

The Senate Committee on Finance offered the following substitute to HB 285:

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, computation of income taxes, and exemptions, so as to
3 provide for tax credits for certain entities and to provide for certain qualifications for such
4 a credit; to provide for procedures, conditions, and limitations; to provide for definitions; to
5 provide for related matters; to provide for an effective date and applicability; to repeal
6 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
10 imposition, rate, computation of income taxes, and exemptions, is amended by adding a new
11 Code section to read as follows:

12 "48-7-40.26A.

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

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

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

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

23 (3) 'Multimarket commercial distribution' means paid commercial distribution which
24 extends 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, expenditures excluding license fees incurred with Georgia companies
35 for sound recordings and musical compositions, lighting, and related services and
36 materials; editing and related services; rental of facilities and equipment; leasing of
37 vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of
38 film to tape or digital format, sound mixing, computer graphics services, special effects
39 services, and animation services; total aggregate payroll; airfare, if purchased through a
40 Georgia travel agency or travel company; insurance costs and bonding, if purchased
41 through a Georgia insurance agency; and other direct costs of producing the project in
42 accordance with generally accepted entertainment industry practices. This term shall not
43 include marketing, story rights, or distribution, but shall not affect other qualified story
44 rights. This term includes payments to a loan-out company by a qualified production
45 company that has met its withholding tax obligations as set out below. The qualified
46 production company shall withhold Georgia income tax at the rate of 6 percent on all
47 payments to loan-out companies for services performed in Georgia. Any amounts so
48 withheld shall be deemed to have been withheld by the loan-out company on wages paid
49 to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of
50 this title notwithstanding the exclusion provided in subparagraph (K) of paragraph (10)
51 of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out
52 company's employees based on the payments made to the loan-out company's employees
53 for services performed in Georgia. For purposes of this chapter, loan-out company
54 nonresident employees performing services in Georgia shall be considered taxable
55 nonresidents and the loan-out company shall be subject to income taxation in the taxable
56 year in which the loan-out company's employees perform services in Georgia,
57 notwithstanding any other provisions in this chapter. Such withholding liability shall be
58 subject to penalties and interest in the same manner as the employee withholding taxes
59 imposed by Article 5 of Chapter 7 of this title and the commissioner shall provide by
60 regulation the manner in which such liability shall be assessed and collected.

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

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

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

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

71 (7) 'Qualified production activities' means the production of new film, video, or digital
72 projects produced in this state and approved by the Department of Economic
73 Development, including only the following: feature films, series, pilots, movies for
74 television, televised commercial advertisements, music videos, sound recording projects
75 used in feature films, series, pilots, or movies for television. Such activities shall include
76 projects recorded in this state, in whole or in part, in either short or long form, animation
77 and music, fixed on a delivery system which includes without limitation film, videotape,
78 computer disc, laser disc, and any element of the digital domain, from which the program
79 is viewed or reproduced, and which is intended for multimarket commercial distribution
80 via theaters, video on demand, direct to DVD, licensing for exhibition by individual
81 television stations, groups of stations, networks, advertiser supported sites, cable
82 television stations, or public broadcasting stations. Such term shall not include the
83 coverage of news and athletic events, local interest programming, instructional videos,
84 corporate videos, or projects not originally created in Georgia.

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

87 (9) 'State certified production' means a production engaged in qualified production
88 activities which have been approved by the Department of Economic Development in
89 accordance with regulations promulgated pursuant to this Code section. In the instance
90 of a 'work for hire' in which one qualified production company hires another qualified
91 production company to produce a project or contribute elements of a project for pay, the
92 hired company shall be considered a service provider for the hiring company, and the
93 hiring company shall be entitled to the tax credit under this Code section.

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

97 (A) With respect to a single employee, the portion of any salary which exceeds
98 \$80,000.00 for a single production shall not be included when calculating total
99 aggregate payroll; and

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

103 (c) For any qualified production company and its affiliates that invest in a state certified
104 production approved by the Department of Economic Development, there shall be allowed
105 an income tax credit against the tax imposed under this article. The tax credit under this
106 subsection shall be allowed if the base investment in this state equals or is less than
107 \$500,000.00 for qualified production activities and shall be calculated as follows:

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

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

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

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

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

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

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

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

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

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

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

150 (e)(1) Where the amount of such credit or credits exceeds the qualified production
151 company's liability for such taxes in a taxable year, the excess may be taken as a credit
152 against such qualified production company's quarterly or monthly payment under Code
153 Section 48-7-103. Each employee whose employer receives credit against such qualified
154 production company's quarterly or monthly payment under Code Section 48-7-103 shall
155 receive credit against his or her income tax liability under Code Section 48-7-20 for the
156 corresponding taxable year for the full amount which would be credited against such
157 liability prior to the application of the credit provided for in this subsection. Credits
158 against quarterly or monthly payments under Code Section 48-7-103 and credits against
159 liability under Code Section 48-7-20 established by this subsection shall not constitute
160 income to the qualified production company.

