



Georgia Timber Tax Credit: Answers to frequently asked questions

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Hurricane Michael had a devastating impact on the timber industry in South Georgia. Many forest landowners suffered catastrophic or severe timber losses due to the event. The Georgia General Assembly enacted HB 4EX in November of 2018 and an amendment (HB 446) in April of 2019. The bill provides a refundable and transferable state income tax credit for qualified taxpayers (including timber producers) who sustained casualty losses during Hurricane Michael. This list of frequently asked questions explains who is eligible for this tax credit, how the general procedure works, how the credit is calculated, how to claim and use the credit, and implications on federal income taxes. The tax credit is transferable and refundable (transferees are not eligible for the refundable provision), which makes it unique for this type of program.

Note well: this publication is based on our interpretation of the bill and the regulations. It is for educational purposes. Please refer to O.C.G.A. § 48-7-40.36 for more details about the program, GA R&R 560-7-8-.65 for implementation and administration rules about the program, and the Georgia Department of Revenue (GADOR) for the submission process of the pre-approval application. Landowners are strongly encouraged to contact competent professionals regarding technical, tax, and legal aspects of the program.

The basics

1. What is the Georgia Timber Tax Credit?

The Georgia Timber Tax Credit is a state income tax credit designed to provide relief to qualified Georgia taxpayers who sustained timber casualty losses as a result of damage or destruction caused by Hurricane Michael and need help for salvaging downed timber, restoration, site clearance, site preparation, and regenerating trees for timber production. Eligible taxpayers are allowed a state income tax credit equal to 100% of the timber casualty loss suffered in eligible counties, with a maximum of \$400 per acre.

Note for purposes of the statute “timber casualty loss” is defined as the amount of the diminution of value included in the computation of the casualty loss deduction for such casualty losses claimed and allowed pursuant to Section 165 of the Internal Revenue Code of 1986. As

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such as is later discussed, a credit may be allowed even if the taxpayer has no adjusted basis in the timber.

The credit is refundable because, if the amount of the credit is more than the amount of your tax liability, you can receive the difference as a refund. If you owe no Georgia state income tax this year, you can carry forward the credit for 10 years until it is used up, or you can get the full amount of the credit as a refund. The credit is also transferable. You can **sell** the credit to other Georgia taxpayers subject to certain restrictions.

Eligibility

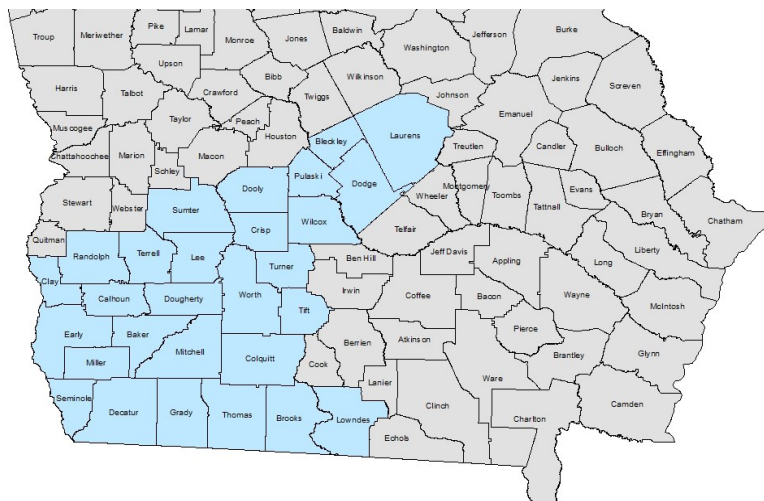
2. Who is eligible for the timber tax credit?

Eligible taxpayers need to meet the following requirements:

- Suffered timber casualty losses in the disaster area (28 counties in southwest Georgia) due to Hurricane Michael;
- The timber was grown as part of a trade or business or a transaction entered into for profit;
- Received pre-approval of the credit from GADOR;
- Certified to the GADOR the replanting of timber in a quantity projected to yield at maturity at least 90% of the value of the timber casualty loss claimed **or** the restoration of each acre for which timber casualty losses were incurred to a condition that has an adequately stocked stand that is expected to result in forest products or ecological services in the foreseeable future.

