House Bill 539 (AS PASSED HOUSE AND SENATE)

By: Representatives O`Neal of the 146th, Parrish of the 156th, Keen of the 179th, Horne of the 71st, Channell of the 116th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, so as to revise and change provisions regarding state income tax credits; to repeal certain business enterprise income tax credits based upon business growth; to provide for income tax credits for certain entertainment industry production investments; to provide for a short title; to provide for definitions; to provide for procedures, conditions, and limitations; to provide for powers, duties, and authority of the state revenue commissioner, the Department of Revenue, and the Department of Economic Development; to provide for applicability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, is amended by striking Code Section 48-7-40.13, relating to business enterprise income tax credits based upon business growth, and inserting in its place a new Code Section 48-7-40.13 to read as follows:

"48-7-40.13.

~~(a) As used in this Code section, the term 'business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, tourism, and research and development industries. Such term shall not include retail businesses.~~

~~(b) A tax credit is allowed a business enterprise having a Georgia net taxable income in the current taxable year which is 20 percent or more above that of the preceding taxable year, if such business enterprise´s Georgia net taxable income in each of the two taxable years preceding the current taxable year also was 20 percent or more above each respective preceding taxable year.~~

~~(c) The tax credit provided in subsection (b) of this Code section shall be the excess over 20 percent of the percentage growth in the business enterprise´s Georgia net taxable income in the current taxable year, provided that the tax credit shall not exceed 50 percent of the business enterprise´s Georgia net income tax liability after all other credits have been applied for the current taxable year and shall not be allowed if the total Georgia income tax liability before application of the credit exceeds $1.5 million.~~

~~(d) The tax credit provided in subsection (b) of this Code section may not be carried backward or forward~~ Reserved."

SECTION 2.

Said article is further amended by adding a new Code section immediately following Code Section 48-7-40.25 to be designated Code Section 48-7-40.26 to read as follows:

"48-7-40.26.

(a) This Code section shall be known and may be cited as the 'Georgia Entertainment Industry Investment Act.'

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

(1) 'Affiliates' means those entities that are included in the production company´s affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) 'Base investment' means the aggregate funds actually invested and expended by a production company as production expenditures incurred in this state that are directly used in a state certified production or productions.

(3) 'Multimarket commercial distribution' means commercial distribution which extends to markets outside the State of Georgia.

(4) 'Production company' means a company primarily engaged in qualified production activities which have been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(5) 'Production expenditures' means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing,

computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel company; insurance costs and bonding, if purchased through a Georgia based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for marketing and distribution.

(6) 'Qualified production activities' means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development, such as feature films, series, pilots, movies for television, commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series pilots, or movies for television. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, licensing for exhibition by individual television stations, groups of stations, networks, cable television stations, public broadcasting stations, corporations, live venues, the Internet, or any other channel of exhibition. Such term shall not include the production of television coverage of news and athletic events.

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

(8) 'State certified production' means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section.

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

(10) 'Total aggregate payroll' means the total sum expended by a production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

(A) With respect to a single employee, the portion of any salary which exceeds $500,000.00 for a single production shall not be included when calculating total aggregate payroll; and

(B) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest shall be considered as having been paid to the employee and shall be aggregated regardless of the means of payment or distribution.

(c) For any production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed $30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals or exceeds $500,000.00 for qualified production activities and shall be calculated as follows:

(1) The production company shall be allowed a tax credit equal to 9 percent of the base investment in this state;

(2) If the base investment in this state is in a tier 1 or tier 2 county, the production company shall be allowed an additional tax credit equal to 3 percent of such base investment;

(3) If Georgia residents are employed in the production, the production company shall be allowed an additional tax credit equal to 3 percent of the total aggregate payroll of Georgia residents; and

(4) If the base investment in this state is in excess of $20 million for multiple television projects, the production company shall be allowed an additional tax credit equal to 2 percent of such base investment.

(d) For any production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state exceeded $30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. For purposes of this subsection, the excess base investment in this state is computed by taking the current year production expenditures in a state certified production and subtracting the average of the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be calculated as follows:

(1) If the excess base investment in this state equals or exceeds $500,000.00, the production company and its affiliates shall be allowed a tax credit of 9 percent of such excess base investment;

(2) An additional tax credit of 3 percent shall be allowed to the production company and its affiliates that qualify for and claim a credit under paragraph (1) of this subsection but only with respect to that portion of such production company´s and affiliate´s base investment that is the difference between the production expenditures in a state certified production in a tier 1 or tier 2 county in the current year and the average of the aggregate production expenditures made in those same counties for the years 2002, 2003, and 2004;

(3) If Georgia residents are employed in the production, the production company and its affiliates shall be allowed an additional tax credit equal to 3 percent of the difference between the total aggregate payroll of Georgia residents, which is includable in the base investment in the current year, and the average of the aggregate payroll of Georgia residents for the years 2002, 2003, and 2004; and

(4) If the excess base investment in this state is in excess of $20 million for multiple television projects, the production company and its affiliates shall be allowed an additional tax credit equal to 2 percent of the difference between the production expenditures in a state certified production for multiple television projects in the current year over the average of the production expenditures for multiple television projects for the years 2002, 2003, and 2004.

(e)(1) Where the amount of such credit or credits exceeds the production company´s liability for such taxes in a taxable year, the excess may be taken as a credit against such production company´s quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such production company´s quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the production company.

(2) If a production company, or a production company and its affiliates, claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company, or the production company and its affiliates, will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized under this Code section and taken by the production company, or the production company and its affiliates, on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

(f) Any tax credits with respect to a state certified production earned by a production company and previously claimed but not used by such production company against its income tax may be transferred or sold in whole or in part by such production company to another Georgia taxpayer, subject to the following conditions:

(1) Such production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) Such production company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such production company´s tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for

each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the production company is in full compliance;

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

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (e) of this Code section. To the extent that such production company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee´s recourse is against such production company; and

(6) The transferee must acquire the tax credits in this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.

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

(1) The credit may be taken beginning with the taxable year in which the production company has met the investment requirement. For each year in which such production company either claims or transfers the credit, the production company shall attach a schedule to the production company´s Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified production activities, along with the certification from the Department of Economic Development;

(B) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

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

(D) Any tax credit previously taken by the production company against Georgia income tax liabilities or the production company´s quarterly or monthly payments under Code Section 48-7-103;

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

(F) The amount of tax credit utilized by the production company in the current taxable year; and

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

(2) In the initial year in which the production company claims the credit granted in this Code section, the production company shall include in the description of the qualified

production activities required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the activities included in the base investment or excess base investment equal or exceed $500,000.00 during such year; and

(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the production company´s income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company against prior years´ tax liability.

(h) The Department of Economic Development shall determine through the promulgation of rules and regulations what projects qualify for the tax credits authorized under this Code section. Certification shall be submitted to the state revenue commissioner.

(i) The state revenue commissioner shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

(j) Any production company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in this Code section.″

SECTION 3.

(a) Except as provided in subsection (b) of this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2005.

(b) Section 1 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2006.

SECTION 4.

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