161 (2) If a qualified production company and its affiliates claim the credit authorized under
162 Code Section 48-7-40, 48-7-40.1, 48-7-40.17, 48-7-40.18, or 48-7-40.26, then the
163 qualified production company and its affiliates will only be allowed to claim the credit
164 authorized under this Code section to the extent that the Georgia resident employees
165 included in the credit calculation authorized under this Code section and taken by the
166 qualified production company and its affiliates on such tax return under this Code section
167 have been permanently excluded from the credit authorized under Code Section 48-7-40,
168 48-7-40.1, 48-7-40.17, 48-7-40.18, or 48-7-40.26.

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

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

177 (2) Such qualified production company shall submit to the Department of Economic
178 Development and to the Department of Revenue a written notification of any transfer or
179 sale of tax credits within 30 days after the transfer or sale of such tax credits. The
180 notification shall include such qualified production company's tax credit balance prior to
181 transfer, the credit certificate number, the remaining balance after transfer, all tax
182 identification numbers for each transferee, the date of transfer, the amount transferred,
183 and any other information required by the Department of Economic Development or the
184 Department of Revenue;

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

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

190 (5) A transferee shall have only such rights to claim and use the tax credit that were
191 available to such qualified production company at the time of the transfer, except for the
192 use of the credit in paragraph (1) of subsection (e) of this Code section. To the extent that
193 such qualified production company did not have rights to claim or use the tax credit at the
194 time of the transfer, the Department of Revenue shall either disallow the tax credit
195 claimed by the transferee or recapture the tax credit from the transferee. The transferee's
196 recourse is against such qualified production company; and

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

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

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

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

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

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

- 211 (D) Any tax credit previously taken by the qualified production company against
 212 Georgia income tax liabilities or the qualified production company's quarterly or
 213 monthly payments under Code Section 48-7-103;
 214 (E) The amount of tax credit carried over from prior years;
 215 (F) The amount of tax credit utilized by the qualified production company in the
 216 current taxable year; and
 217 (G) The amount of tax credit to be carried over to subsequent tax years;
 218 (2) In the initial year in which the qualified production company claims the credit
 219 granted in this Code section, the qualified production company shall include in the
 220 description of the qualified production activities required by subparagraph (A) of
 221 paragraph (1) of this subsection information which demonstrates that the activities
 222 included in the base investment or excess base investment are equal to or less than
 223 \$500,000.00 during such year; and
 224 (3) In no event shall the amount of the tax credit under this Code section for a taxable
 225 year exceed the qualified production company's income tax liability. Any unused credit
 226 amount shall be allowed to be carried forward for five years from the close of the taxable
 227 year in which the investment occurred. No such credit shall be allowed the qualified
 228 production company against prior years' tax liability.
 229 (h) The Department of Economic Development shall determine through the promulgation
 230 of rules and regulations what projects qualify for the tax credits authorized under this Code
 231 section. Certification shall be submitted to the state revenue commissioner.
 232 (i) The state revenue commissioner shall promulgate such rules and regulations as are
 233 necessary to implement and administer this Code section.
 234 (j) Any qualified production company claiming, transferring, or selling the tax credit shall
 235 be required to reimburse the Department of Revenue for any department initiated audits
 236 relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer
 237 which may include the review of the credit provided in this Code section."

238 **SECTION 2.**

239 Said article is further amended by adding a new Code section to read as follows:

240 "48-7-29.21.

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

242 (1) 'Georgia State Defense Force' means the organization established pursuant to Part 3
 243 of Article 1 of Chapter 2 of Title 38.

244 (2) 'Georgia State Defense Force member' means an individual who is an active member
 245 in good standing of the Georgia State Defense Force for at least eight months.

246 (b) A Georgia State Defense Force member shall be allowed a credit against the tax
247 imposed by Code Section 48-7-20 in an amount not to exceed \$500.00 per taxable year.
248 In no event shall the amount of the tax credit exceed the taxpayer's income tax liability for
249 any taxable year, and any unused tax credit shall not be allowed to be carried forward to
250 apply to the taxpayer's succeeding years' tax liability. No such tax credit shall be allowed
251 the taxpayer against prior years' tax liability.
252 (c) The commissioner shall promulgate any rules and regulations necessary to implement
253 and administer this Code section."

254 **SECTION 3.**

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

257 **SECTION 4.**

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