

House Bill 285 (COMMITTEE SUBSTITUTE)

By: Representatives Stephens of the 164<sup>th</sup> and England of the 116<sup>th</sup>

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, computation, and exemptions from state income taxation, so as to provide for an additional entertainment tax credit for certain entities and to change certain qualifications for such a credit; to provide for procedures, conditions, and limitations; to provide for definitions; to provide for related matters; to provide for an effective date and applicability; 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, computation, and exemptions from state income taxation, is amended by adding a new Code section to read as follows:

"48-7-40.26A.

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

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

(1) 'Affiliates' means those entities that are included in the qualified 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 qualified 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 paid 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, expenditures excluding license fees incurred with Georgia companies for sound recordings and musical compositions, 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 travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include marketing, story rights, or distribution, but shall not affect other qualified story rights. This term includes payments to a loan-out company by a qualified production company that has met its withholding tax obligations as set out below. The qualified production company shall withhold Georgia income tax at the rate of 6 percent on all payments to loan-out companies for services performed in Georgia. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of this title notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of this chapter, loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of Chapter 7 of this title and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.

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

(A) Qualified movie production which includes a five-second long static or animated logo that promotes Georgia in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to Georgia on the project's web page;

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

(C) Qualified music video which includes the Georgia logo at the end of each video and within online promotions.

(7) '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, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, 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, video on demand, direct to DVD, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, corporate videos, or projects not originally created in Georgia.

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

(9) '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. In the instance of a 'work for hire' in which one qualified production company hires another qualified production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the tax credit under this Code section.

(10) 'Total aggregate payroll' means the total sum expended by a qualified 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 \$80,000.00 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 qualified production company and its affiliates that invest in a state certified production approved by the Department of Economic Development, 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 is less than \$500,000.00 for qualified production activities and shall be calculated as follows:

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

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

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

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

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

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

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

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

(d)(1) In no event shall the aggregate amount of tax credits allowed under this Code section for qualified production companies and affiliates exceed \$6 million for any single taxable year. The maximum credit for any single qualified production company and its affiliates shall be \$150,000.00 for any taxable year. When the \$6 million cap is reached, the tax credit for qualified production companies shall expire for such taxable years.

(2) Qualified production companies seeking to claim a tax credit under the provisions of this Code section shall submit an application to the commissioner for preapproval of such tax credit. The commissioner shall be authorized to promulgate any rules and regulations and forms necessary to implement and administer the provisions of this Code section. The commissioner shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(3) Before the Department of Economic Development issues its approval to the qualified production company for the qualified production activities, the qualified production company must certify to the department that it maintains a business location physically located in this state.

(e)(1) Where the amount of such credit or credits exceeds the qualified production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such qualified production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such qualified 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 qualified production company.

(2) If a qualified production company and its affiliates claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, 48-7-40.18, or 48-7-40.26, then the qualified 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 qualified 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, 48-7-40.18, or 48-7-40.26.

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

(1) Such qualified 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 qualified 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 qualified 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 qualified 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 qualified 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 qualified 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 qualified 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 qualified production company has met the investment requirement. For each year in which such qualified production company either claims or transfers the credit, the qualified production company shall attach a schedule to the qualified 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 qualified production company against Georgia income tax liabilities or the qualified 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 qualified 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 qualified production company claims the credit granted in this Code section, the qualified 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 are equal to or less than \$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 qualified 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 qualified 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 qualified 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 2.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and be applicable to tax years beginning on or after January 1, 2016.

## **SECTION 3.**

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