

The Senate Committee on Finance offered the following substitute to HB 199:

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:

SECTION 1.

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

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 extend 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)~~ (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)~~ (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, had a total aggregate payroll of \$250,000.00 or more
- 98 for employees working within the state in the taxable year the qualified interactive
- 99 entertainment production company claims the tax credits;

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

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

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

107 ~~(8)~~(11) 'Qualified production activities' means the production of new film, video, or
108 digital projects produced in this state and approved by the Department of Economic
109 Development, including only the following: feature films, series, pilots, movies for
110 television, televised commercial advertisements, music videos, interactive entertainment,
111 prereleased interactive games, or sound recording projects used in feature films, series,
112 pilots, or movies for television. Such activities shall include projects recorded in this
113 state, in whole or in part, in either short or long form, animation and music, fixed on a
114 delivery system which includes without limitation film, videotape, computer disc, laser
115 disc, and any element of the digital domain, from which the program is viewed or
116 reproduced, and which is intended for multimarket commercial distribution via theaters,
117 video on demand, direct to DVD, digital platforms designed for the distribution of
118 interactive games, licensing for exhibition by individual television stations, groups of
119 stations, networks, advertiser supported sites, cable television stations, or public
120 broadcasting stations. Such term shall not include the coverage of news and athletic
121 events, local interest programming, instructional videos, corporate videos, or projects not
122 shot, recorded, or originally created in Georgia.

123 ~~(9)~~(12) 'Resident' means an individual as designated pursuant to paragraph (10) of Code
124 Section 48-7-1, as amended.

125 ~~(10)~~(13) 'State certified production' means a production engaged in qualified production
126 activities which have been approved by the Department of Economic Development in
127 accordance with regulations promulgated pursuant to this Code section. In the instance
128 of a 'work for hire' in which one production company or qualified interactive
129 entertainment production company hires another production company or qualified
130 interactive entertainment production company to produce a project or contribute elements
131 of a project for pay, the hired company shall be considered a service provider for the
132 hiring company, and the hiring company shall be entitled to the film tax credit.

133 ~~(11)~~(14) 'Total aggregate payroll' means the total sum expended by a production
134 company or qualified interactive entertainment production company on salaries paid to
135 employees working within this state in a state certified production or productions. For
136 purposes of this paragraph:

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

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

143 (c) For any production company or qualified interactive entertainment production
144 company and its affiliates that invest in a state certified production approved by the
145 Department of Economic Development and whose average annual total production
146 expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall
147 be allowed an income tax credit against the tax imposed under this article. The tax credit
148 under this subsection shall be allowed if the base investment in this state equals or exceeds
149 \$500,000.00 for qualified production activities, except that any qualified interactive
150 entertainment production company shall be allowed the tax credit under this subsection if
151 the base investment in this state equals or exceeds \$250,000.00 for qualified production
152 activities on or after January 1, 2018, and shall be calculated as follows:

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

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

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

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

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

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

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

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

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

190 (1) If the excess base investment in this state equals or exceeds \$500,000.00, or
191 \$250,000.00 for qualified interactive entertainment production activities on or after
192 January 1, 2018, the production company or qualified interactive entertainment
193 production company and its affiliates shall be allowed a tax credit of 20 percent of such
194 excess base investment; and

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

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

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

- 209 (ii) The names of all production companies approved by the Department of Economic
 210 Development to provide alternative marketing opportunities;
- 211 (iii) The estimated value to the state of each approved alternative marketing
 212 opportunity compared to the estimated value of the Georgia promotional logo; and
- 213 (iv) The names of all production companies who chose to include the Georgia
 214 promotional logo in their final production instead of offering the state an alternative
 215 marketing proposal.

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

221 (e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
 222 section for qualified interactive entertainment production companies and affiliates exceed
 223 \$25 million for taxable years beginning on or after January 1, 2013, and before January
 224 1, 2014. The maximum credit for any qualified interactive entertainment production
 225 company and its affiliates shall be \$5 million for such taxable year. When the \$25
 226 million cap is reached, the tax credit for qualified interactive entertainment production
 227 companies shall expire for such taxable years.

