

House Bill 1027 (AS PASSED HOUSE AND SENATE)

By: Representatives Stephens of the 164th, Parrish of the 156th, Carter of the 175th, Hatchett of the 143rd, and Dollar of the 45th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
2 income taxes, so as to change certain definitions relating to the job tax credit; to change
3 certain provisions relating to the tax credit for film, video, or interactive entertainment
4 production in Georgia; to provide for related matters; to provide for an effective date and
5 applicability; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
9 is amended in Code Section 48-7-40.24, relating to conditions for taking the job tax credit,
10 by adding a new paragraph and revising paragraph (1) of subsection (a) as follows:

11 "(1) 'Affiliate' means the members of a business enterprise's affiliated group within the
12 meaning of Section 1504(a) of the Internal Revenue Code and also means any entity,
13 notwithstanding its form of organization, that would otherwise qualify as a member of
14 such affiliated group.

15 (1) 'Business enterprise' or 'taxpayer' means any enterprise or organization, whether
16 corporation, partnership, limited liability company, proprietorship, association, trust,
17 business trust, real estate trust, or other form of organization, and its affiliates, which ~~is~~
18 are registered and authorized to use the federal employment verification system known
19 as 'E-Verify' or any successor federal employment verification system and ~~is~~ are engaged
20 in or carrying on any business activities within this state, except that such term shall not
21 include retail businesses."

22 **SECTION 2.**

23 Said chapter is further amended by revising Code Section 48-7-40.26, relating to a tax credit
24 for film or video production in Georgia, as follows:

25 "48-7-40.26.

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

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

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

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

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

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

45 (5) 'Production expenditures' means preproduction, production, and postproduction
46 expenditures incurred in this state that are directly used in a qualified production activity,
47 including without limitation the following: set construction and operation; wardrobes,
48 make-up, accessories, and related services; costs associated with photography and sound
49 synchronization, expenditures excluding license fees incurred with Georgia companies
50 for sound recordings and musical compositions, lighting, and related services and
51 materials; editing and related services; rental of facilities and equipment; leasing of
52 vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of
53 film to tape or digital format, sound mixing, computer graphics services, special effects
54 services, and animation services; total aggregate payroll; airfare, if purchased through a
55 Georgia ~~based~~ travel agency or travel company; insurance costs and bonding, if
56 purchased through a Georgia ~~based~~ insurance agency; and other direct costs of producing
57 the project in accordance with generally accepted entertainment industry practices. This
58 term shall not include postproduction expenditures for footage shot outside the State of
59 Georgia, marketing, story rights, or ~~and~~ distribution, but shall not affect other qualified
60 story rights. This term includes payments to a loan-out company by a production
61 company or qualified interactive entertainment production company that has met its

62 withholding tax obligations as set out below. The production company or qualified
 63 interactive entertainment production company shall withhold Georgia income tax at the
 64 rate of 6 percent on all payments to loan-out companies for services performed in
 65 Georgia. Any amounts so withheld shall be deemed to have been withheld by the
 66 loan-out company on wages paid to its employees for services performed in Georgia
 67 pursuant to Article 5 of Chapter 7 of this title notwithstanding the exclusion provided in
 68 subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld
 69 shall be allocated to the loan-out company's employees based on the payments made to
 70 the loan-out company's employees for services performed in Georgia. For purposes of
 71 this chapter, loan-out company nonresident employees performing services in Georgia
 72 shall be considered taxable nonresidents and the loan-out company shall be subject to
 73 income taxation in the taxable year in which the loan-out company's employees perform
 74 services in Georgia, notwithstanding any other provisions in this chapter. Such
 75 withholding liability shall be subject to penalties and interest in the same manner as the
 76 employee withholding taxes imposed by Article 5 of Chapter 7 and the commissioner
 77 shall provide by regulation the manner in which such liability shall be assessed and
 78 collected.

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

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

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

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

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

93 (7) 'Qualified interactive entertainment production company' means a company whose
 94 gross income is less than \$100 million that is primarily engaged in qualified production
 95 activities related to interactive entertainment which has been approved by the Department
 96 of Economic Development. This term shall not mean or include any form of business
 97 owned, affiliated, or controlled, in whole or in part, by any company or person which is

98 in default on any tax obligation of the state, or a loan made by the state or a loan
 99 guaranteed by the state.

