

House Bill 1523

By: Representatives Parrish of the 102nd, Wix of the 33rd, Post 1, Royal of the 140th, Jamieson of the 22nd, Gardner of the 42nd, Post 3, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation of income tax, so as to provide for income
3 tax credits for certain motion picture production investments; to provide for definitions; to
4 provide for procedures, conditions, and limitations; to provide for powers, duties, and
5 authority of the state revenue commissioner and the Georgia Department of Industry, Trade,
6 and Tourism; to provide for applicability; to provide an effective date; to repeal conflicting
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
11 imposition, rate, and computation of income tax, is amended by adding a new Code section
12 immediately following Code Section 48-7-40.25 to be designated Code Section 48-7-40.26
13 to read as follows:

14 "48-7-40.26.

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

16 (1) 'Base investment' means the aggregate funds actually invested and expended by a
17 motion picture production company as direct production costs incurred in the state in a
18 state certified production or productions. Such term, except as specifically set out in this
19 Code section, does not include labor costs or salaries for services.

20 (2) 'Department of Industry, Trade, and Tourism' means the Georgia Department of
21 Industry, Trade, and Tourism.

22 (3) 'Motion picture' means a single media or multimedia program made in this state, in
23 whole or in part, in either short or long form, including advertising, animation, and music,
24 fixed on a delivery system which includes without limitation film, videotape, computer
25 disc, laser disc, and any element of the digital domain, from which the program is viewed
26 or reproduced, and which is intended for public or private exhibition via theaters, licensed

1 for exhibition by individual television stations, groups of stations, networks, cable
2 television stations, public broadcasting stations, corporations, live venues, the Internet,
3 or any other channel of exhibition. Such term shall not include the production of
4 television coverage of news and athletic events.

5 (4) 'Motion picture production company' means a person engaged in the business of
6 producing motion pictures. Such term shall not mean or include any form of business
7 owned, affiliated, or controlled, in whole or in part, by any person which is in default on
8 a loan made by the state or a loan guaranteed by the state.

9 (5) 'Production costs' means direct pre-production, production, and post-production
10 expenditures in the state associated with a motion picture, including without limitation
11 the following: cost of story and scenario; set construction and operation; wardrobes,
12 make-up, accessories, and related services; costs associated with photography and sound
13 synchronization, lighting, and related services and materials; editing and related services;
14 rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital
15 or tape editing, film processing, transfers of film to tape or digital format, sound mixing,
16 computer graphics services, special effects services, animation services, and script
17 production; airfare, if purchased through a Georgia based travel agency or travel
18 company; insurance costs and bonding, if purchased through a Georgia based insurance
19 agency; and other direct costs of producing a motion picture in accordance with generally
20 accepted entertainment industry practices.

21 (6) 'Resident' means an individual as designated pursuant to paragraph (10) of Code
22 Section 48-7-1, as amended.

23 (7) 'State certified production' means a motion picture produced in the state and
24 approved by the Department of Industry, Trade, and Tourism pursuant to regulations to
25 carry out the purposes set forth in this Code section.

26 (8) 'Tier' means a tier as designated pursuant to Code Section 48-7-40, as amended.

27 (9) 'Total aggregate payroll' means the total sum expended by a motion picture
28 production company on salaries for services rendered in a state certified production or
29 productions, except that such term shall not include the salary of any employee whose
30 salary for a single production is equal to or greater than \$1 million.

31 (b) A motion picture production company shall be allowed a credit against the tax imposed
32 under this article for taxpayers owing tax in this state. The tax credit shall be earned by the
33 motion picture production company at the time of the investment in a state certified
34 production or productions approved by the Department of Industry, Trade, and Tourism on
35 or after January 1, 2004, and calculated as a percentage of the investment by the motion
36 picture production company as follows:

1 (1) If the base investment in the state is greater than \$200,000.00, the motion picture
2 production company shall be allowed a tax credit equal to 10 percent of the base
3 investment made by the motion picture production company;

4 (2) If the base investment in tier 1 or 2 counties is at least \$200,000.00, a motion picture
5 production company shall be allowed a tax credit equal to 5 percent of the base
6 investment in tier 1 or 2 counties made by the motion picture production company; or

7 (3) If the base investment in this state equals or exceeds \$200,000.00, a motion picture
8 production company shall be allowed a tax credit equal to 15 percent of the total
9 aggregate payroll for residents employed in such production or productions.