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

231 (3) For taxable years beginning on or after January 1, 2015, and before January 1, 2016,
 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 (4) For taxable years beginning on or after January 1, 2016, and before January 1,
 235 ~~2019~~ 2018, the amount of tax credits allowed under this Code section for qualified
 236 interactive entertainment production companies and affiliates shall not exceed \$12.5
 237 million for each taxable year. ~~The tax credits allowed under this Code section for~~
 238 ~~qualified interactive entertainment production companies and affiliates shall not be~~
 239 ~~available for taxable years beginning on or after January 1, 2019.~~

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

244 (B) Beginning on or after January 1, 2018, qualified interactive entertainment
 245 production companies are eligible for tax credits for prereleased interactive game

246 production; provided, however, that such credits shall not be available for a period
 247 which exceeds three years.

248 ~~(5)(6)~~ The maximum allowable credit claimed for any qualified interactive entertainment
 249 production company and its affiliates shall not exceed \$1.5 million in any single year.

250 ~~(6)(7)~~ Qualified interactive entertainment production companies seeking to claim a tax
 251 credit under the provisions of this Code section shall submit an application to the
 252 commissioner for preapproval of such tax credit. The commissioner shall be authorized
 253 to promulgate any rules and regulations and forms necessary to implement and administer
 254 the provisions of this Code section. The commissioner shall preapprove the tax credits
 255 based on the order in which properly completed applications were submitted. In the
 256 event that two or more applications were submitted on the same day and the amount of
 257 funds available will not be sufficient to fully fund the tax credits requested, the
 258 commissioner shall prorate the available funds between or among the applicants.

259 ~~(7)(8)~~ No qualified interactive entertainment production company shall be allowed to
 260 claim an amount of tax credits under this Code section for any single year in excess of
 261 its total aggregate payroll expended to employees working within this state for the
 262 calendar year ~~directly preceding the start of the year~~ that the qualified interactive
 263 entertainment production company claims the tax credits. Any amount in excess of such
 264 limit shall not be eligible for carry forward to the succeeding years' tax liability, nor shall
 265 such excess amount be eligible for use against the qualified interactive entertainment
 266 production company's quarterly or monthly payment under Code Section 48-7-103, nor
 267 shall such excess amount be assigned, sold, or transferred to any other taxpayer.

268 ~~(8)(9)~~ Before the Department of Economic Development issues its approval to the
 269 qualified interactive entertainment production company for the qualified production
 270 activities related to interactive entertainment, the qualified interactive entertainment
 271 production company must certify to the department that:

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

274 (B) The qualified interactive entertainment production company had expended a total
 275 aggregate payroll of \$500,000.00 or more, or \$250,000.00 or more on or after January
 276 1, 2018, for employees working within this state during ~~the calendar year directly~~
 277 ~~preceding the start of~~ the taxable year of the qualified interactive entertainment
 278 production company.

279 The department shall issue a certification that the qualified interactive entertainment
 280 production company meets the requirements of this paragraph; provided, however, that
 281 the department shall not issue any certifications before July 1, 2014. The qualified
 282 interactive entertainment production company shall provide such certification to the

283 Department of Economic Development. The Department of Economic Development
284 shall not issue its approval until it receives such certification.

285 ~~(9)(10)~~(A) For taxable years beginning on or after January 1, 2016, and before January
286 1, 2019, the qualified interactive entertainment production company shall report to the
287 Department of Revenue on its Georgia income tax return the monthly average number
288 of full-time employees subject to Georgia income tax withholding for the taxable year
289 as provided in subparagraphs (B) and (C) of this paragraph. For purposes of this
290 paragraph, a full-time employee shall mean a person who performs a job that requires
291 a minimum of 35 hours a week, and pays at or above the average wage earned in the
292 county with the lowest average wage earned in this state, as reported in the most
293 recently available annual issue of the Georgia Employment and Wages Averages
294 Report of the Department of Labor.

295 (B) For taxable years beginning on or after January 1, 2016, and before January 1,
296 2017, the qualified interactive entertainment production company shall report such
297 number for such taxable year and separately for each of the prior two taxable years.

298 (C) For taxable years beginning on or after January 1, 2017, and before January 1,
299 2019, the qualified interactive entertainment production company shall report such
300 number for each respective taxable year.