100 ~~(7)~~(8) 'Qualified production activities' means the production of new film, video, or digital
 101 projects produced in this state and approved by the Department of Economic
 102 Development, ~~such as~~ including only the following: feature films, series, pilots, movies
 103 for television, televised commercial advertisements, music videos, interactive
 104 entertainment or sound recording projects used in feature films, series, pilots, or movies
 105 for television. Such activities shall include projects recorded in this state, in whole or in
 106 part, in either short or long form, animation and music, fixed on a delivery system which
 107 includes without limitation film, videotape, computer disc, laser disc, and any element
 108 of the digital domain, from which the program is viewed or reproduced, and which is
 109 intended for multimarket commercial distribution via theaters, video on demand, direct
 110 to DVD, digital platforms designed for the distribution of interactive games, licensing for
 111 exhibition by individual television stations, groups of stations, networks, advertiser
 112 supported sites, cable television stations, or public broadcasting stations, corporations,
 113 live venues, the Internet, or any other channel of exhibition. Such term shall not include
 114 the production of television coverage of news and athletic events, local interest
 115 programming, instructional videos, corporate videos, or projects not shot, recorded, or
 116 originally created in Georgia.

117 ~~(8)~~(9) 'Resident' means an individual as designated pursuant to paragraph (10) of Code
 118 Section 48-7-1, as amended.

119 ~~(9)~~(10) 'State certified production' means a production engaged in qualified production
 120 activities which have been approved by the Department of Economic Development in
 121 accordance with regulations promulgated pursuant to this Code section. In the instance
 122 of a 'work for hire' in which one production company or qualified interactive
 123 entertainment production company hires another production company or qualified
 124 interactive entertainment production company to produce a project or contribute elements
 125 of a project for pay, the hired company shall be considered a service provider for the
 126 hiring company, and the hiring company shall be entitled to the film tax credit.

127 ~~(10)~~(11) 'Total aggregate payroll' means the total sum expended by a production
 128 company or qualified interactive entertainment production company on salaries paid to
 129 employees working within this state in a state certified production or productions. For
 130 purposes of this paragraph:

131 (A) With respect to a single employee, the portion of any salary which exceeds
 132 \$500,000.00 for a single production shall not be included when calculating total
 133 aggregate payroll; and

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

137 (c) 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 did not exceed \$30 million for 2002, 2003, and 2004, there shall
 141 be allowed an income tax credit against the tax imposed under this article. The tax credit
 142 under this subsection shall be allowed if the base investment in this state equals or exceeds
 143 \$500,000.00 for qualified production activities and shall be calculated as follows:

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

146 (2)(A) The production company or qualified interactive entertainment production
 147 company shall be allowed an additional tax credit equal to 10 percent of such base
 148 investment if the qualified production activity includes a qualified Georgia promotion.
 149 In lieu of the inclusion of the Georgia promotional logo, the production company or
 150 qualified interactive entertainment production company may offer alternative marketing
 151 opportunities to be evaluated by the Georgia Department of Economic Development
 152 to ensure that they offer equal or greater promotional value to the State of Georgia.

153 (B) The Department of Economic Development shall prepare an annual report detailing
 154 the marketing opportunities it has approved under the provisions of subparagraph (A)
 155 of this paragraph. The report shall include, but not be limited to:

156 (i) The goals and strategy behind each marketing opportunity approved pursuant to
 157 the provisions of subparagraph (A) of this paragraph;

158 (ii) The names of all production companies approved by the Department of Economic
 159 Development to provide alternative marketing opportunities;

160 (iii) The estimated value to the state of each approved alternative marketing
 161 opportunity compared to the estimated value of the Georgia promotional logo; and

162 (iv) The names of all production companies who chose to include the Georgia
 163 promotional logo in their final production instead of offering the state an alternative
 164 marketing proposal.

165 The report required under this paragraph shall be completed no later than January 1 of
 166 each year and presented to each member of the House Committee on Ways and Means,
 167 the Senate Finance Committee, the Senate Economic Development Committee, the
 168 House Committee on Economic Development and Tourism, and the Governor.

169 (d) For any production company or qualified interactive entertainment production
 170 company and its affiliates that invest in a state certified production approved by the

171 Department of Economic Development and whose average annual total production
 172 expenditures in this state exceeded \$30 million for 2002, 2003, and 2004, there shall be
 173 allowed an income tax credit against the tax imposed under this article. For purposes of
 174 this subsection, the excess base investment in this state is computed by taking the current
 175 year production expenditures in a state certified production and subtracting the average of
 176 the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be
 177 calculated as follows:

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

181 (2)(A) The production company or qualified interactive entertainment production
 182 company and its affiliates shall be allowed an additional tax credit equal to 10 percent
 183 of the excess base investment if the qualified production activities include a qualified
 184 Georgia promotion. In lieu of the inclusion of the Georgia promotional logo, the
 185 production company or qualified interactive entertainment production company may
 186 offer marketing opportunities to be evaluated by the Department of Economic
 187 Development to ensure that they offer equal or greater promotional value to the State
 188 of Georgia.

189 (B) The Department of Economic Development shall prepare an annual report detailing
 190 the marketing opportunities it has approved under the provisions of subparagraph (A)
 191 of this paragraph. The report shall include, but not be limited to:

192 (i) The goals and strategy behind each marketing opportunity approved pursuant to
 193 the provisions of subparagraph (A) of this paragraph;

194 (ii) The names of all production companies approved by the Department of Economic
 195 Development to provide alternative marketing opportunities;

196 (iii) The estimated value to the state of each approved alternative marketing
 197 opportunity compared to the estimated value of the Georgia promotional logo; and

198 (iv) The names of all production companies who chose to include the Georgia
 199 promotional logo in their final production instead of offering the state an alternative
 200 marketing proposal.

