

House Bill 155

By: Representatives Carter of the 175th, Reeves of the 34th, Hatchett of the 150th, Frye of the 118th, Hawkins of the 27th, and others

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 and exemptions from state income taxes,
3 so as to create an income tax credit for certain expenditures by a production company related
4 to certain state certified musical or theatrical productions or recorded musical performances;
5 to provide for rules and regulations and an application process related to such income tax
6 credit; to provide for certain conditions and limitations; to provide for definitions; to provide
7 a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
11 imposition, rate, and computation of and exemptions from state income taxes, is amended
12 by adding a new Code section to read as follows:

13 "48-7-40.32.

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

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

17 (1) 'Musical or theatrical performance' means a live performance of a concert, musical
18 tour, ballet, dance, opera, live variety entertainment, or a series of any such performances
19 occurring over the course of a 12 month period or longer that originate, are developed,
20 and have their initial public performance before an audience within Georgia, or their
21 United States debut within Georgia. Such term excludes a single musical performance
22 that is not intended for touring, a music or cultural festival that is not intended for touring,
23 an industry seminar, a trade show, or a market.

24 (2) 'Production company' means a company primarily engaged in qualified production
25 activities. Such term shall not mean or include any form of business owned, affiliated,

26 or controlled, in whole or in part, by any company or person which is in default on any
27 tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

28 (3) 'Qualified Georgia promotion' means an advertisement for the benefit of this state
29 that is approved by the Department of Economic Development and published:

30 (A) For a recorded musical performance contained on a physical format as a copy of
31 the Georgia logo that includes the website address to be determined by the Department
32 of Economic Development with each unit sold;

33 (B) For a musical or theatrical performance as a full-page promotion in the program
34 of which shall include the Georgia logo, a statement that the musical or theatrical event
35 was produced in Georgia, and the website address to be determined by the Department
36 of Economic Development;

37 (C) For a musical or theatrical performance that is created and synchronized with a
38 visual medium which is:

39 (i) A movie production as an approximately five-second long static or animated logo
40 that promotes Georgia by including the website address to be determined by the
41 Department of Economic Development before the below-the-line crew crawl for the
42 life of the project within its presentation of all promotional trailers worldwide and the
43 movie itself at the end credits;

44 (ii) A television production as an embedded five-second long Georgia promotion that
45 includes the website address to be determined by the Department of Economic
46 Development for each half hour broadcast worldwide for the life of the project and
47 which includes a link to the website address to be determined by the Department of
48 Economic Development on the television production's web page; or

49 (iii) An interactive entertainment production as a 15 second long Georgia
50 advertisement that includes the website address to be determined by the Department
51 of Economic Development within each unit sold and within each online promotion
52 for an interactive entertainment production; or

53 (D) For a musical or theatrical performance or recorded musical performance in
54 accordance with an alternative marketing opportunity evaluated by the Department of
55 Economic Development and determined to offer a promotional value to the State of
56 Georgia that is equal to or greater than those described in subparagraphs (A) through
57 (C) of this paragraph.

58 (4) 'Qualified production activities' means activities related to the preparation, planning,
59 recording, or staging of a state certified production.

60 (5) 'Qualified production expenditures' means expenditures incurred in this state on
61 direct account of qualified production activities. Such expenditures include, but are not
62 limited to:

63 (A) Set construction and operation; wardrobe, make-up, accessories, and related
 64 services; costs associated with photography and sound synchronization, expenditures
 65 excluding license fees incurred with Georgia companies for sound recordings and
 66 musical compositions, lighting, and related services and materials; editing and related
 67 services; rental of facilities and equipment; leasing of vehicles; costs of food and
 68 lodging; total aggregate payroll; talent and producer fees; technical fees; crew fees; per
 69 diem costs paid to employees; airfare, if purchased through a Georgia travel agency or
 70 travel company; insurance costs and bonding, if purchased through a Georgia insurance
 71 agency; and other direct costs of producing the project in accordance with generally
 72 accepted entertainment industry practices; and

73 (B) Payments to a loan-out company by a production company that has met its
 74 withholding tax obligations as provided in subsection (g) of this Code section.

75 (6) 'Recorded musical performance' means the writing, creating, arranging, recording,
 76 or synchronizing of music for use in and exportation from this state.

77 (7) 'Resident' shall have the same meaning as set forth in paragraph (10) of Code Section
 78 48-7-1.

79 (8) 'Spending threshold' means:

80 (A) For a musical or theatrical performance, \$300,000.00 during a taxable year; and

81 (B) For a recorded musical performance, \$70,000.00 during a taxable year.

82 (9) 'State certified production' means a musical or theatrical performance or recorded
 83 musical performance that is intended for viewing by a live audience in this state and is
 84 approved by the Department of Economic Development in accordance with rules and
 85 regulations promulgated pursuant to this Code section.

