

The House Committee on Ways and Means offers the following substitute to HB 1027:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to change certain provisions relating to the tax credit for film, video, or
3 interactive entertainment production in Georgia; to provide for related matters; to provide for
4 an effective date and applicability; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
8 amended by revising Code Section 48-7-40.26, relating to a tax credit for film or video
9 production in Georgia, as follows:

10 "48-7-40.26.

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

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

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

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

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

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

27 shall not mean or include any form of business owned, affiliated, or controlled, in whole
 28 or in part, by any company or person which is in default on any tax obligation of the state,
 29 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 footage shot outside the State of Georgia, marketing, story rights, or and
 43 distribution, but shall not affect other qualified story rights. This term includes payments
 44 to a loan-out company by a production company or qualified interactive entertainment
 45 production company that has met its withholding tax obligations as set out below. The
 46 production company or qualified interactive entertainment production company shall
 47 withhold Georgia income tax at the rate of 6 percent on all payments to loan-out
 48 companies for services performed in Georgia. Any amounts so withheld shall be deemed
 49 to have been withheld by the loan-out company on wages paid to its employees for
 50 services performed in Georgia pursuant to Article 5 of Chapter 7 of this title
 51 notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code
 52 Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's
 53 employees based on the payments made to the loan-out company's employees for services
 54 performed in Georgia. For purposes of this chapter, loan-out company nonresident
 55 employees performing services in Georgia shall be considered taxable nonresidents and
 56 the loan-out company shall be subject to income taxation in the taxable year in which the
 57 loan-out company's employees perform services in Georgia, notwithstanding any other
 58 provisions in this chapter. Such withholding liability shall be subject to penalties and
 59 interest in the same manner as the employee withholding taxes imposed by Article 5 of
 60 Chapter 7 and the commissioner shall provide by regulation the manner in which such
 61 liability shall be assessed and collected.

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

64 (A) Qualified movie production which includes ~~an approximately~~ a five-second long
 65 static or animated logo that promotes Georgia ~~within its presentation and all~~
 66 ~~promotional trailers worldwide~~ in the end credits before the below-the-line crew crawl
 67 for the life of the project and which includes a link to Georgia on the project's web
 68 page;

69 (B) Qualified TV production which includes an ~~imbedded~~ embedded five-second long
 70 Georgia promotion during each broadcast ~~half hour~~ worldwide for the life of the project
 71 and which includes a link to Georgia on the project's web page;

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

74 (D) Qualified interactive game which includes a 15 second long Georgia advertisement
 75 in units sold and ~~imbedded~~ embedded in online promotions.

76 (7) 'Qualified interactive entertainment production company' means a company whose
 77 gross income is less than \$100 million that is primarily engaged in qualified production
 78 activities related to interactive entertainment which has been approved by the Department
 79 of Economic Development. This term shall not mean or include any form of business
 80 owned, affiliated, or controlled, in whole or in part, by any company or person which is
 81 in default on any tax obligation of the state, or a loan made by the state or a loan
 82 guaranteed by the state.

83 ~~(7)~~(8) 'Qualified production activities' means the production of new film, video, or digital
 84 projects produced in this state and approved by the Department of Economic
 85 Development, ~~such as~~ including only the following: feature films, series, pilots, movies
 86 for television, televised commercial advertisements, music videos, interactive
 87 entertainment or sound recording projects used in feature films, series, pilots, or movies
 88 for television. Such activities shall include projects recorded in this state, in whole or in
 89 part, in either short or long form, animation and music, fixed on a delivery system which
 90 includes without limitation film, videotape, computer disc, laser disc, and any element
 91 of the digital domain, from which the program is viewed or reproduced, and which is
 92 intended for multimarket commercial distribution via theaters, video on demand, direct
 93 to DVD, licensing for exhibition by individual television stations, groups of stations,
 94 networks, cable television stations, or public broadcasting stations, ~~corporations, live~~
 95 ~~venues, the Internet, or any other channel of exhibition.~~ Such term shall not include the
 96 ~~production of television~~ coverage of news and athletic events, local interest
 97 programming, instructional videos, corporate videos, or projects not shot, recorded, or
 98 originally created in Georgia.

99 ~~(8)~~(9) 'Resident' means an individual as designated pursuant to paragraph (10) of Code
 100 Section 48-7-1, as amended.