201 The report required under this paragraph shall be completed no later than January 1 of
 202 each year and presented to each member of the House Committee on Ways and Means,
 203 the Senate Finance Committee, the Senate Economic Development Committee, the
 204 House Committee on Economic Development and Tourism, and the Governor.

205 (e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
 206 section for qualified interactive entertainment production companies and affiliates exceed

207 \$25 million. The maximum credit for any qualified interactive entertainment production
 208 company and its affiliates shall be \$5 million.

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

213 ~~(e)~~(f)(1) Where the amount of such credit or credits exceeds the production company's
 214 or qualified interactive entertainment production company's liability for such taxes in a
 215 taxable year, the excess may be taken as a credit against such production company's or
 216 qualified interactive entertainment production company's quarterly or monthly payment
 217 under Code Section 48-7-103. Each employee whose employer receives credit against
 218 such production company's or qualified interactive entertainment production company's
 219 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against
 220 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable
 221 year for the full amount which would be credited against such liability prior to the
 222 application of the credit provided for in this subsection. Credits against quarterly or
 223 monthly payments under Code Section 48-7-103 and credits against liability under Code
 224 Section 48-7-20 established by this subsection shall not constitute income to the
 225 production company or qualified interactive entertainment production company.

226 (2) If a production company and its affiliates, or a qualified interactive entertainment
 227 production company and its affiliates, claim the credit authorized under Code Section
 228 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its
 229 affiliates, or the qualified interactive entertainment production company and its affiliates,
 230 will only be allowed to claim the credit authorized under this Code section to the extent
 231 that the Georgia resident employees included in the credit calculation authorized under
 232 this Code section and taken by the production company and its affiliates, or the qualified
 233 interactive entertainment production company and its affiliates, on such tax return under
 234 this Code section have been permanently excluded from the credit authorized under Code
 235 Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

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

245 (2) Such production company or qualified interactive entertainment production company
 246 shall submit to the Department of Economic Development and to the Department of
 247 Revenue a written notification of any transfer or sale of tax credits within 30 days after
 248 the transfer or sale of such tax credits. The notification shall include such production
 249 company's or qualified interactive entertainment production company's tax credit balance
 250 prior to transfer, the credit certificate number, the remaining balance after transfer, all tax
 251 identification numbers for each transferee, the date of transfer, the amount transferred,
 252 and any other information required by the Department of Economic Development or the
 253 Department of Revenue;

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

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

260 (5) A transferee shall have only such rights to claim and use the tax credit that were
 261 available to such production company or qualified interactive entertainment production
 262 company at the time of the transfer, except for the use of the credit in paragraph (1) of
 263 subsection ~~(e)~~(f) of this Code section. To the extent that such production company or
 264 qualified interactive entertainment production company did not have rights to claim or
 265 use the tax credit at the time of the transfer, the Department of Revenue shall either
 266 disallow the tax credit claimed by the transferee or recapture the tax credit from the
 267 transferee. The transferee's recourse is against such production company or qualified
 268 interactive entertainment production company; and

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

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

273 (1) The credit may be taken beginning with the taxable year in which the production
 274 company or qualified interactive entertainment production company has met the
 275 investment requirement. For each year in which such production company or qualified
 276 interactive entertainment production company either claims or transfers the credit, the
 277 production company or qualified interactive entertainment production company shall
 278 attach a schedule to the production company's or qualified interactive entertainment

279 production company's Georgia income tax return which will set forth the following
280 information, as a minimum:

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

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

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

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

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

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

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

294 (2) In the initial year in which the production company or qualified interactive
295 entertainment production company claims the credit granted in this Code section, the
296 production company or qualified interactive entertainment production company shall
297 include in the description of the qualified production activities required by subparagraph
298 (A) of paragraph (1) of this subsection information which demonstrates that the activities
299 included in the base investment or excess base investment equal or exceed \$500,000.00
300 during such year; and

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

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

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

313 ~~(j)~~(k) Any production company or qualified interactive entertainment production company
314 claiming, transferring, or selling the tax credit shall be required to reimburse the
315 Department of Revenue for any department initiated audits relating to the tax credit. This

316 subsection shall not apply to routine tax audits of a taxpayer which may include the review
317 of the credit provided in this Code section."

318 **SECTION 3.**

319 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
320 law without such approval.

321 (b) Section 1 of this Act shall be applicable to all tax years beginning on or after January 1,
322 2012.

323 (c) Section 2 of this Act shall be applicable to all tax years beginning on or after January 1,
324 2013.

325 **SECTION 4.**

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