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

89 (A) With respect to a single employee, the portion of any salary which exceeds
 90 \$500,000.00 for a single production shall not be included when calculating total
 91 aggregate payroll; and

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

95 (c) A production company that invests in a state certified production shall be allowed an
 96 income tax credit against the tax imposed under this article if such production company's
 97 qualified production expenditures equal or exceed the spending threshold as follows:

98 (1) A production company shall be allowed a tax credit equal to 20 percent of such
 99 production company's qualified production expenditures; and

100 (2)(A) A production company shall be allowed an additional tax credit equal to 5
101 percent of such qualified production expenditures if the state certified production
102 includes a qualified Georgia promotion.

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

106 (i) The goals and strategy behind each qualified Georgia promotion that was
107 approved by the Department of Economic Development as an alternative marketing
108 opportunity;

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

111 (iii) The estimated value to the state of each approved alternative marketing
112 opportunity compared to the estimated value of a full-page advertisement published
113 in the program of each state certified production; and

114 (iv) The names of all production companies that were approved for an alternative
115 marketing opportunity but chose to offer the full-page advertisement instead.

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

121 (d)(1) Where the amount of such credit or credits exceeds the production company's
122 liability for such taxes in a taxable year, the excess may be taken as a credit against such
123 production company's quarterly or monthly payment under Code Section 48-7-103. Each
124 employee whose employer receives credit against such production company's quarterly
125 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
126 income tax liability under Code Section 48-7-20 for the corresponding taxable year for
127 the full amount which would be credited against such liability prior to the application of
128 the credit provided for in this subsection. Credits against quarterly or monthly payments
129 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20
130 established by this subsection shall not constitute income to the production company.

131 (2) If a production company claims the credit authorized under Code Section 48-7-40,
132 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company will only be allowed
133 to claim the credit authorized under this Code section to the extent that the Georgia
134 resident employees included in the credit calculation authorized under this Code section
135 and taken by the production company on such tax return under this Code section have

136 been permanently excluded from the credit authorized under Code Section 48-7-40,
137 48-7-40.1, 48-7-40.17, or 48-7-40.18.

138 (e) The credit granted under this Code section shall be subject to the following conditions
139 and limitations:

140 (1) The credit may be taken beginning with the taxable year in which the production
141 company has met the investment requirement. For each year in which such production
142 company claims the credit, the production company shall attach a schedule to the
143 production company's Georgia income tax return which will set forth the following
144 information, as a minimum:

145 (A) A description of the qualified production expenditures showing categorized
146 spending that meets or exceeds the spending threshold, along with the certification from
147 the Department of Economic Development;

148 (B) A detailed listing of employees' names, social security numbers, and Georgia
149 wages when salaries are included in the base investment;

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

151 (D) Any tax credit previously taken by the production company against Georgia
152 income tax liabilities or the production company's quarterly or monthly payments under
153 Code Section 48-7-103;

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

155 (F) The amount of tax credit utilized by the production company in the current taxable
156 year; and

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

158 (2) In no event shall the amount of the tax credit under this Code section for a taxable
159 year exceed the production company's income tax liability. Any unused credit amount
160 shall be allowed to be carried forward for five years from the close of the taxable year in
161 which the investment occurred. No such credit shall be allowed the production company
162 against prior years' tax liability.

163 (f) Any production company claiming the tax credit provided for by this Code section shall
164 be required to reimburse the Department of Revenue for any department initiated audits
165 relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer
166 which may include a review of the credit provided in this Code section.

167 (g) A production company shall withhold Georgia income tax at the rate of 5 percent on
168 all payments to loan-out companies for services performed in Georgia. Any amounts so
169 withheld shall be deemed to have been withheld by the loan-out company on wages paid
170 to its employees for services performed in Georgia pursuant to Article 5 of this chapter,
171 notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code
172 Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's

173 employees based on the payments made to the loan-out company's employees for services
174 performed in Georgia. For purposes of this chapter and notwithstanding any other
175 provision in this chapter to the contrary, loan-out company nonresident employees
176 performing services in Georgia shall be considered taxable nonresidents and the loan-out
177 company shall be subject to income taxation in the taxable year in which the loan-out
178 company's employees perform services in Georgia. Such withholding liability shall be
179 subject to penalties and interest in the same manner as the employee withholding taxes
180 imposed by Article 5 of this chapter and the state revenue commissioner shall provide by
181 regulation the manner in which such liability shall be assessed and collected.
182 (h) The Department of Economic Development shall determine through the promulgation
183 of rules and regulations which projects qualify for the tax credits authorized under this
184 Code section. Certification shall be submitted to the state revenue commissioner.
185 (i) The state revenue commissioner shall promulgate such rules and regulations as are
186 necessary to implement and administer this Code section."

187 **SECTION 2.**

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