101 ~~(9)~~(10) 'State certified production' means a production engaged in qualified production
 102 activities which have been approved by the Department of Economic Development in
 103 accordance with regulations promulgated pursuant to this Code section. In the instance
 104 of a 'work for hire' in which one production company or qualified interactive
 105 entertainment production company hires another production company or qualified
 106 interactive entertainment production company to produce a project or contribute elements
 107 of a project for pay, the hired company shall be considered a service provider for the
 108 hiring company, and the hiring company shall be entitled to the film tax credit.

109 ~~(10)~~(11) 'Total aggregate payroll' means the total sum expended by a production
 110 company or qualified interactive entertainment production company on salaries paid to
 111 employees working within this state in a state certified production or productions. For
 112 purposes of this paragraph:

113 (A) With respect to a single employee, the portion of any salary which exceeds
 114 \$500,000.00 for a single production shall not be included when calculating total
 115 aggregate payroll; and

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

119 (c) For any production company or qualified interactive entertainment production
 120 company and its affiliates that invest in a state certified production approved by the
 121 Department of Economic Development and whose average annual total production
 122 expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall
 123 be allowed an income tax credit against the tax imposed under this article. The tax credit
 124 under this subsection shall be allowed if the base investment in this state equals or exceeds
 125 \$500,000.00 for qualified production activities and shall be calculated as follows:

126 (1) The production company or qualified interactive entertainment production company
 127 shall be allowed a tax credit equal to 20 percent of the base investment in this state; and

128 (2) The production company or qualified interactive entertainment production company
 129 shall be allowed an additional tax credit equal to 10 percent of such base investment if
 130 the qualified production activity includes a qualified Georgia promotion. If the inclusion
 131 of the Georgia promotional logo is prohibited by the Children's Television Act, any other
 132 local, state, or federal government policy, or cannot be satisfied due to prior contractual
 133 agreements, the production company or qualified interactive entertainment production
 134 company may offer alternative marketing opportunities to be evaluated by the Georgia
 135 Department of Economic Development to ensure that they offer equal or greater
 136 promotional value to the State of Georgia.

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

146 (1) If the excess base investment in this state equals or exceeds \$500,000.00, the
 147 production company or qualified interactive entertainment production company and its
 148 affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and

149 (2) The production company or qualified interactive entertainment production company
 150 and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess
 151 base investment if the qualified production activities include a qualified Georgia
 152 promotion. If the inclusion of the Georgia promotional logo is prohibited by the
 153 Children's Television Act, any other local, state, or federal government policy, or cannot
 154 be satisfied due to prior contractual agreements, the production company or qualified
 155 interactive entertainment production company may offer marketing opportunities to be
 156 evaluated by the Georgia Department of Economic Development to ensure that they offer
 157 equal or greater promotional value to the State of Georgia.

158 (e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
 159 section for qualified interactive entertainment production companies and affiliates exceed
 160 \$25 million. The maximum credit for any qualified interactive entertainment production
 161 company and its affiliates shall be \$5 million.

162 (2) The commissioner shall allow the tax credits for qualified interactive entertainment
 163 production companies on a first come, first served basis based on the date the credits are
 164 claimed. When the \$25 million cap is reached, the tax credit for qualified interactive
 165 entertainment production companies shall expire.

166 (e)(f)(1) Where the amount of such credit or credits exceeds the production company's
 167 or qualified interactive entertainment production company's liability for such taxes in a
 168 taxable year, the excess may be taken as a credit against such production company's or
 169 qualified interactive entertainment production company's quarterly or monthly payment
 170 under Code Section 48-7-103. Each employee whose employer receives credit against
 171 such production company's or qualified interactive entertainment production company's
 172 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against
 173 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable

174 year for the full amount which would be credited against such liability prior to the
 175 application of the credit provided for in this subsection. Credits against quarterly or
 176 monthly payments under Code Section 48-7-103 and credits against liability under Code
 177 Section 48-7-20 established by this subsection shall not constitute income to the
 178 production company or qualified interactive entertainment production company.