3. What are the eligible counties (designated disaster area)?

The disaster area is announced and documented in Executive Order 11.06.18.01 of the office of the Governor. They include Georgia counties: Baker, Bleckley, Brooks, Calhoun, Clay, Colquitt, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Grady, Laurens, Lee, Lowndes, Miller, Mitchell, Pulaski, Randolph, Seminole, Sumter, Terrell, Thomas, Tift, Turner, Wilcox, and Worth (see figure below).



4. Is the timber tax credit only available to timber producers?

No. The bill defines timber as trees grown for the primary purpose of commercial production of food, wood or wood fiber products. Besides forest landowners, some horticultural producers may also be eligible for the program (e.g., pecan growers).

5. Is the timber tax credit only available to timber owners?

Eligible taxpayers can be an individual, business entity, estate, or trust who owns or leases the affected timber. A lessee qualifies only if the lessee is eligible to claim the federal casualty loss deduction for the eligible timber property and the owner of the property does not claim the credit.

6. Is the timber tax credit only available to Georgia resident taxpayers?

No. It is available to non-resident forest landowners as well, as long as they meet the requirements above.

7. If I missed the first round of pre-approval (March 1-May 31, 2019), do I still have a chance to get the timber tax credit?

If on July 1, 2019, the Commissioner has not pre-approved tax credits in the amount of \$200 million, a second round of pre-approval applications will be initiated. You can make an application through the Georgia Tax Center (GTC) <https://gtc.dor.ga.gov/>.

Computing the amount of eligible timber tax credit

8. How is the amount of the timber tax credit computed?

The credit is calculated separately for each county with eligible timber property.

First, the difference in the Fair Market Values (FMVs) of timber immediately before and after the disaster needs to be determined. Then you need to aggregate the diminution of values across all eligible timber properties in a county. To determine the eligible timber tax credit, you compare the aggregated value to the product of \$400 and the affected acreage of eligible timber property and take the smaller number as eligible timber tax credit for pre-approval.

Since the total amount of the timber tax credit for all qualified taxpayers is capped at \$200 million, the GADOR will prorate the fund among applicants who timely filed an application for approval through the GTC if the aggregated approved credits exceed the cap. Therefore, the final timber tax credit received by a qualified applicant could be smaller than the amount requested.

An appraisal requires the expertise from a competent appraiser. When it comes to timber, a professional forester is regarded as a competent appraiser. The Georgia Forestry Commission maintains a directory of consulting foresters. Go to this website to locate a forester in your area: <http://www.gfc.state.ga.us/resources/directories/consulting-foresters/>.

Example

Mrs. Smith owns 200 acres of forestland (\$6,000 in timber basis) for timber production in the disaster area. Before the hurricane, the fair market value of the timber was \$20,000. After the hurricane, the timber is worth only \$2,000. The FMV of the timber decreased \$18,000. Since the diminution in the timber value is less than the product of \$400 and affected acreage of eligible timber property (\$80,000), she can apply for \$18,000 as eligible timber tax credit for pre-approval. The amount of timber tax credit is not limited by timber basis. Since the total funding is capped at \$200 million statewide, the actual timber tax credit Mrs. Smith receives might be different due to possible prorations.

Example

Mr. York's 200-acre forestland in Clay county was damaged by Hurricane Michael. The diminution in the FMV of the affected timber is \$90,000. He can only apply for the credit in \$80,000 because the credit is capped at \$400/ac.

9. Is the amount of timber casualty loss limited to the adjusted timber basis of the affected timberland as the way it is determined for federal income tax purposes?

No. Eligible timber tax credits are the lesser of the diminution of FMVs of the eligible affected timber property or the acreage of affected timber property multiplied by \$400/ac. It is not subjected to the adjusted timber basis.

10. To determine the diminution in FMVs after the hurricane, should I do a salvage sale first?

It is not necessary. The diminution in FMVs of timber affected by the hurricane can be determined by a professional forester without conducting a salvage sale. A salvage sale is a separate event.

Reporting, claiming, and transferring

11. What should I do if I want to apply for the timber tax credit?

First, you need to request pre-approval of the credit by submitting Form IT-TIM-AP through the GTC. A separate form should be submitted for each county. The first round of pre-approvals is between March 1 and May 31, 2019. The GADOR will review the applications and notify applicants within 30 days about whether the application is complete. You will receive a pre-approval certificate number if your request is approved.