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

307 (f)(1) Where the amount of such credit or credits exceeds the production company's or
308 qualified interactive entertainment production company's liability for such taxes in a
309 taxable year, the excess may be taken as a credit against such production company's or
310 qualified interactive entertainment production company's quarterly or monthly payment
311 under Code Section 48-7-103. Each employee whose employer receives credit against
312 such production company's or qualified interactive entertainment production company's
313 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against
314 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable
315 year for the full amount which would be credited against such liability prior to the
316 application of the credit provided for in this subsection. Credits against quarterly or
317 monthly payments under Code Section 48-7-103 and credits against liability under Code
318 Section 48-7-20 established by this subsection shall not constitute income to the
319 production company or qualified interactive entertainment production company.

320 (2) If a production company and its affiliates, or a qualified interactive entertainment
321 production company and its affiliates, claim the credit authorized under Code Section
322 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its
323 affiliates, or the qualified interactive entertainment production company and its affiliates,
324 will only be allowed to claim the credit authorized under this Code section to the extent
325 that the Georgia resident employees included in the credit calculation authorized under
326 this Code section and taken by the production company and its affiliates, or the qualified
327 interactive entertainment production company and its affiliates, on such tax return under
328 this Code section have been permanently excluded from the credit authorized under Code
329 Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

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

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

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

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

354 (5) A transferee shall have only such rights to claim and use the tax credit that were
355 available to such production company or qualified interactive entertainment production
356 company at the time of the transfer, except for the use of the credit in paragraph (1) of

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

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

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

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

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

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

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

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

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

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

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

388 (2) In the initial year in which the production company or qualified interactive
389 entertainment production company claims the credit granted in this Code section, the
390 production company or qualified interactive entertainment production company shall
391 include in the description of the qualified production activities required by subparagraph
392 (A) of paragraph (1) of this subsection information which demonstrates that the activities
393 included in the base investment or excess base investment equal or exceed \$500,000.00

394 during such year, or \$250,000.00 on or after January 1, 2018, for qualified interactive
 395 entertainment production companies; and

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

402 (i) The Department of Economic Development shall determine through the promulgation
 403 of rules and regulations what projects qualify for the tax credits authorized under this Code
 404 section. Certification shall be submitted to the state revenue commissioner.

405 (j) The state revenue commissioner shall promulgate such rules and regulations as are
 406 necessary to implement and administer this Code section.

407 (k) Any production company or qualified interactive entertainment production company
 408 claiming, transferring, or selling the tax credit shall be required to reimburse the
 409 Department of Revenue for any department initiated audits relating to the tax credit. This
 410 subsection shall not apply to routine tax audits of a taxpayer which may include the review
 411 of the credit provided in this Code section."

412 SECTION 2.

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

414 "48-7-40.26A.

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

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

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

422 (2) 'Multimarket commercial distribution' means paid commercial distribution media
 423 buys which extend to markets outside the State of Georgia.

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

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

426 (B) Has a total aggregate payroll of \$250,000.00 or more for employees working
 427 within the state in the taxable year the postproduction company claims the tax credits;

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

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

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

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

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

- 447 (A) Costs associated with photography and sound synchronization;
- 448 (B) Expenditures, excluding license fees, incurred with Georgia companies for sound
 449 recordings and musical compositions, lighting, and related services and materials;
- 450 (C) Editing and related services;
- 451 (D) Rental of facilities and equipment;
- 452 (E) Leasing of vehicles;
- 453 (F) Costs of food and lodging;
- 454 (G) Digital or tape editing, film processing, transfers of film to tape or digital format,
 455 sound mixing, computer graphics services, special effects services, and animation
 456 services;
- 457 (H) Total aggregate payroll;
- 458 (I) Airfare, if purchased through a Georgia travel agency or travel company;
- 459 (J) Insurance costs and bonding, if purchased through a Georgia insurance agency; and
- 460 (K) Other direct postproduction costs for the project in accordance with generally
 461 accepted entertainment industry practices.

462 This term includes expenditures incurred in this state for footage shot inside or outside
 463 this state.

464 (6) 'Qualified production' means a film, video, or digital project, including only the
 465 following: feature films, series, pilots, movies for television, televised commercial
 466 advertisements, music videos, interactive entertainment, or sound recording projects used

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

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

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

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

487 (B) An additional tax credit equal to 10 percent of the qualified postproduction
488 expenditures shall be allowed if the qualified production expenditures, as defined in
489 Code Section 48-7-40.26, were incurred in this state.

