUS. However, Public Law 86-272 provides an exemption from taxation in the following circumstances. If the employee merely solicits orders for sales of tangible personal property that are sent outside Georgia for approval and are filled and shipped from outside Georgia (from a state other than Georgia where the employee's corporation conducts its business) then the exemption from taxation applies. It must be noted that if an employee goes beyond mere solicitation then the exemption does not apply. Additionally, the Public Law 86-272 exemption does not apply to the net worth tax, so a Form 600 or 600S must be filed with Georgia and the net worth tax must be paid. Even when the exemption applies, we

recommend that the corporation complete all schedules on the Georgia return relating to income tax and attach a copy of their Federal Form 1120 or 1120S. However, on line 8, Schedule 1 of Form 600 or on the face of page 1 of the 600S they should indicate their belief that they fall under the protection of Public Law 86-272 and show -0- tax due. I file a Form 1120-H with the Federal government. What form should I file with Georgia? File Form 600 to report income tax information. If not organized for pecuniary gain or profit, a homeowners association is not liable for net worth tax. Write "not organized for profit" in schedule 2 of Form 600. If organized for profit, a homeowners association is liable for net worth tax.

Apportionment and Allocation of Income for Corporations, Partnerships and Limited Liability Companies

What code section and regulation provide guidance in this area?

Georgia Code Section 48-7-31 and regulation 560-7-7-.03 provide guidance in this area.

What number should be used for the "everywhere gross receipts figure" for a company which manufactures, produces, or sells tangible personal property?

The number from Line 1c of page 1 of the Federal Form 1120, 1120S, or 1065 should be used. Georgia Code Section 48-7-31(d)(1)(C) and Georgia Regulation 560-7-7-.03(4)(c) state gross receipts are all gross receipts derived by the taxpayer from products shipped or delivered to customers in the regular course of its trade or business.

What number should be used for the "everywhere gross receipts figure" for a company where the business income is derived principally from business other than the manufacturing, production, or sale of tangible personal property?

The "everywhere gross receipts figure" should include all gross receipts of the taxpayer except those gross receipts that are connected with the production of income subject to allocation under O.C.G.A. Section 48-7-31(c). Apportionable interest and the gross proceeds from the sale of assets held, owned and used in the trade or business of the company are included in the "everywhere gross receipts figure".

How does Georgia source gross receipts for a company which manufactures, produces, or sells tangible personal property?

Georgia gross receipts are all gross receipts derived by the taxpayer from products shipped or delivered to customers in Georgia in the regular course of its trade or business.

How does Georgia source gross receipts where the business income is derived principally from business other than the manufacturing, production, or sale of tangible personal property?

Georgia code section 48-7-31(d)(2)(C) states "Gross receipts are in this state if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace". Regulation 560-7-7-.03(5)(c)1 states "This gross receipts factor is designed to measure the marketplace for the taxpayer's goods and services". Accordingly, services consumed by a customer in Georgia are considered Georgia gross receipts. Please note, this is different from the "cost of performance" theory which attributes the gross receipts to the state where the services are performed.

Example 1: An engineering company domiciled in California sells engineering services to a Georgia company that are utilized or consumed by that customer at a Georgia job site, the gross receipts are sourced to Georgia even though most of the engineering work is done in California.

Example 2: An engineering company domiciled in California sells engineering services to a Florida-based construction company, which is building a plant in Georgia. The gross receipts are sourced to Georgia since the job site where the services are utilized or consumed is in Georgia.

Does Georgia recognize Internal Revenue Code Section 338(h)(10) elections by c-corporations and/or s-corporations for state income tax purposes? How would the state treat the gain/loss arising from a section 338(h)(10) election?

Georgia does recognize the IRC 338(h)(10) election. In this case, the gain on the sale of the stock would not be recognized. Instead there would be a deemed sale of the assets, which would be reported on the target corporation's return. If the corporation allocates and apportions their income, the gain would be considered apportionable income.

Net Worth Tax for Corporations

What is the tax rate for net worth tax?

The tax is a graduated tax, ranging from a minimum \$10 up to \$5,000 depending on the taxable net worth of the corporation. To determine the appropriate tax, the net worth tax table must be used. The table can be found in the 611 or 611S instruction booklets.

What dates should I use on the corporate return under net worth tax beginning and ending dates?

Net worth tax is computed on the net worth of the corporation from the ending balance sheet and is due at the beginning of the year for the upcoming tax year. The beginning and ending dates for net worth tax would be one year later than the income tax beginning and ending dates. For example, the income tax beginning and ending dates are 1/1/00 through 12/31/00. The net worth tax beginning and ending dates would be 1/1/01 through 12/31/01.

