

House Bill 199 (COMMITTEE SUBSTITUTE)

By: Representatives Rhodes of the 120th, Efstoration of the 104th, Rogers of the 10th, and Powell of the 171st

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 imposition, rate, computation, and exemptions from state income taxes, so as to
3 change certain provisions regarding the income tax credit for interactive entertainment
4 companies; to remove the sunset on such exemptions; to add an exemption for certain
5 prereleased products; to provide for a new state income tax credit for qualified
6 postproduction expenditures of postproduction companies; to provide for procedures,
7 conditions, and limitations; to provide for definitions; to provide for related matters; to
8 provide for an effective date and applicability; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
13 imposition, rate, computation, and exemptions from state income taxes, is amended by
14 revising Code Section 48-7-40.26, relating to the income tax credit for film, video, or digital
15 production in this state, as follows:

16 "48-7-40.26.

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

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

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

24 (2) 'Base investment' means the aggregate funds actually invested and expended by a
25 production company or qualified interactive entertainment production company as

26 production expenditures incurred in this state that are directly used in a state certified
27 production or productions.

28 (3) 'Game platform' means the electronic delivery system used to launch or play an
29 interactive game.

30 (4) 'Game sequel' means an interactive game which builds upon the theme of a
31 previously released interactive game, is distinguished by a new title, and features
32 objectives or characters that are recognizably different from the original game.

33 ~~(3)~~(5) 'Multimarket commercial distribution' means paid commercial distribution with
34 media buys which extends to markets outside the State of Georgia.

35 (6) 'Prereleased interactive game' means a new game, the offering of an existing game
36 on a new game platform, or a game sequel that is in the developmental stages of
37 production, which may be available to individuals for testing purposes but is not
38 generally made available or distributed to consumers or to the general public.

39 ~~(4)~~(7) '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)~~(8) '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 travel agency or travel company; insurance costs and bonding, if purchased
56 through a Georgia insurance agency; and other direct costs of producing the project in
57 accordance with generally accepted entertainment industry practices. This term shall not
58 include postproduction expenditures for footage shot outside the State of Georgia,
59 marketing, story rights, or distribution, but shall not affect other qualified story rights.
60 This term includes payments to a loan-out company by a production company or
61 qualified interactive entertainment production company that has met its withholding tax
62 obligations as set out below. The production company or qualified interactive

63 entertainment production company shall withhold Georgia income tax at the rate of 6
 64 percent on all payments to loan-out companies for services performed in Georgia. Any
 65 amounts so withheld shall be deemed to have been withheld by the loan-out company on
 66 wages paid to its employees for services performed in Georgia pursuant to Article 5 of
 67 ~~Chapter 7 of this title~~ this chapter 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 of this title~~ this chapter
 77 and the commissioner shall provide by regulation the manner in which such liability shall
 78 be assessed and collected.

79 ~~(6)(9)~~ 'Qualified Georgia promotion' means a qualified promotion of this state approved
 80 by the Department of Economic Development consisting of a:

- 81 (A) Qualified movie production which includes a five-second long static or animated
- 82 logo that promotes Georgia in the end credits before the below-the-line crew crawl for
- 83 the life of the project and which includes a link to Georgia on the project's web page;
- 84 (B) Qualified TV production which includes an embedded five-second long Georgia
- 85 promotion during each broadcast worldwide for the life of the project and which
- 86 includes a link to Georgia on the project's web page;
- 87 (C) Qualified music video which includes the Georgia logo at the end of each video
- 88 and within online promotions; or
- 89 (D) Qualified interactive game which includes a 15 second long Georgia advertisement
- 90 in units sold and embedded in online promotions.

91 ~~(7)(10)~~ 'Qualified interactive entertainment production company' means a company that:

- 92 (A) Maintains a business location physically located in Georgia;
- 93 (B)(i) Through December 31, 2017, in ~~in~~ the calendar year directly preceding the
- 94 start of the taxable year of the qualified interactive entertainment production
- 95 company, had a total aggregate payroll of \$500,000.00 or more for employees
- 96 working within the state; or
- 97 (ii) On or after January 1, 2018, in the calendar year directly preceding the start of
- 98 the taxable year of the qualified interactive entertainment production company, had

99 a total aggregate payroll of \$250,000.00 or more for employees working within the
 100 state;

101 (C) Has gross income less than \$100 million for the taxable year; and

102 (D) Is primarily engaged in qualified production activities related to interactive
 103 entertainment which have been approved by the Department of Economic
 104 Development.

