House Bill 424 (AS PASSED HOUSE AND SENATE)
By: Representatives Williamson of the 115th, Martin of the 49th, Smith of the 133rd, Newton of the 123rd, Rhodes of the 120th, and others

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.
Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, is amended by adding a new Code section to read as follows:

"48-7-29.24.
(a) As used in this Code section, the term:
(1) 'Aging foster children' means:
(A) Foster children aged 16 through 18 that would benefit based on projected status at age 18, as determined by the division; and
(B) Former foster children up to and including age 21, or age 25 if legally possible, who have not been adopted or reunited with families.

(2) 'Aging-out program' means a program with the primary function of supporting aging foster children.

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

(4) 'Foster child support organization' means:
(A) The aging-out program of the Technical College System of Georgia Foundation;
(B) The aging-out program of the University System of Georgia Foundation, provided that such program is certified by the Governor's Office of Planning and Budget as an aging-out program; or
(C) Any domestic nonprofit corporation which maintains nonprofit status under Section 501(c)(3) of the Internal Revenue Code and tax exempt status under Code Section 48-7-25, that has the primary function of:
   (i) Operating an aging-out program or operating as or supporting a Georgia licensed child-placing agency; or
   (ii) Disbursing funds directly to one or more of the entities identified in subparagraphs (A) or (B) or division (C)(i) of this paragraph.

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

(6) 'Qualified expenditures' means expenditures made by a qualified organization for:
(A) The costs associated with tuition waivers granted pursuant to Code Section 20-3-660;
(B) Wraparound services for individuals attending a public postsecondary educational institution under a waiver granted pursuant to Code Section 20-3-660; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The current list of all qualified organizations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) A complete copy of its IRS Form 990 including applicable attachments, or for any qualified organization that is not required by federal law to file an IRS Form 990, such
organization shall submit to the commissioner equivalent information on a form
prescribed by the commissioner; and
(B) A report detailing the contributions received during the calendar year pursuant to
this Code section on a date determined by, and on a form provided by, the
commissioner which shall include:

(i) The total number and dollar value of individual contributions and tax credits
approved. Individual contributions shall include contributions made by those filing
income tax returns as a single individual or head of household and those filing joint
returns;
(ii) The total number and dollar value of corporate contributions and tax credits
approved;
(iii) The total number and dollar value of all qualified expenditures made; and
(iv) A list of contributors, including the dollar value of each contribution and the
dollar value of each approved tax credit.
(2) Except for the information published in accordance with subsection (c) of this Code
section, all information or reports relative to this Code section that were provided by
qualified organizations to the department shall be confidential taxpayer information,
governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such information
relates to the contributor or the qualified organization.
(h) By April 1 of each year each qualified organization shall publicly post on its website
in a prominent place a copy of its prior year's annual budget containing the total amount
of funds received from all sources relative to the amount of qualified contributions it
received and the total amount and a description of how such contributions were utilized.
(i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified
contributions to any particular purpose or for the direct benefit of any particular
individual.
(2) A taxpayer that operates, owns, or is a subsidiary of an association, organization, or other entity that contracts directly with a qualified organization shall not be eligible for tax credits allowed under this Code section for contributions made to such qualified organization.

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

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

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

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

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

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

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

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

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

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

(n) The commissioner shall promulgate rules and regulations necessary to implement and administer the provisions of this Code section.”
SECTION 2.

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

SECTION 3.

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