How is the net worth tax determined for a short-period income tax return?

For short periods other than initial or final returns, the tax is computed on the net worth of the corporation from the ending balance sheet of the short period return. The tax is then prorated based on the number of months included in the short period return.

How is the net worth tax determined for an initial or final return?

The Initial Net Worth tax return is due the 15th day of the third month after incorporation or qualification. The net worth reported on this return is as of the date of incorporation or qualification. No income tax information is reported on the Initial Net Worth return. The net worth tax paid on this return covers the period beginning with the date of incorporation or qualification and ending with the end of the first income tax year. If this period is less than 6 months, only ½ the tax as shown in the net worth tax table is due.

The second return that is required to be filed is used to report income tax for the period beginning with the date of incorporation or qualification and ending with the corporation's chosen year ending and to report net worth tax for the next full year. This return is due on the 15th day of the third month after the end of the income tax year. A full year's net worth tax is always due with this first income tax return. The following example illustrates this.

Date of incorporation or qualification, 3/18/00. Accounting year end chosen, 10/31/00. Initial net worth return is due, 6/15/00. This covers 3/18/00 through 10/31/00 and since this is greater than 6 months, a full year net worth tax is due. First income tax return is due, 1/15/01. This covers income tax year 3/18/00 through 10/31/00 and net worth tax year 11/01/00 through 10/31/01.

How can I file the initial net worth tax return two and one half months after incorporation when the IRS has not issued my FEI #?

File the return showing "Applied For" in the box for the Federal Employer ID No.

How are a Qualified Subchapter S Subsidiary (QSSS) and its parent treated for Georgia Net worth tax purposes?

The QSSS and the parent would file separate net worth tax returns. If the parent is not registered with the Secretary of State and does not do business or own property in Georgia (other than thru the QSSS) they would not be required to file a net worth tax return.

Is a disregarded single member LLC subject to the Georgia net worth tax?

No. The single member LLC is not subject to the Georgia net worth tax. However, if the owner of the single member LLC is a corporation, the corporation is subject to the Georgia net worth tax if the single member LLC does business in Georgia.

Is an LLC who files as a partnership subject to Georgia Net Worth tax?

No. There is no Net Worth tax on partnerships.

Is an LLC who files as a corporation subject to Net Worth tax in Georgia?

Yes.

How is net worth tax determined on a corporation incorporated in Georgia that does business both inside and outside the state?

A Georgia corporation or a domesticated foreign corporation is liable for net worth tax on 100% of the taxable net worth. For corporations incorporated in states other than Georgia, a ratio is computed using property and gross receipts within Georgia and total everywhere.

The property factor for income tax apportionment and net worth tax apportionment are computed differently. What kinds of property are included in the net worth apportionment?

The property portion of the net worth ratio is computed as follows. For the "everywhere figure", the ending balance sheet asset figure from the Federal income tax return should be used. For the "within Georgia figure" a "Georgia" balance sheet must be calculated from assets owned in Georgia. The difference between net worth tax apportionment and income tax apportionment is that for net worth tax purposes tangible and intangible assets, like cash, accounts receivable, allowance for bad debts, accumulated depreciation, etc. are included.

Does a corporation have to file a net worth return on Form 600 or 600S even if the corporate income tax portion of the return does not have to be filed?

Yes, if you do business or own property in Georgia you must file the net worth portion of the Georgia Form 600 or 600S every year.

Can a BEST credit be applied towards the net worth tax?

No.

What is meant by "foreign" corporation?

A corporation incorporated in another state, territory, or nation.

Are homeowners associations liable for the net worth tax?

If not organized for pecuniary gain or profit, a homeowners association is not liable for the net worth tax. Write "not organized for profit" in schedule 2 of Form 600. If organized for profit, a homeowners association is liable for net worth tax.

S-Corporations

Does Georgia have its own K-1?

No.

Who gets the benefit of tax credits earned by s-corporations?

Usually the benefits are passed through to the shareholders.

Where do I deduct separately stated expenses (Section 179, charitable contributions, investment expenses etc.) on the s-corporation Form 600S?

Since these items may be subject to further limitations, they are not deducted in the calculation of Georgia net income of the s-corporation. The portion of these expenses that are attributable to Georgia, that have not been included in the s-corporation's Georgia net income and that have been allowed on the taxpayer's Federal tax return, can also be subtracted on the shareholder's Georgia return.

If we file as a s-corporation with the IRS, how do we file with Georgia?

