

House Bill 1247

By: Representatives Stephens of the 164th and Parrish of the 156th

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 revise and change
3 the income tax credit with respect to qualified, film, video, or digital productions; to provide
4 for conditions and limitations; to provide for powers, duties, and authority of the state
5 revenue commissioner with respect to the foregoing; to provide an effective date; to provide
6 for applicability; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
10 imposition, rate, and computation of income tax, is amended by revising Code Section
11 48-7-40.26, relating to the income tax credit for qualified film, video, or digital production,
12 as follows:

13 "48-7-40.26.

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

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

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

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

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

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

31 (5) 'Production expenditures' means preproduction, production, and postproduction
32 expenditures incurred in this state that are directly used in a qualified production activity,
33 including without limitation the following: set construction and operation; wardrobes,
34 make-up, accessories, and related services; costs associated with photography and sound
35 synchronization, lighting, and related services and materials; editing and related services;
36 rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital
37 or tape editing, film processing, transfers of film to tape or digital format, sound mixing,
38 computer graphics services, special effects services, and animation services; total
39 aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel
40 company; insurance costs and bonding, if purchased through a Georgia based insurance
41 agency; and other direct costs of producing the project in accordance with generally
42 accepted entertainment industry practices. This term shall not include postproduction
43 expenditures for marketing and distribution.

44 (6) 'Qualified Georgia promotion' means a qualified promotion of this state approved by
45 the Department of Economic Development consisting of a:

46 (A) Qualified movie production which includes an approximately five-second long
47 animated logo that promotes Georgia within its presentation and all promotional trailers
48 worldwide for the life of the project;

49 (B) Qualified TV production which includes an imbedded five-second long Georgia
50 promotion during each broadcast half hour worldwide for the life of the project;

51 (C) Qualified music video which includes the Georgia logo at the end of each video
52 and within online promotions; or

53 (D) Qualified interactive game which includes a 15 second long Georgia advertisement
54 in units sold and imbedded in online promotions.

55 (7) 'Qualified production activities' means the production of new film, video, or digital
56 projects produced in this state and approved by the Department of Economic
57 Development, such as feature films, series, pilots, movies for television, commercial
58 advertisements, music videos, interactive entertainment or sound recording projects used
59 in feature films, series pilots, or movies for television. Such activities shall include
60 projects recorded in this state, in whole or in part, in either short or long form, animation
61 and music, fixed on a delivery system which includes without limitation film, videotape,
62 computer disc, laser disc, and any element of the digital domain, from which the program

63 is viewed or reproduced, and which is intended for multimarket commercial distribution
64 via theaters, licensing for exhibition by individual television stations, groups of stations,
65 networks, cable television stations, public broadcasting stations, corporations, live
66 venues, the Internet, or any other channel of exhibition. Such term shall not include the
67 production of television coverage of news and athletic events.

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

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

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

76 (A) With respect to a single employee, the portion of any salary which exceeds
77 \$500,000.00 for a single production shall not be included when calculating total
78 aggregate payroll; and

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

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

89 (1) The production company shall be allowed a tax credit equal to 20 percent of the base
90 investment in this state; and

91 (2) The production company shall be allowed an additional tax credit equal to 10 percent
92 of such base investment if the qualified production activity includes a qualified Georgia
93 promotion.

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

100 average of the annual total production expenditures for 2002, 2003, and 2004. The tax
101 credit shall be calculated as follows:

102 (1) If the excess base investment in this state equals or exceeds \$500,000.00, the
103 production company and its affiliates shall be allowed a tax credit of 20 percent of such
104 excess base investment; and

105 (2) The production company and its affiliates shall be allowed an additional tax credit
106 equal to 10 percent of the excess base investment if the qualified production activities
107 include a qualified Georgia promotion.

108 (e)(1) Where the amount of such credit or credits exceeds the production company's
109 liability or, pursuant to subsection (f) of this Code section and effective for tax years
110 beginning on or after January 1, 2011, a production company transferee's liability for
111 such taxes in a taxable year, the excess may be taken as a credit against such production
112 company's or transferee's quarterly or monthly payment under Code Section 48-7-103.
113 Each employee whose employer receives credit against such production company's or
114 transferee's quarterly or monthly payment under Code Section 48-7-103 shall receive
115 credit against his or her income tax liability under Code Section 48-7-20 for the
116 corresponding taxable year for the full amount which would be credited against such
117 liability prior to the application of the credit provided for in this subsection. Credits
118 against quarterly or monthly payments under Code Section 48-7-103 and credits against
119 liability under Code Section 48-7-20 established by this subsection shall not constitute
120 income to the production company or transferee.