10 (c) Any tax credits with respect to a state certified production allocated to a Georgia
11 taxpayer and not previously claimed by such taxpayer against its income tax may be
12 transferred or sold by such taxpayer to another Georgia taxpayer, subject to the following
13 conditions:

14 (1) A taxpayer may make only three transfers or sales of tax credits during any calendar
15 year; provided, however, a single transfer or sale may involve one or more transferees.
16 The transferee of the tax credits may transfer or sell such tax credits subject to the
17 conditions of this subsection;

18 (2) Transferors and transferees shall submit to the Department of Industry, Trade, and
19 Tourism and to the Department of Revenue a written notification of any transfer or sale
20 of tax credits within 30 days after the transfer or sale of such tax credits. The notification
21 shall include the transferor's tax credit balance prior to transfer, the credit certificate
22 number, the remaining balance after transfer, all tax identification numbers for both
23 transferor and each transferee, the date of transfer, the amount transferred, and any other
24 information required by the Department of Industry, Trade, and Tourism or the
25 Department of Revenue;

26 (3) Failure to comply with this subsection shall result in the disallowance of the tax
27 credit until the taxpayers are in full compliance;

28 (4) The transfer or sale of this tax credit does not extend the time in which such tax credit
29 can be used. The carry forward period for tax credit that is transferred or sold shall begin
30 on the date on which the tax credit was originally earned;

31 (5) A transferee shall have only such rights to claim and use the tax credit that were
32 available to the transferor at the time of the transfer. To the extent that the transferor did
33 not have rights to claim or use the tax credit at the time of the transfer, the Department
34 of Revenue shall either disallow the tax credit claimed by the transferee or recapture the
35 tax credit from the transferee. The transferee's recourse is against the transferor; and

1 (6) The transferee shall apply such tax credits in the same manner and against the same
2 taxes as the taxpayer originally awarded the credit unless subsequent elections are made
3 and allowed.

4 (d) In the event that the entire tax credit cannot be used in the year earned, any remaining
5 credit may be carried forward and applied against income tax liabilities for the subsequent
6 ten years or the excess may be taken as a credit against the taxpayer's periodic payment
7 under Code Section 48-7-103. The taxpayer may file an election with the commissioner
8 to take such credit against periodic payments under Code Section 48-7-103 which become
9 due before the due date of the income tax return on which such credit may be claimed. In
10 the event of such an election, the commissioner shall confirm with the taxpayer a date
11 which shall not be later than 30 days after receipt of the taxpayer's election when the
12 taxpayer may begin to take credit against such periodic payments. Each employee whose
13 employer receives credit against such taxpayer's periodic payments under Code Section
14 48-7-103 shall receive credit against his or her income tax liability under Code Section
15 48-7-20 for the corresponding taxable year for the full amount which would be credited
16 against such liability prior to application of the credit provided for in this subsection.
17 Credits against periodic payments under Code Section 48-7-103 and credits against liability
18 under Code Section 48-7-20 established by this subsection shall not constitute income to
19 the taxpayer.

20 (e) The credit granted under this Code section shall be subject to the following conditions
21 and limitations:

22 (1) The credit may be taken beginning with the taxable year in which the taxpayer has
23 met the investment requirement. For each year in which a taxpayer claims the credit, the
24 taxpayer shall attach a schedule to the taxpayer's Georgia income tax return which will
25 set forth the following information, as a minimum:

26 (A) A description of the qualified production activities;

27 (B) The amount of tax credit claimed for the taxable year;

28 (C) Any tax credit previously taken by the taxpayer against Georgia income tax
29 liabilities or the taxpayer's quarterly or monthly payments under Code section
30 48-7-103;

31 (D) The amount of tax credit carried over from prior years;

32 (E) The amount of tax credit utilized by the taxpayer in the current taxable year; and

33 (F) The amount of tax credit to be carried over to subsequent tax years;

34 (2) In the initial year in which the taxpayer claims the credit granted in this Code section,
35 the taxpayer shall include in the description of the qualified production activities required
36 by subparagraph (A) of paragraph (1) of this subsection information which demonstrates

1 that the activities include the base investment equal to or exceeding \$200,000.00 during
2 such year; and

3 (3) In no event shall the amount of the tax credit under this Code section for a taxable
4 year exceed the taxpayer's income tax liability. No such credit shall be allowed the
5 taxpayer against prior years' tax liability.

6 (f) The Department of Industry, Trade, and Tourism shall determine through the
7 promulgation of rules what projects qualify for the tax credits authorized under this Code
8 section. Certification shall be submitted to investors and to the commissioner.

9 (g) The commissioner shall promulgate such rules and regulations as are necessary to
10 implement and administer this Code section.

11 (h) Any taxpayer applying for the tax credit shall be required to reimburse the Department
12 of Revenue for any audits required in relation to granting the tax credit.

13 (i) If the commissioner finds that funds for which an investor received credits according
14 to this Code section are not invested in and expended with respect to a state certified
15 production within 24 months of the date that such credits are earned, then the investor's
16 state income tax for such taxable period shall be increased by such amount necessary for
17 the recapture of credit provided by this Code section."

18 **SECTION 2.**

19 This Act shall become effective upon its approval by the Governor or upon its becoming law
20 without such approval and shall be applicable to all taxable years beginning on or after
21 January 1, 2004.

22 **SECTION 3.**

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