

House Bill 392

By: Representative Stephens of the 164<sup>th</sup>

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 taxes, so as to revise and change  
3 the income tax credit with respect to qualified film, video, or digital productions; to provide  
4 an effective date; to provide for applicability; to repeal conflicting laws; and for other  
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

12 48-7-40.26.

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

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

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

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

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

25 (4) 'Production company' means a company primarily engaged in qualified production  
26 activities which have been approved by the Department of Economic Development. This

27 term shall not mean or include any form of business owned, affiliated, or controlled, in  
 28 whole or in part, by any company or person which is in default on any tax obligation of  
 29 the state, or a loan made by the state or a loan guaranteed by the state.

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

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

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

48 (B) Qualified TV production which includes an imbedded five-second long Georgia  
 49 promotion during each broadcast half hour ~~worldwide~~ world wide for the life of the  
 50 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 shall be computed  
99 by taking the current year production expenditures in a state certified production and

100 subtracting the average of the annual total production expenditures for 2002, 2003, and  
 101 2004. The tax 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 for such taxes in a taxable year, the excess may be taken as a credit against such  
 110 production company's quarterly or monthly payment under Code Section 48-7-103. Each  
 111 employee whose employer receives credit against such production company's quarterly  
 112 or monthly payment under Code Section 48-7-103 shall receive credit against his or her  
 113 income tax liability under Code Section 48-7-20 for the corresponding taxable year for  
 114 the full amount which would be credited against such liability prior to the application of  
 115 the credit provided for in this subsection. Credits against quarterly or monthly payments  
 116 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20  
 117 established by this subsection shall not constitute income to the production company.

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

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

131 ~~(1) Such production company may make only a single transfer or sale of tax credits~~  
 132 ~~earned in a taxable year; however, the transfer or sale may involve~~ The production  
 133 company may sell its unused tax credits to one or more transferees purchasers in any  
 134 increment in any number of installments over one or more tax years; provided, however,  
 135 that no purchaser of tax credits shall subsequently resell, transfer, or assign such credits.  
 136 For purposes of this subsection, neither the allocation of credits by a partnership or any

137 legal entity taxed as a partnership for Georgia income tax purposes to its owners nor the  
 138 assignment of credits by a production company to an affiliated entity pursuant to Code  
 139 Section 48-7-42 shall constitute a sale of such credits;

140 (2) Such production company shall submit to the Department of Economic Development  
 141 and to the Department of Revenue a written notification of any transfer or sale of tax  
 142 credits within 30 days after the transfer or sale of such tax credits. The notification shall  
 143 include such production company's tax credit balance prior to transfer, the credit  
 144 certificate number, the remaining balance after transfer, all tax identification numbers for  
 145 each transferee, the date of transfer, the amount transferred, and any other information  
 146 required by the Department of Economic Development or the Department of Revenue;

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

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

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

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

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

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

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

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

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

- 173 (D) Any tax credit previously taken by the production company against Georgia  
174 income tax liabilities or the production company's quarterly or monthly payments under  
175 Code Section 48-7-103;
- 176 (E) The amount of tax credit carried over from prior years;
- 177 (F) The amount of tax credit utilized by the production company in the current taxable  
178 year; and
- 179 (G) The amount of tax credit to be carried over to subsequent tax years;
- 180 (2) In the initial year in which the production company claims the credit granted in this  
181 Code section, the production company shall include in the description of the qualified  
182 production activities required by subparagraph (A) of paragraph (1) of this subsection  
183 information which demonstrates that the activities included in the base investment or  
184 excess base investment equal or exceed \$500,000.00 during such year; and
- 185 (3) In no event shall the amount of the tax credit under this Code section for a taxable  
186 year exceed the production company's income tax liability. Any unused credit amount  
187 shall be allowed to be carried forward for five years from the close of the taxable year in  
188 which the investment occurred. No such credit shall be allowed the production company  
189 against prior years' tax liability.
- 190 (h) A production company may petition the state revenue commissioner to perform an  
191 audit of its tax credits claimed under this Code section prior to the filing of the production  
192 company's Georgia income tax return on which the credits will be claimed, subject to the  
193 following conditions and limitations:
- 194 (1) Within 30 days of filing a petition for a voluntary audit of its credits by a production  
195 company, the state revenue commissioner shall initiate an audit of the tax credits claimed  
196 by the production company under this Code section on such form or forms to be  
197 promulgated by the state revenue commissioner;
- 198 (2) An audit performed under this subsection shall be limited to the determination of the  
199 production company's proper credits under this Code section for a given tax year. Such  
200 an audit shall not preclude the state revenue commissioner from subsequently performing  
201 a full income tax audit of the production company except that the state revenue  
202 commissioner shall be bound by the findings of the audit performed under this subsection  
203 with regard to the production company's tax credits, absent a showing of fraud by the  
204 production company;
- 205 (3) Any changes to the production company's credits resulting from an audit under this  
206 subsection shall be treated as a proposed assessment against the production company  
207 subject to the protest procedures set out in Code Section 48-2-46; and
- 208 (4) A production company filing a petition for a voluntary audit of its tax credits under  
209 this Code section shall be required to reimburse the state revenue commissioner for the

210 cost of the audit by paying a filing fee with the petition equal to 0.1 percent of the credits  
211 claimed by the production company for purposes of the audit or \$5,000.00, whichever is  
212 less.

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

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

219 ~~(j)~~(k) Any production company claiming, transferring, or selling the tax credit shall be  
220 required to reimburse the Department of Revenue for any department initiated audits  
221 relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer  
222 which may include the review of the credit provided in this Code section or a voluntary  
223 audit of tax credits requested by a production company pursuant to subsection (h) of this  
224 Code section."

225 **SECTION 2.**

226 This Act shall become effective upon its approval by the Governor or upon its becoming law  
227 without such approval, and shall be applicable to all taxable years beginning on or after  
228 January 1, 2011.

229 **SECTION 3.**

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