490 (3) The amount of tax credits allowed to a postproduction company under this Code
491 section for any single taxable year shall not exceed the postproduction company's total
492 aggregate payroll expended to employees working within this state for the taxable year
493 the postproduction company claims the tax credit.

494 (c.1)(1) A postproduction company that has incurred qualified postproduction
495 expenditures of at least \$100,000.00 but less than \$500,000.00 and has a total aggregate
496 payroll in this state of at least \$100,000.00 but less than \$500,000.00 in a taxable year
497 shall be allowed a tax credit against the tax imposed by this article, subject to the
498 additional limitations set forth in this subsection.

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

502 (3) The aggregate amount of tax credits allowed under this subsection for smaller
503 postproduction companies shall not exceed \$1 million per taxable year. This \$1 million

504 aggregate amount of tax credits is separate from, and shall not be included in, the
505 aggregate amount of tax credits under subsection (d) of this Code section.

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

508 (1) For taxable years beginning on or after January 1, 2018, and before January 1, 2019,
509 the aggregate amount of tax credits allowed under this Code section shall not exceed \$5
510 million;

511 (2) For taxable years beginning on or after January 1, 2019, and before January 1, 2020,
512 the aggregate amount of tax credits allowed under this Code section shall not exceed \$10
513 million;

514 (3) For taxable years beginning on or after January 1, 2020, and before January 1, 2023,
515 the aggregate amount of tax credits allowed under this Code section shall not exceed \$15
516 million per year;

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

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

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

528 (2) Postproduction companies seeking to claim a tax credit under this Code section shall
529 submit an application to the Department of Revenue for preapproval of such tax credit.
530 The Department of Revenue shall preapprove the tax credits based on the order in which
531 properly completed applications were submitted. In the event that two or more
532 applications were submitted on the same day and the amount of funds available will not
533 be sufficient to fully fund the tax credits requested, the Department of Revenue shall
534 prorate the available funds between or among the applicants.

535 (f) For taxable years beginning on or after January 1, 2018, and before January 1, 2023,
536 the postproduction company shall report to the Department of Revenue on its Georgia
537 income tax return the monthly average number of full-time employees subject to Georgia
538 income tax withholding for the taxable year. For purposes of this subsection, the term
539 'full-time employee' shall mean a person who performs a job that requires a minimum of
540 35 hours a week, and pays at or above the average wage earned in the county with the

541 lowest average wage earned in this state, as reported in the most recently available annual
542 issue of the Georgia Employment and Wages Averages Report of the Department of Labor.
543 Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the
544 commissioner shall annually report to the House Committee on Ways and Means and the
545 Senate Finance Committee. The report shall include the name, tax year beginning, and
546 monthly average number of full-time employees for each postproduction company. The
547 first report shall be submitted by June 30, 2018, and each year thereafter by June 30.

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

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

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

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

566 (A) A description of the qualified postproduction activities;

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

569 (C) A certification that the postproduction company expended a total aggregate payroll
570 of \$250,000.00 or more for employees working within this state during the taxable year
571 of the postproduction company;

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

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

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

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

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

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

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

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

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

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

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

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

604 (3) Any tax credits earned by a postproduction company under this Code section and
 605 previously claimed but not used by such postproduction company against its income tax
 606 or its monthly payment under Code Section 48-7-103 may be transferred or sold in whole
 607 or in part by such postproduction company to another Georgia taxpayer, subject to the
 608 following conditions:

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

612 (B) Such postproduction company shall submit to the Department of Economic
 613 Development and to the Department of Revenue a written notification of any transfer
 614 or sale of tax credits within 30 days after the transfer or sale of such tax credits. The

615 notification shall include such postproduction company's tax credit balance prior to
 616 transfer, the credit certificate number, the remaining balance after transfer, all tax
 617 identification numbers for each transferee, the date of transfer, the amount transferred,
 618 and any other information required by the Department of Economic Development or
 619 the Department of Revenue;

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

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

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

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

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

639 **SECTION 3.**

640 This Act shall become effective on July 1, 2017, and shall be applicable to tax years
 641 beginning on or after January 1, 2018.

642 **SECTION 4.**

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