In order for the s-corporation election to be recognized, nonresident shareholders must execute an agreement (Form 600 S-CA) where the shareholders agree to pay Georgia income tax on their proportionate part of the corporation's Georgia taxable income or the s-corporation election will be terminated. If the agreements are executed, the corporation should file Form 600S.

If a composite return is being filed on behalf of nonresident shareholders of a s-corporation, is it necessary to have the consent agreements attached to the corporate return (Form 600S)?

Yes. The consent agreements are necessary in order for the s-corporation election to be recognized for Georgia purposes. Whereas, filing a composite return fulfills the shareholder's filing obligation. However, the consent agreements do not have to be attached to the composite return (Form IT-CR) when it is filed.

For income tax purposes, does Georgia follow the Federal treatment for a Qualified Subchapter S Subsidiary (QSSS)?

Yes. However, the QSSS and the parent would file separate net worth tax returns. If the parent is not registered with the Secretary of State and does not do business or own property in Georgia (other than thru the QSSS) they would not be required to file a net worth tax return.

Does your state accept an Employee Stock Option Plan (ESOP) as a shareholder for a s-corporation?

Yes.

How is an ESOP shareholder in a s-corporation taxed?

An ESOP shareholder is not taxed unless the income is considered Unrelated Business Taxable Income (UBTI).

Can you carry back or carry forward a loss from a year when the corporation was not recognized as a s-corporation in Georgia to a year when it is recognized as a s-corporation in Georgia?

No.

Does having an employee in Georgia create NEXUS (requiring the corporation, or the shareholders in the case of an s-corporation, to pay Georgia income taxes) for a company based in another state which sells tangible personal property?

Yes. In general having an employee in Georgia does create NEXUS. However, Public Law 86-272 provides an exemption from taxation in the following circumstances. If the employee merely solicits orders for sales of tangible personal property that are sent

outside Georgia for approval and are filled and shipped from outside Georgia (from a state other than Georgia where the employee's corporation conducts its business) then the exemption from taxation applies. It must be noted that if an employee goes beyond mere solicitation then the exemption does not apply. Additionally, the Public Law 86-272 exemption does not apply to the net worth tax, so a Form 600 or 600S must be filed with Georgia and the net worth tax must be paid. Even when the exemption applies, we recommend that the corporation complete all schedules on the Georgia return relating to income tax and attach a copy of their Federal Form 1120 or 1120S. However, on line 8, Schedule 1, of Form 600 or on the face of page 1 of the 600S they should indicate their belief that they fall under the protection of Public Law 86-272 and show -0- tax due.

Partnerships

Where do I deduct separately stated expenses (Section 179, charitable contributions, investment expenses etc.) on the partnership Form 700?

Since these items may be subject to further limitations, they are not deducted in the calculation of Georgia net income of the partnership. The portion of these expenses that are attributable to Georgia, that have not been included in the partnership's Georgia net income and that have been allowed on the taxpayer's Federal tax return, can also be subtracted on the partner's Georgia return.

How should guaranteed payments be treated on the partnership return?

The following example illustrates how they should be treated. There are two partners in the partnership. Partner one is a resident of Georgia and owns 25% of the partnership. Partner one receives a guaranteed payment of \$10. Partner number two is a nonresident of Georgia and owns 75% of the partnership. Partner two receives a guaranteed payment of \$40. The profit and loss sharing ratio is the same as the ownership percentage. The Georgia apportionment ratio on line 4, part 2, schedule 6, of Form 700 is 50%. Ordinary income before the guaranteed payment \$150

Guaranteed payment \$ 50

Ordinary income placed on line 1, schedule 7, of Form 700 \$100

Guaranteed payment placed on line, 5, schedule 7, of Form 700 \$ 50

Total income for Georgia purposes, line 12, schedule 7, of Form 700 \$150

Partner one (resident) is required to report \$35 on their Georgia return. The entire \$10 guaranteed payment plus their share of the ordinary income of the partnership \$25 (\$100 ordinary income placed on line 1, schedule 7, of Form 700 multiplied by their ownership percentage of 25%). Partner two (nonresident) is required to report \$57.5 on their Georgia return. The Georgia portion of the guaranteed payment \$20 (\$40 guaranteed payment multiplied by the Georgia ratio of 50%) plus their share of the Georgia portion of the ordinary income of the partnership \$37.5 (\$100 ordinary income placed on line 1, schedule 7, of Form 700 multiplied by their ownership percentage of 75% multiplied by the Georgia ratio of 50%).

Does a partnership have to pay net worth tax?