105 This term shall not mean or include any form of business owned, affiliated, or controlled,
 106 in whole or in part, by any company or person which is in default on any tax obligation
 107 of the state, or a loan made by the state or a loan guaranteed by the state.

108 ~~(8)~~(11) 'Qualified production activities' means the production of new film, video, or
 109 digital projects produced in this state and approved by the Department of Economic
 110 Development, including only the following: feature films, series, pilots, movies for
 111 television, televised commercial advertisements, music videos, interactive entertainment,
 112 prereleased interactive games, or sound recording projects used in feature films, series,
 113 pilots, or movies for television. Such activities shall include projects recorded in this
 114 state, in whole or in part, in either short or long form, animation and music, fixed on a
 115 delivery system which includes without limitation film, videotape, computer disc, laser
 116 disc, and any element of the digital domain, from which the program is viewed or
 117 reproduced, and which is intended for multimarket commercial distribution via theaters,
 118 video on demand, direct to DVD, digital platforms designed for the distribution of
 119 interactive games, licensing for exhibition by individual television stations, groups of
 120 stations, networks, advertiser supported sites, cable television stations, or public
 121 broadcasting stations. Such term shall not include the coverage of news and athletic
 122 events, local interest programming, instructional videos, corporate videos, or projects not
 123 shot, recorded, or originally created in Georgia.

124 ~~(9)~~(12) 'Resident' means an individual as designated pursuant to paragraph (10) of Code
 125 Section 48-7-1, as amended.

126 ~~(10)~~(13) 'State certified production' means a production engaged in qualified production
 127 activities which have been approved by the Department of Economic Development in
 128 accordance with regulations promulgated pursuant to this Code section. In the instance
 129 of a 'work for hire' in which one production company or qualified interactive
 130 entertainment production company hires another production company or qualified
 131 interactive entertainment production company to produce a project or contribute elements
 132 of a project for pay, the hired company shall be considered a service provider for the
 133 hiring company, and the hiring company shall be entitled to the film tax credit.

134 ~~(11)~~(14) 'Total aggregate payroll' means the total sum expended by a production
 135 company or qualified interactive entertainment production company on salaries paid to

136 employees working within this state in a state certified production or productions. For
137 purposes of this paragraph:

138 (A) With respect to a single employee, the portion of any salary which exceeds
139 \$500,000.00 for a single production shall not be included when calculating total
140 aggregate payroll; and

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

144 (c) For any production company or qualified interactive entertainment production
145 company and its affiliates that invest in a state certified production approved by the
146 Department of Economic Development and whose average annual total production
147 expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall
148 be allowed an income tax credit against the tax imposed under this article. The tax credit
149 under this subsection shall be allowed if the base investment in this state equals or exceeds
150 \$500,000.00 for qualified production activities, except that any qualified interactive
151 entertainment production company shall be allowed the tax credit under this subsection if
152 the base investment in this state equals or exceeds \$500,000.00 in total over a two-year
153 period for qualified production activities on or after January 1, 2018, and shall be
154 calculated as follows:

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

157 (2)(A) The production company or qualified interactive entertainment production
158 company shall be allowed an additional tax credit equal to 10 percent of such base
159 investment if the qualified production activity includes a qualified Georgia promotion.
160 Such additional tax credit shall be allowed for any qualified production that includes
161 a qualified Georgia promotion upon its release to the general public. In lieu of the
162 inclusion of the Georgia promotional logo, the production company or qualified
163 interactive entertainment production company may offer alternative marketing
164 opportunities to be evaluated by the Department of Economic Development to ensure
165 that they offer equal or greater promotional value to the State of Georgia.

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

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

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

- 173 (iii) The estimated value to the state of each approved alternative marketing
 174 opportunity compared to the estimated value of the Georgia promotional logo; and
 175 (iv) The names of all production companies who chose to include the Georgia
 176 promotional logo in their final production instead of offering the state an alternative
 177 marketing proposal.

