

House Bill 1775

By: Representatives Parrish of the 102nd, Royal of the 140th, Teper of the 42nd, Post 1, Wix of the 33rd, Post 1, Stephens of the 123rd, 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, the Department of Revenue, and the Georgia
6 Department of Industry, Trade, and Tourism; to provide for applicability; to provide an
7 effective date; to repeal conflicting 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)(1) A motion picture production company shall be allowed credits against the tax
32 imposed under this article for taxpayers. The tax credits shall be earned by the motion
33 picture production company at the time of the investment in a state certified production
34 or productions approved by the Department of Industry, Trade, and Tourism on or after
35 January 1, 2004, and calculated as a percentage of the investment by the motion picture
36 production company as follows:

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

4 (B) If the base investment in tier 1 or 2 counties equals or exceeds \$200,000.00, a
5 motion picture production company shall be allowed an additional tax credit equal to
6 5 percent of the base investment in tier 1 or 2 counties made by the motion picture
7 production company.

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

11 (c) Where the amount of such credit or credits exceeds a taxpayer's liability for such taxes
12 in a taxable year, the excess may be taken as a credit against such taxpayer's quarterly or
13 monthly payment under Code Section 48-7-103. Each employee whose employer receives
14 credit against such taxpayer's quarterly or monthly payment under Code Section 48-7-103
15 shall receive credit against his or her income tax liability under Code Section 48-7-20 for
16 the corresponding taxable year for the full amount which would be credited against such
17 liability prior to the application of the credit provided for in this subsection. Credits against
18 quarterly or monthly payments under Code Section 48-7-103 and credits against liability
19 under Code Section 48-7-20 established by this subsection shall not constitute income to
20 the taxpayer.

21 (d) Any tax credits with respect to a state certified production allocated to a Georgia
22 taxpayer and not previously claimed by such taxpayer against its income tax may be
23 transferred or sold by such taxpayer to another Georgia taxpayer, subject to the following
24 conditions:

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

29 (2) Transferors and transferees shall submit to the Department of Industry, Trade, and
30 Tourism and to the Department of Revenue a written notification of any transfer or sale
31 of tax credits within 30 days after the transfer or sale of such tax credits. The notification
32 shall include the transferor's tax credit balance prior to transfer, the credit certificate
33 number, the remaining balance after transfer, all tax identification numbers for both
34 transferor and each transferee, the date of transfer, the amount transferred, and any other
35 information required by the Department of Industry, Trade, and Tourism or the
36 Department of Revenue;

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

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

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

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

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

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

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

19 (C) Any tax credit previously taken by the taxpayer against Georgia income tax
20 liabilities or the taxpayer's quarterly or monthly payments under Code section
21 48-7-103;

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

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

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

25 (2) In the initial year in which the taxpayer claims the credit granted in this Code section,
26 the taxpayer shall include in the description of the qualified production activities required
27 by subparagraph (A) of paragraph (1) of this subsection information which demonstrates
28 that the activities include the base investment equal to or exceeding \$200,000.00 during
29 such year; and

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

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

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

- 1 (h) Any taxpayer applying for the tax credit shall be required to reimburse the Department
2 of Revenue for any audits required in relation to granting the tax credit.
- 3 (i) If the commissioner finds that funds for which an investor received credits according
4 to this Code section are not invested in and expended with respect to a state certified
5 production within 24 months of the date that such credits are earned, then the investor's
6 state income tax for such taxable period shall be increased by such amount necessary for
7 the recapture of credit provided by this Code section."

8 **SECTION 2.**

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

12 **SECTION 3.**

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