The Partnership Return is an information return only and partnerships are not subject to the net worth tax.

Does Georgia have its own K-1?

No.

Who gets the benefit of tax credits earned by partnerships?

Usually the benefits are passed through to the partners.

Limited Liability Companies

How is an LLC classified in Georgia?

Each limited liability company and foreign limited liability company is classified as a partnership for Georgia income tax purposes unless classified otherwise for Federal income tax purposes, in which case the limited liability company or foreign limited liability company is classified for Georgia income tax purposes in the same manner as it is classified for Federal income tax purposes. Accordingly, Georgia follows the Federal "Check the Box" classifications.

In 1999, Tennessee expanded the type of entities that are subject to the Franchise and Excise tax. In addition to s-corporations, it now includes limited liability companies, limited partnerships, etc. A Georgia resident, who is a shareholder in an s-corporation operating in a state that does not recognize the s-election, can make an adjustment for this income on schedule 1, line 9, of Form 500 if the tax is paid by the corporation. Does this adjustment also apply to a member of a limited liability company (treated as a partnership) or a partner of a limited partnership when the limited liability company or the limited partnership pays the Tennessee Franchise and Excise tax?

Georgia law is very specific and only provides an adjustment to Federal AGI for s-corporation income in this situation. Accordingly, no adjustment to income is allowed on schedule 1, line 9, of Form 500 for a member of a limited liability company or a partner of a limited partnership when the limited liability company or the limited partnership pays the Tennessee Franchise and Excise tax. Additionally, the member or partner is not entitled to an other states tax credit since the tax was paid by the entity for the entity and not for the member or partner.

Does an LLC have to pay net worth tax?

An LLC is only subject to net worth tax if it is treated as a corporation for income tax purposes.

Withholding on Distributions and Composite Returns for Nonresident Shareholders, Partners, and Members of S-Corporations, Partnerships and Limited Liability Companies
What code section and regulation provide guidance in this area?

Code Section 48-7-129 and Regulation 560-7-8-.34, Withholding on Distributions to Nonresident Members of Partnerships, S-Corporations, and Limited Liability Companies, provide guidance in this area.

Are s-corporations, partnerships, and limited liability companies subject to a withholding tax of 4% from the distributions paid or credited to its nonresident shareholders, partners, or members under Georgia Code Section 48-7-129?

Yes.

How is this tax reported and paid to Georgia?

Registration for a withholding number is required. This is a different number than the withholding number for wages. You can register for your withholding number by completing Form CRF-002. Payments must be submitted on Form GA-V within 30 days of the close of the calendar month in which the distribution is paid or credited. The Form G-7 must be filed on or before the last day of the month following the end of the quarter. Form G2-A's are required to be provided to the recipients no later than 30 days following the close of the entity's taxable year. Additionally a copy of the Form G2-A's should be submitted to the Department along with the transmittal Form G-1003 within 30 days of the end of the entity's taxable year.

When an entity has met the withholding requirement for a nonresident shareholder, partner, or member, must the shareholder, partner, or member still file a Georgia income tax return?

Yes. The withholding does not relieve the shareholder, partner, or member of the requirement to file a tax return. The shareholder, partner, or member should attach to its return a copy of the withholding statement received from the entity, and claim credit on the return for the Georgia income tax withheld.

Can the shareholder, partner, or member file estimated tax payments in order to relieve the entity from the responsibility of the withholding requirement?

No. The filing of estimated tax payments by the shareholder, partner, or member does not relieve the entity from the responsibility of the withholding requirement.

Are distributions paid or credited to shareholders, partners, or members who are exempt organizations subject to withholding?

Only if the distributions paid or credited result in unrelated business taxable income to the exempt organization. Georgia Code Section 48-7-100(2.1) limits the definition of distributions paid or credited that are subject to withholding to those distributions paid or credited "which may be subject to Georgia income tax." Any distribution paid or credited to an exempt organization that is not related to the purpose for which the organization received exempt status is taxable as unrelated business taxable income under Georgia Code Section 48-7-25(c)(1). Thus, any distribution paid or credited which results in unrelated business taxable income to an exempt organization as defined by IRC Section 512 will be subject to withholding. Distributions paid or credited to an exempt organization that do not result in unrelated business taxable income are not subject to withholding.

Are distributions paid or credited to shareholders, partners, or members who are insurance companies subject to withholding under Georgia Code Section 48-7-129?

If the insurance company pays a tax to Georgia on its premium income, it is not subject to Georgia income tax and withholding under Georgia Code Section 48-7-129.