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

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

192 (1) If the excess base investment in this state equals or exceeds \$500,000.00, or
 193 \$500,000.00 in total over a two-year period for qualified interactive entertainment
 194 production activities on or after January 1, 2018, the production company or qualified
 195 interactive entertainment production company and its affiliates shall be allowed a tax
 196 credit of 20 percent of such excess base investment; and

197 (2)(A) The production company or qualified interactive entertainment production
 198 company and its affiliates shall be allowed an additional tax credit equal to 10 percent
 199 of the excess base investment if the qualified production activities include a qualified
 200 Georgia promotion. Such additional tax credit shall be allowed for any prereleased
 201 interactive entertainment production upon its release to the general public, provided that
 202 the production includes and maintains a qualified Georgia promotion. In lieu of the
 203 inclusion of the Georgia promotional logo, the production company or qualified
 204 interactive entertainment production company may offer marketing opportunities to be
 205 evaluated by the Department of Economic Development to ensure that they offer equal
 206 or greater promotional value to the State of Georgia.

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

- 210 (i) The goals and strategy behind each marketing opportunity approved pursuant to
 211 the provisions of subparagraph (A) of this paragraph;
- 212 (ii) The names of all production companies approved by the Department of Economic
 213 Development to provide alternative marketing opportunities;
- 214 (iii) The estimated value to the state of each approved alternative marketing
 215 opportunity compared to the estimated value of the Georgia promotional logo; and
- 216 (iv) The names of all production companies who chose to include the Georgia
 217 promotional logo in their final production instead of offering the state an alternative
 218 marketing proposal.

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

224 (e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
 225 section for qualified interactive entertainment production companies and affiliates exceed
 226 \$25 million for taxable years beginning on or after January 1, 2013, and before January
 227 1, 2014. The maximum credit for any qualified interactive entertainment production
 228 company and its affiliates shall be \$5 million for such taxable year. When the \$25
 229 million cap is reached, the tax credit for qualified interactive entertainment production
 230 companies shall expire for such taxable years.

231 (2) For taxable years beginning on or after January 1, 2014, and before January 1, 2015,
 232 the amount of tax credits allowed under this Code section for qualified interactive
 233 entertainment production companies and affiliates shall not exceed \$12.5 million.

234 (3) For taxable years beginning on or after January 1, 2015, and before January 1, 2016,
 235 the amount of tax credits allowed under this Code section for qualified interactive
 236 entertainment production companies and affiliates shall not exceed \$12.5 million.

237 (4) For taxable years beginning on or after January 1, 2016, and before January 1,
 238 ~~2019~~ 2018, the amount of tax credits allowed under this Code section for qualified
 239 interactive entertainment production companies and affiliates shall not exceed \$12.5
 240 million for each taxable year. ~~The tax credits allowed under this Code section for~~
 241 ~~qualified interactive entertainment production companies and affiliates shall not be~~
 242 ~~available for taxable years beginning on or after January 1, 2019.~~

243 (5)(A) For taxable years beginning on or after January 1, 2018, the amount of tax
 244 credits allowed under this Code section for qualified interactive entertainment
 245 production companies and affiliates shall not exceed \$12.5 million for each taxable
 246 year.

247 (B) Beginning on or after January 1, 2018, qualified interactive entertainment
 248 production companies are eligible for tax credits for prereleased interactive game
 249 production; provided, however, that such credits shall not be available for a period
 250 which exceeds three years.

251 ~~(5)~~(6) The maximum allowable credit claimed for any qualified interactive entertainment
 252 production company and its affiliates shall not exceed \$1.5 million in any single year.

253 ~~(6)~~(7) Qualified interactive entertainment production companies seeking to claim a tax
 254 credit under the provisions of this Code section shall submit an application to the
 255 commissioner for preapproval of such tax credit. The commissioner shall be authorized
 256 to promulgate any rules and regulations and forms necessary to implement and administer
 257 the provisions of this Code section. The commissioner shall preapprove the tax credits
 258 based on the order in which properly completed applications were submitted. In the
 259 event that two or more applications were submitted on the same day and the amount of
 260 funds available will not be sufficient to fully fund the tax credits requested, the
 261 commissioner shall prorate the available funds between or among the applicants.