179 (2) If a production company and its affiliates, or a qualified interactive entertainment
 180 production company and its affiliates, claim the credit authorized under Code Section
 181 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its
 182 affiliates, or the qualified interactive entertainment production company and its affiliates,
 183 will only be allowed to claim the credit authorized under this Code section to the extent
 184 that the Georgia resident employees included in the credit calculation authorized under
 185 this Code section and taken by the production company and its affiliates, or the qualified
 186 interactive entertainment production company and its affiliates, on such tax return under
 187 this Code section have been permanently excluded from the credit authorized under Code
 188 Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

189 ~~(f)~~(g) Any tax credits with respect to a state certified production earned by a production
 190 company or qualified interactive entertainment production company and previously
 191 claimed but not used by such production company or qualified interactive entertainment
 192 production company against its income tax may be transferred or sold in whole or in part
 193 by such production company or qualified interactive entertainment production company
 194 to another Georgia taxpayer, subject to the following conditions:

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

198 (2) Such production company or qualified interactive entertainment production company
 199 shall submit to the Department of Economic Development and to the Department of
 200 Revenue a written notification of any transfer or sale of tax credits within 30 days after
 201 the transfer or sale of such tax credits. The notification shall include such production
 202 company's or qualified interactive entertainment production company's tax credit balance
 203 prior to transfer, the credit certificate number, the remaining balance after transfer, all tax
 204 identification numbers for each transferee, the date of transfer, the amount transferred,
 205 and any other information required by the Department of Economic Development or the
 206 Department of Revenue;

207 (3) Failure to comply with this subsection shall result in the disallowance of the tax
 208 credit until the production company or qualified interactive entertainment production
 209 company is in full compliance;

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

213 (5) A transferee shall have only such rights to claim and use the tax credit that were
 214 available to such production company or qualified interactive entertainment production
 215 company at the time of the transfer, except for the use of the credit in paragraph (1) of
 216 subsection ~~(e)~~(f) of this Code section. To the extent that such production company or
 217 qualified interactive entertainment production company did not have rights to claim or
 218 use the tax credit at the time of the transfer, the Department of Revenue shall either
 219 disallow the tax credit claimed by the transferee or recapture the tax credit from the
 220 transferee. The transferee's recourse is against such production company or qualified
 221 interactive entertainment production company; and

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

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

226 (1) The credit may be taken beginning with the taxable year in which the production
 227 company or qualified interactive entertainment production company has met the
 228 investment requirement. For each year in which such production company or qualified
 229 interactive entertainment production company either claims or transfers the credit, the
 230 production company or qualified interactive entertainment production company shall
 231 attach a schedule to the production company's or qualified interactive entertainment
 232 production company's Georgia income tax return which will set forth the following
 233 information, as a minimum:

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

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

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

239 (D) Any tax credit previously taken by the production company or qualified interactive
 240 entertainment production company against Georgia income tax liabilities or the
 241 production company's or qualified interactive entertainment production company's
 242 quarterly or monthly payments under Code Section 48-7-103;

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

244 (F) The amount of tax credit utilized by the production company or qualified
 245 interactive entertainment production company in the current taxable year; and

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

247 (2) In the initial year in which the production company or qualified interactive
 248 entertainment production company claims the credit granted in this Code section, the
 249 production company or qualified interactive entertainment production company shall
 250 include in the description of the qualified production activities required by subparagraph
 251 (A) of paragraph (1) of this subsection information which demonstrates that the activities
 252 included in the base investment or excess base investment equal or exceed \$500,000.00
 253 during such year; and

254 (3) In no event shall the amount of the tax credit under this Code section for a taxable
 255 year exceed the production company's or qualified interactive entertainment production
 256 company's income tax liability. Any unused credit amount shall be allowed to be carried
 257 forward for five years from the close of the taxable year in which the investment
 258 occurred. No such credit shall be allowed the production company or qualified
 259 interactive entertainment production company against prior years' tax liability.

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

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

266 ~~(j)~~(k) Any production company or qualified interactive entertainment production company
 267 claiming, transferring, or selling the tax credit shall be required to reimburse the
 268 Department of Revenue for any department initiated audits relating to the tax credit. This
 269 subsection shall not apply to routine tax audits of a taxpayer which may include the review
 270 of the credit provided in this Code section."

271 **SECTION 2.**

272 This Act shall become effective upon its approval by the Governor or upon its becoming law
 273 without such approval and shall be applicable to all tax years beginning on or after January
 274 1, 2013.

275 **SECTION 3.**

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