A shareholder's, partner's, or member's distributions that were paid or credited total more than \$1,000.00 per year, but its I.R.C. Section 179 deduction will make its Georgia taxable income less than this amount. Is withholding required?

Yes. Since the I.R.C. Section 179 deduction may be limited at the Federal level, withholding is required before the I.R.C. Section 179 deduction.

Subsection (c) of Georgia Code Section 48-7-24 provides an exemption from Georgia income taxation for a nonresident member who receives income from a resident limited partnership or similar nontaxable entity which derives income exclusively from buying, selling, dealing in, and holding securities on its own behalf and not as a broker. Do the withholding requirements of Georgia Code Section 48-7-129 apply to distributions paid or credited in this situation?

Withholding is not required in this situation.

Does subsection (c) of Georgia Code Section 48-7-24 apply to a family limited partnership?

No. This subsection does not apply to a family limited partnership the majority interest of which is owned by one or more natural or naturalized citizens related to each other within the fourth degree of reckoning according to the laws of descent and distribution.

Does Georgia allow the filing of a composite return for the nonresident shareholders, partners, or members of a s-corporation, partnership, or LLC?

Yes, use Form IT-CR. Note on the return when it is filed that you are filing a composite return for the nonresidents. Nonresidents having income within Georgia from sources other than the Entity may not be included in the Entity's composite return. The 4% withholding requirement of Georgia Code Section 48-7-129 does not apply to nonresidents who are included on the composite return.

Is it necessary to get pre approval before filing a composite return?

No prior approval is necessary.

If a composite return is being filed on behalf of nonresident shareholders of a s-corporation, is it necessary to have the consent agreements attached to the corporate return(Form 600S)?

Yes. The consent agreements are necessary in order for the s-corporation election to be recognized for Georgia purposes. Whereas, filing a composite return fulfills the shareholder's filing obligation. However, the consent agreements do not have to be attached to the composite return (Form IT-CR) when it is filed.

Must all nonresident shareholders, partners, or members be included on the composite return?

No, only those who elect are included. Additionally, nonresident shareholders, partners, or members who receive Georgia income from sources other than the withholding entity cannot be included on the composite return. Withholding is required on distributions paid or credited to any nonresident shareholders, partners, or members who are not included on the composite return.

A nonresident is included in the entity's composite return, and also files a separate Georgia income tax return. Can they receive credit for the composite income tax paid by the entity on their behalf?

The law does not provide for such a tax credit. In this situation, the entity must file an amended Form IT-CR to exclude that shareholder, partner or member, and must register for nonresident withholding (if not already registered) and request a transfer of the composite return overpayment to the nonresident withholding account. The entity then must furnish a withholding statement (Form G2-A) to the shareholder, partner, or member for the amount of the Georgia income tax payment transferred.

How should "tiered" situations be handled for withholding and composite returns?

In situations where distributions are paid or credited from an entity to a shareholder, partner, or member who is also an entity, the following shall apply: 1. Withholding is only required by the entity that owns property or does business in Georgia. Any withholding done at this level can be passed through each tier by attaching the G-2A and a schedule which allocates the withholding tax between the shareholders, partners, or members at each tier based upon the profit/loss percentage. 2. A composite return may be done at any level but if the composite return is not filed by the entity that owns property or does business in Georgia, withholding is still required by the entity that owns property or does business in Georgia, unless otherwise exempted. Tax withheld at one level can be claimed on a composite return at another level.

How are net operating losses computed on a composite return?

The following shall apply with regard to net operating losses. 1. A net operating loss computed on a composite return can be carried to another composite return year where a

different option was used. However, the income for the year or years that the loss is being carried to must be recomputed using the option that was used for the loss year before the loss is carried to that year.

Example 1: If option 1 was used in the loss year but option 2 was used in the carry back year, the loss could still be carried to the option 2 carry back year. However, the option 2 carry back year's income would have to be recomputed using option 1 before the loss is applied.

2. A net operating loss can not be carried from a year where the shareholder, partner, or member is not included on the composite return to a year the shareholder, partner, or member is included on the composite return. This would not be allowed even if the year the shareholder, partner, or member was not included on the composite return, they only had income from the entity. In these situations, the shareholder, partner, or member should not be included on the composite return. 3. A net operating loss can be carried from a year where the shareholder, partner, or member is included on the composite return to a year the shareholder, partner, or member is not included on the composite return. 4. An entity, on behalf of a shareholder, partner, or member, can elect to waive the carry back period of a net operating loss on a composite return. The same provisions that would apply to the shareholder, partner, or member if they were not included on the composite return would apply to the composite return.