262 ~~(7)~~(8) No qualified interactive entertainment production company shall be allowed to
 263 claim an amount of tax credits under this Code section for any single year in excess of
 264 its total aggregate payroll expended to employees working within this state for the
 265 calendar year directly preceding the start of the year the qualified interactive
 266 entertainment production company claims the tax credits. Any amount in excess of such
 267 limit shall not be eligible for carry forward to the succeeding years' tax liability, nor shall
 268 such excess amount be eligible for use against the qualified interactive entertainment
 269 production company's quarterly or monthly payment under Code Section 48-7-103, nor
 270 shall such excess amount be assigned, sold, or transferred to any other taxpayer.

271 ~~(8)~~(9) Before the Department of Economic Development issues its approval to the
 272 qualified interactive entertainment production company for the qualified production
 273 activities related to interactive entertainment, the qualified interactive entertainment
 274 production company must certify to the department that:

275 (A) The qualified interactive entertainment production company maintains a business
 276 location physically located in this state; and

277 (B) The qualified interactive entertainment production company had expended a total
 278 aggregate payroll of \$500,000.00 or more before January 1, 2018, or \$250,000.00 or
 279 more on or after January 1, 2018, for employees working within this state during the
 280 calendar year directly preceding the start of the taxable year of the qualified interactive
 281 entertainment production company.

282 The department shall issue a certification that the qualified interactive entertainment
 283 production company meets the requirements of this paragraph; provided, however, that

284 the department shall not issue any certifications before July 1, 2014. The qualified
 285 interactive entertainment production company shall provide such certification to the
 286 Department of Economic Development. The Department of Economic Development
 287 shall not issue its approval until it receives such certification.

288 ~~(9)~~(10)(A) For taxable years beginning on or after January 1, 2016, and before January
 289 1, 2019; the qualified interactive entertainment production company shall report to the
 290 Department of Revenue on its Georgia income tax return the monthly average number
 291 of full-time employees subject to Georgia income tax withholding for the taxable year
 292 as provided in subparagraphs (B) and (C) of this paragraph. For purposes of this
 293 paragraph, a full-time employee shall mean a person who performs a job that requires
 294 a minimum of 35 hours a week, and pays at or above the average wage earned in the
 295 county with the lowest average wage earned in this state, as reported in the most
 296 recently available annual issue of the Georgia Employment and Wages Averages
 297 Report of the Department of Labor.

298 (B) For taxable years beginning on or after January 1, 2016, and before January 1,
 299 2017, the qualified interactive entertainment production company shall report such
 300 number for such taxable year and separately for each of the prior two taxable years.

301 (C) For taxable years beginning on or after January 1, 2017, and before January 1,
 302 2019; the qualified interactive entertainment production company shall report such
 303 number for each respective taxable year.

304 (D) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable
 305 years, the commissioner shall report yearly to the House Committee on Ways and
 306 Means and the Senate Finance Committee. The report shall include the name, tax year
 307 beginning, and monthly average number of full-time employees for each qualified
 308 interactive entertainment production company. The first report shall be submitted by
 309 June 30, 2016, and each year thereafter by June 30.

310 (f)(1) Where the amount of such credit or credits exceeds the production company's or
 311 qualified interactive entertainment production company's liability for such taxes in a
 312 taxable year, the excess may be taken as a credit against such production company's or
 313 qualified interactive entertainment production company's quarterly or monthly payment
 314 under Code Section 48-7-103. Each employee whose employer receives credit against
 315 such production company's or qualified interactive entertainment production company's
 316 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against
 317 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable
 318 year for the full amount which would be credited against such liability prior to the
 319 application of the credit provided for in this subsection. Credits against quarterly or
 320 monthly payments under Code Section 48-7-103 and credits against liability under Code

321 Section 48-7-20 established by this subsection shall not constitute income to the
322 production company or qualified interactive entertainment production company.