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

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

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

- 136 (2) Such production company shall submit to the Department of Economic Development
137 and to the Department of Revenue a written notification of any transfer or sale of tax
138 credits within 30 days after the transfer or sale of such tax credits. The notification shall
139 include such production company's tax credit balance prior to transfer, the credit
140 certificate number, the remaining balance after transfer, all tax identification numbers for
141 each transferee, the date of transfer, the amount transferred, and any other information
142 required by the Department of Economic Development or the Department of Revenue;
- 143 (3) Failure to comply with this subsection shall result in the disallowance of the tax
144 credit until the production company is in full compliance;
- 145 (4) The transfer or sale of this tax credit does not extend the time in which such tax credit
146 can be used. The carry-forward period for tax credit that is transferred or sold shall begin
147 on the date on which the tax credit was originally earned;
- 148 (5) A transferee shall have only such rights to claim and use the tax credit that were
149 available to such production company at the time of the transfer, ~~except for the use of the~~
150 ~~credit in paragraph (1) of subsection (e) of this Code section.~~ To the extent that such
151 production company did not have rights to claim or use the tax credit at the time of the
152 transfer, the Department of Revenue shall either disallow the tax credit claimed by the
153 transferee or recapture the tax credit from the transferee. The transferee's recourse is
154 against such production company; and
- 155 (6) The transferee must acquire the tax credits in this Code section for a minimum of 60
156 percent of the amount of the tax credits so transferred.
- 157 (g) The credit granted under this Code section shall be subject to the following conditions
158 and limitations:
- 159 (1) The credit may be taken beginning with the taxable year in which the production
160 company has met the investment requirement. For each year in which such production
161 company either claims or transfers the credit, the production company shall attach a
162 schedule to the production company's Georgia income tax return which will set forth the
163 following information, as a minimum:
- 164 (A) A description of the qualified production activities, along with the certification
165 from the Department of Economic Development;
- 166 (B) A detailed listing of the employee names, social security numbers, and Georgia
167 wages when salaries are included in the base investment;
- 168 (C) The amount of tax credit claimed for the taxable year;
- 169 (D) Any tax credit previously taken by the production company against Georgia
170 income tax liabilities or the production company's quarterly or monthly payments under
171 Code Section 48-7-103;
- 172 (E) The amount of tax credit carried over from prior years;

- 173 (F) The amount of tax credit utilized by the production company in the current taxable
174 year; and
- 175 (G) The amount of tax credit to be carried over to subsequent tax years;
- 176 (2) In the initial year in which the production company claims the credit granted in this
177 Code section, the production company shall include in the description of the qualified
178 production activities required by subparagraph (A) of paragraph (1) of this subsection
179 information which demonstrates that the activities included in the base investment or
180 excess base investment equal or exceed \$500,000.00 during such year; and
- 181 (3) In no event shall the amount of the tax credit under this Code section for a taxable
182 year exceed the production company's income tax liability. Any unused credit amount
183 shall be allowed to be carried forward for five years from the close of the taxable year in
184 which the investment occurred. No such credit shall be allowed the production company
185 against prior years' tax liability.
- 186 (h) The Department of Economic Development shall determine through the promulgation
187 of rules and regulations what projects qualify for the tax credits authorized under this Code
188 section. Certification shall be submitted to the state revenue commissioner.
- 189 (i) The state revenue commissioner shall promulgate such rules and regulations as are
190 necessary to implement and administer this Code section.
- 191 (j) Any production company claiming, transferring, or selling the tax credit shall be
192 required to reimburse the Department of Revenue for any department initiated audits
193 relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer
194 which may include the review of the credit provided in this Code section."

195 **SECTION 2.**

196 This Act shall become effective January 1, 2011, and shall be applicable to all taxable years
197 beginning on or after January 1, 2011.

198 **SECTION 3.**

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