Next, you need to notify the GADOR through the GTC when you complete the replanting or restoration requirements. You can choose either replanting of timber in a quantity projected to yield at maturity at least 90% of the value of the timber casualty loss claimed *or* restoring each affected acre to a condition that has an adequately stocked stand that is expected to result in forest products or ecological services in the foreseeable future.

12. When can I claim the credit?

You should claim the timber credit on your Georgia income tax return in the first year you submitted the proof of sufficient replanting or restoration as described above. You still need to claim the credit even if you have sold or transferred it. The credit has to be claimed by December 31, 2024.

Example

Suppose Mr. York claimed a diminution of value of \$90,000 but only received an approval for a \$80,000 credit for his timber damage in Clay county. To fulfill the requirement, he can replant enough timber that can yield \$81,000 (90% of \$90,000) worth of timber products at maturity or restore the timberland adequately that will produce ecological services or forest products in the future.

13. What happens if the claimed timber tax credit exceeds my tax liability of the tax year?

If the total amount of timber tax credit claimed in a taxable year exceeds your income tax liability, the tax credit in excess of the tax liability is refundable to you. You can also choose to carry forward the unused credit for 10 years until it is used up.

14. Can I sell my timber tax credit at any price?

GA R&R 560-7-8-.65 and the underlying statute mandate that the timber tax credit has to be sold for a minimum of 60% of the credit amount.

15. When does my ownership of the timber tax credit start?

The credit is considered earned when you have received pre-approval from the GADOR and have reported the replantation or restoration through the GTC. Therefore, you may transfer the timber tax credit once it has been earned.

16. Can buyers of timber tax credit sell the credit?

No. A transferee shall only have the rights to claim and use the timber tax credit available to him/her. Therefore, a transferee cannot transfer the credit. Also for the transferee the credit is not refundable.

17. Can I make multiple sales of my timber tax credit?

You can only make a one-time sale or transfer of the timber tax credit earned to a single other Georgia taxpayer. This means that if you sell a part of your earned timber tax credit in one year, the remaining tax credit cannot be sold any more.

18. Which form should I use to report the transfer if I transfer or sell my timber tax credit?

You should file Form IT-TRANS “Notice of Tax Credit Transfer” with the GADOR within 30 days of the transfer/sale. The form must be submitted electronically through the GTC.

19. We are a pass-through entity. Does each shareholder/member/partner need to apply for the pre-approval separately? What about claiming the credit? What about transferring the credit?

A pass-through entity should apply for pre-approval at the entity level. If the credit is earned, the entity may make an election to sell or transfer the credit at the entity level. In that case, the credit does not pass through to the shareholders, members, or partners. Otherwise, it will pass through to the shareholders, members, or partners.

Example

Suppose Mr. Johnson met the restoration requirement for the credit in 2019 and claimed the credit on his 2019 tax return. He sells the timber tax credit to Mr. Houser in 2020. The credit may be claimed by Mr. Houser on his 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, and 2029 return. The carry forward period for this tax credit will expire by 2029.

Federal income tax implications of the timber tax credit

20. Do I need to pay federal income tax on the timber tax credit?

You can exclude from your federal taxable income the receipt of the credits that reduce your state income tax liability. However, if you sell the credits to others, the income you received from the sale is subject to federal income tax. According to IRS Chief Counsel Advice CCA 201147024, a state tax credit is a capital asset [see *Georgia H. Tempel v. Commissioner*, 136 T.C. 34 (2011)]. Therefore, the gain from selling the credit is a capital gain in nature for federal income tax purposes. The basis of the credit is zero in your hand since it is granted by the state of Georgia.

21. Does the buyer/transferee need to pay federal income tax on the timber tax credit?

If the credit is purchased for less than its face value, the buyer should report an apportioned gain from the transfer when the tax credit is used to deduct against his state tax liability (see IRS Chief Counsel Advice CCA 201147024). The holding period determines whether it is a short-term or long-term capital gain.

We recommend you consult your tax advisor for specific tax advice regarding the federal income tax implications of the timber tax credit.

Additional sources of information

1. O.C.G.A. § 48-7-40.36
2. GA R&R 560-7-8-.65 timber tax credit
3. Instruction by GA DOR on pre-approval application <https://dor.georgia.gov/documents/timber-tax-credit>
4. IRS Chief Counsel Advice CCA 201147024

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