323 (2) If a production company and its affiliates, or a qualified interactive entertainment
324 production company and its affiliates, claim the credit authorized under Code Section
325 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its
326 affiliates, or the qualified interactive entertainment production company and its affiliates,
327 will only be allowed to claim the credit authorized under this Code section to the extent
328 that the Georgia resident employees included in the credit calculation authorized under
329 this Code section and taken by the production company and its affiliates, or the qualified
330 interactive entertainment production company and its affiliates, on such tax return under
331 this Code section have been permanently excluded from the credit authorized under Code
332 Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

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

342 (2) Such production company or qualified interactive entertainment production company
343 shall submit to the Department of Economic Development and to the Department of
344 Revenue a written notification of any transfer or sale of tax credits within 30 days after
345 the transfer or sale of such tax credits. The notification shall include such production
346 company's or qualified interactive entertainment production company's tax credit balance
347 prior to transfer, the credit certificate number, the remaining balance after transfer, all tax
348 identification numbers for each transferee, the date of transfer, the amount transferred,
349 and any other information required by the Department of Economic Development or the
350 Department of Revenue;

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

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

357 (5) A transferee shall have only such rights to claim and use the tax credit that were
358 available to such production company or qualified interactive entertainment production
359 company at the time of the transfer, except for the use of the credit in paragraph (1) of
360 subsection (f) of this Code section. To the extent that such production company or
361 qualified interactive entertainment production company did not have rights to claim or
362 use the tax credit at the time of the transfer, the Department of Revenue shall either
363 disallow the tax credit claimed by the transferee or recapture the tax credit from the
364 transferee. The transferee's recourse is against such production company or qualified
365 interactive entertainment production company; and

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

368 (h) The credit granted under this Code section shall be subject to the following conditions
369 and limitations:

370 (1) The credit may be taken beginning with the taxable year in which the production
371 company or qualified interactive entertainment production company has met the
372 investment requirement. For each year in which such production company or qualified
373 interactive entertainment production company either claims or transfers the credit, the
374 production company or qualified interactive entertainment production company shall
375 attach a schedule to the production company's or qualified interactive entertainment
376 production company's Georgia income tax return which will set forth the following
377 information, as a minimum:

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

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

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

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

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

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

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

391 (2) In the initial year in which the production company or qualified interactive
392 entertainment production company claims the credit granted in this Code section, the
393 production company or qualified interactive entertainment production company shall

394 include in the description of the qualified production activities required by subparagraph
 395 (A) of paragraph (1) of this subsection information which demonstrates that the activities
 396 included in the base investment or excess base investment equal or exceed \$500,000.00
 397 during such year, or \$500,000.00 or more in total over a two-year period on or after
 398 January 1, 2018, for qualified interactive entertainment production companies; and
 399 (3) In no event shall the amount of the tax credit under this Code section for a taxable
 400 year exceed the production company's or qualified interactive entertainment production
 401 company's income tax liability. Any unused credit amount shall be allowed to be carried
 402 forward for five years from the close of the taxable year in which the investment
 403 occurred. No such credit shall be allowed the production company or qualified
 404 interactive entertainment production company against prior years' tax liability.
 405 (i) The Department of Economic Development shall determine through the promulgation
 406 of rules and regulations what projects qualify for the tax credits authorized under this Code
 407 section. Certification shall be submitted to the state revenue commissioner.
 408 (j) The state revenue commissioner shall promulgate such rules and regulations as are
 409 necessary to implement and administer this Code section.
 410 (k) Any production company or qualified interactive entertainment production company
 411 claiming, transferring, or selling the tax credit shall be required to reimburse the
 412 Department of Revenue for any department initiated audits relating to the tax credit. This
 413 subsection shall not apply to routine tax audits of a taxpayer which may include the review
 414 of the credit provided in this Code section."

415 **SECTION 2.**

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

417 "48-7-40.26A.

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

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

421 (1) 'Affiliates' means those entities that are included in the postproduction company's
 422 affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other
 423 entities that are directly or indirectly owned 50 percent or more by members of the
 424 affiliated group.

425 (2) 'Multimarket commercial distribution' means paid commercial distribution which
 426 extends to markets outside the State of Georgia.

427 (3) 'Postproduction company' means a company that:

428 (A) Maintains a business location physically located in this state;

429 (B) In the calendar year directly preceding the start of the taxable year of the
 430 postproduction company, had a total aggregate payroll of \$250,000.00 or more for
 431 employees working within this state;

432 (C) Is engaged in qualified postproduction activities; and

433 (D) Has been approved by the Department of Revenue.

434 This term shall not mean or include any form of business owned, affiliated, or controlled,
 435 in whole or in part, by any company or person which is in default on any tax obligation
 436 of the state, or a loan made by the state or a loan guaranteed by the state. In the instance
 437 of a 'work for hire' in which one postproduction company hires another postproduction
 438 company to engage in qualified postproduction activities for pay, the hired company shall
 439 be considered a service provider for the hiring company, and the hiring company shall
 440 be entitled to the postproduction tax credit only if the department certifies that the hired
 441 company is a Georgia company employing workers in this state.

442 (4) 'Qualified postproduction activities' means the activities performed on a qualified
 443 production employing traditional, emerging, and new workflow techniques used in
 444 postproduction for picture, sound, and music editing, rerecording and mixing, visual
 445 effects, graphic design, original scoring, animation, musical composition, and other
 446 activities performed after initial production and including activities performed on
 447 previously produced and edited content.

448 (5) 'Qualified postproduction expenditures' means expenditures incurred in this state
 449 directly in qualified postproduction activities, including without limitation the following:

450 (A) Costs associated with photography and sound synchronization;

451 (B) Expenditures, excluding license fees, incurred with Georgia companies for sound
 452 recordings and musical compositions, lighting, and related services and materials;

453 (C) Editing and related services;

454 (D) Rental of facilities and equipment;

455 (E) Leasing of vehicles;

456 (F) Costs of food and lodging;

457 (G) Digital or tape editing, film processing, transfers of film to tape or digital format,
 458 sound mixing, computer graphics services, special effects services, and animation
 459 services;

460 (H) Total aggregate payroll;

461 (I) Airfare, if purchased through a Georgia travel agency or travel company;

462 (J) Insurance costs and bonding, if purchased through a Georgia insurance agency; and

463 (K) Other direct postproduction costs for the project in accordance with generally
 464 accepted entertainment industry practices.

465 This term includes expenditures incurred in this state for footage shot inside or outside
 466 this state.

467 (6) 'Qualified production' means a film, video, or digital project, including only the
 468 following: feature films, series, pilots, movies for television, televised commercial
 469 advertisements, music videos, interactive entertainment, or sound recording projects used
 470 in feature films, series, pilots, or movies for television. This term shall include projects
 471 shot, recorded, or originally created in either short or long form, animation and music,
 472 fixed on a delivery system which includes without limitation film, videotape, computer
 473 disc, laser disc, and any element of the digital domain, from which the program is viewed
 474 or reproduced, and which is intended for multimarket commercial distribution via
 475 theaters, video on demand, direct to DVD, digital platforms designed for the distribution
 476 of interactive games, licensing for exhibition by individual television stations, groups of
 477 stations, networks, advertiser supported sites, cable television stations, or public
 478 broadcasting stations. Such term shall not include the coverage of news and athletic
 479 events, local interest programming, instructional videos, and corporate videos.

480 (7) 'Total aggregate payroll' means the total sum expended by a postproduction company
 481 on salaries paid to employees working within this state on qualified postproduction
 482 activities.

483 (c)(1) A postproduction company that has incurred qualified postproduction expenditures
 484 of at least \$500,000.00 in a taxable year shall be allowed a tax credit against the tax
 485 imposed by this article, subject to the conditions and limitations set forth in this Code
 486 section.

487 (2)(A) The tax credit allowed shall be equal to 20 percent of the qualified
 488 postproduction expenditures actually invested and expended by the postproduction
 489 company in a taxable year.

490 (B) The tax credit shall be increased to 30 percent of the qualified postproduction
 491 expenditures if the qualified production was created exclusively in this state.

492 (C) The tax credit shall be increased to 40 percent if the qualified production was
 493 created exclusively in a tier 1 or tier 2 county so designated by the commissioner of
 494 community affairs pursuant to Code Section 48-7-40.

495 (3) The amount of tax credits allowed to a postproduction company under this Code
 496 section for any single taxable year shall not exceed the postproduction company's total
 497 aggregate payroll expended to employees working within this state for the calendar year
 498 directly preceding the start of the taxable year the postproduction company claims the tax
 499 credits.

500 (c.1)(1) A postproduction company that has incurred qualified postproduction
 501 expenditures of at least \$100,000.00 but less than \$500,000.00 and has a total aggregate

502 payroll in this state of at least \$100,000.00 but less than \$500,000.00 in a taxable year
503 shall be allowed a tax credit against the tax imposed by this article, subject to the
504 additional limitations set forth in this subsection.

505 (2) The tax credit allowed shall be equal to 20 percent of the qualified postproduction
506 expenditures actually invested and expended by the postproduction company in a taxable
507 year.

508 (3) The aggregate amount of tax credits allowed under this subsection shall not exceed
509 \$1 million per taxable year.

510 (d) The tax credits allowed under this Code section for all postproduction companies shall
511 be subject to the following aggregate annual caps:

512 (1) For taxable years beginning on or after January 1, 2017, and before January 1, 2018,
513 the aggregate amount of tax credits allowed under this Code section shall not exceed \$5
514 million;

515 (2) For taxable years beginning on or after January 1, 2018, and before January 1, 2019,
516 the aggregate amount of tax credits allowed under this Code section shall not exceed \$10
517 million;

518 (3) For taxable years beginning on or after January 1, 2019, and before January 1, 2023,
519 the aggregate amount of tax credits allowed under this Code section shall not exceed \$15
520 million per year;

521 (4) The tax credits allowed under this Code section shall not be available for taxable
522 years beginning on or after January 1, 2023; and

523 (5) If the aggregate amount of tax credits claimed by taxpayers under this Code section
524 during a year is less than the aggregate annual cap applicable to such year, the unclaimed
525 portion of the aggregate annual cap shall be added to the aggregate annual cap applicable
526 to the next succeeding year or years until it is fully claimed.

527 (e)(1) The maximum allowable tax credit under this Code section claimed by a single
528 postproduction company and its affiliates shall not exceed, in any single taxable year, 20
529 percent of the aggregate amount of tax credits available for such taxable year under
530 subsection (d) of this Code section, including the amount of any aggregate annual caps
531 rolled over from prior years.

532 (2) Postproduction companies seeking to claim a tax credit under this Code section shall
533 submit an application to the Department of Revenue for preapproval of such tax credit
534 on or before the start of postproduction activities. The Department of Revenue shall
535 preapprove the tax credits based on the order in which properly completed applications
536 were submitted. In the event that two or more applications were submitted on the same
537 day and the amount of funds available will not be sufficient to fully fund the tax credits

538 requested, the Department of Revenue shall prorate the available funds between or among
 539 the applicants.

540 (f) For taxable years beginning on or after January 1, 2017, and before January 1, 2020,
 541 the postproduction company shall report to the Department of Revenue on its Georgia
 542 income tax return the monthly average number of full-time employees subject to Georgia
 543 income tax withholding for the taxable year. For purposes of this subsection, the term
 544 'full-time employee' shall mean a person who performs a job that requires a minimum of
 545 35 hours a week, and pays at or above the average wage earned in the county with the
 546 lowest average wage earned in this state, as reported in the most recently available annual
 547 issue of the Georgia Employment and Wages Averages Report of the Department of Labor.
 548 Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the
 549 commissioner shall annually report to the House Committee on Ways and Means and the
 550 Senate Finance Committee. The report shall include the name, tax year beginning, and
 551 monthly average number of full-time employees for each postproduction company. The
 552 first report shall be submitted by June 30, 2018, and each year thereafter by June 30.

553 (g)(1) Any qualified postproduction expenditures for which a postproduction company
 554 claims a tax credit under this Code section shall not be eligible production expenditures
 555 for purposes of the credit authorized under Code Section 48-7-40.26.

556 (2) If a postproduction company and its affiliates claim the credit authorized under Code
 557 Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the postproduction company
 558 and its affiliates will only be allowed to claim the credit authorized under this Code
 559 section to the extent that the Georgia resident employees included in the credit calculation
 560 authorized under this Code section and taken by the postproduction company and its
 561 affiliates on such tax return under this Code section have been permanently excluded
 562 from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or
 563 48-7-40.18.

564 (h) The credit granted under this Code section shall be subject to the following conditions
 565 and limitations:

566 (1) The credit may be taken beginning with the taxable year in which the postproduction
 567 company has incurred the qualified postproduction expenditures. For each year in which
 568 such postproduction company either claims or transfers the credit, the postproduction
 569 company shall attach a schedule to the postproduction company's Georgia income tax
 570 return which will set forth the following information, as a minimum:

571 (A) A description of the qualified postproduction activities, along with the certification
 572 from the Department of Economic Development;

573 (B) A certification that the postproduction company maintains a business location
 574 physically located in this state;

575 (C) A certification that the postproduction company expended a total aggregate payroll
 576 of \$250,000.00 or more for employees working within this state during the calendar
 577 year directly preceding the start of the taxable year of the postproduction company;

578 (D) In the initial year in which the postproduction company claims the credit granted
 579 in this Code section only, information demonstrating that the qualified postproduction
 580 expenditures equal or exceed \$500,000.00 during such year;

581 (E) A detailed listing of the employee names, social security numbers, and Georgia
 582 wages when salaries are included in the qualified postproduction expenditures;

583 (F) The amount of tax credit claimed for the taxable year;

584 (G) Any tax credit previously taken by the postproduction company against Georgia
 585 income tax liabilities or the postproduction company's quarterly or monthly payments
 586 under Code Section 48-7-103;

587 (H) The amount of tax credit carried over from prior years;

588 (I) The amount of tax credit utilized by the postproduction company in the current
 589 taxable year; and

590 (J) The amount of tax credit to be carried over to subsequent tax years.

591 The postproduction company shall file a copy of the schedule with the Department of
 592 Economic Development within 30 days after the schedule is filed with its income tax
 593 return;

594 (2) Where the amount of tax credits under this Code section exceeds the postproduction
 595 company's income tax liability in a taxable year, any unused credit amount:

596 (A) May be carried forward for five years from the close of the taxable year in which
 597 the investment occurred; or

598 (B) May be taken as a credit against such postproduction company's quarterly or
 599 monthly payment under Code Section 48-7-103. Each employee whose employer
 600 receives credit against such postproduction company's quarterly or monthly payment
 601 under Code Section 48-7-103 shall receive credit against his or her income tax liability
 602 under Code Section 48-7-20 for the corresponding taxable year for the full amount
 603 which would be credited against such liability prior to the application of the credit
 604 provided for in this subparagraph. Credits against quarterly or monthly payments under
 605 Code Section 48-7-103 and credits against liability under Code Section 48-7-20
 606 established by this subparagraph shall not constitute income to the postproduction
 607 company.

608 No such credit shall be allowed the postproduction company against prior years' tax
 609 liability; and

610 (3) Any tax credits earned by a postproduction company under this Code section and
 611 previously claimed but not used by such postproduction company against its income tax

612 or its monthly payment under Code Section 48-7-103 may be transferred or sold in whole
 613 or in part by such postproduction company to another Georgia taxpayer, subject to the
 614 following conditions:

615 (A) Such postproduction company may make only a single transfer or sale of tax
 616 credits earned in a taxable year; however, the transfer or sale may involve one or more
 617 transferees;

618 (B) Such postproduction company shall submit to the Department of Economic
 619 Development and to the Department of Revenue a written notification of any transfer
 620 or sale of tax credits within 30 days after the transfer or sale of such tax credits. The
 621 notification shall include such postproduction company's tax credit balance prior to
 622 transfer, the credit certificate number, the remaining balance after transfer, all tax
 623 identification numbers for each transferee, the date of transfer, the amount transferred,
 624 and any other information required by the Department of Economic Development or
 625 the Department of Revenue;

626 (C) Failure to comply with this paragraph shall result in the disallowance of the tax
 627 credit until the postproduction company is in full compliance;

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

631 (E) A transferee shall have only such rights to claim and use the tax credit that were
 632 available to such postproduction company at the time of the transfer, except for the use
 633 of the credit in subparagraph (B) of paragraph (2) of this subsection. To the extent that
 634 such postproduction company did not have rights to claim or use the tax credit at the
 635 time of the transfer, the Department of Revenue shall either disallow the tax credit
 636 claimed by the transferee or recapture the tax credit from the transferee. The
 637 transferee's recourse is against such postproduction company; and

638 (F) Any postproduction company claiming, transferring, or selling the tax credit shall
 639 be required to reimburse the Department of Revenue for any department initiated audits
 640 relating to the tax credit. This subparagraph shall not apply to routine tax audits of a
 641 taxpayer that may include the review of the credit provided in this Code section.

642 (i) The Department of Revenue and the Department of Economic Development shall
 643 promulgate such rules and regulations as are necessary to implement and administer this
 644 Code section."

645 **SECTION 3.**

646 This Act shall become effective on July 1, 2017, and shall be applicable to tax years
 647 beginning on or after January 1, 2017.

648

SECTION 4.

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