

The Senate Committee on Finance offered the following substitute to HB 155:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to the imposition, rate, and computation of and exemptions from state income taxes,  
3 so as to create an income tax credit for certain expenditures by a production company related  
4 to certain state certified musical or theatrical productions or recorded musical performances;  
5 to provide for rules and regulations and an application process related to such income tax  
6 credit; to provide for certain conditions, procedures, and limitations; to provide for  
7 definitions; to provide a short title; to provide for related matters; to provide for an effective  
8 date and automatic repeal; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

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

14 "48-7-40.32.

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

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

18 (1) 'Musical or theatrical performance' means a live performance of a concert, musical  
19 tour, ballet, dance, opera, live variety entertainment, or a series of any such performances  
20 occurring over the course of a 12 month period or longer that originates, is developed,  
21 and has its initial public performance before a live audience within this state or that  
22 prepares and rehearses a minimum of 10 days within a 14 day period within this state and  
23 has its United States debut within this state. Such term excludes a single musical  
24 performance that is not intended for touring, a music or cultural festival that is not  
25 intended for touring, an industry seminar, a trade show, or a market.

- 26 (2) 'Production company' means a company primarily engaged in qualified production  
27 activities. Such term shall not mean or include any form of business owned, affiliated,  
28 or controlled, in whole or in part, by any company or person which is in default on any  
29 tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.
- 30 (3) 'Qualified production activities' means activities related to the preparation, planning,  
31 recording, or staging of a state certified production.
- 32 (4) 'Qualified production expenditures' means expenditures incurred in this state on  
33 direct account of qualified production activities for which a tax credit has not been  
34 claimed pursuant to Code Section 48-7-40.26 and shall include, but are not limited to:
- 35 (A) Set construction and operation; wardrobe, make-up, accessories, and related  
36 services; costs associated with photography and sound synchronization, expenditures  
37 excluding license fees incurred with Georgia companies for sound recordings and  
38 musical compositions, lighting, and related services and materials; editing and related  
39 services; rental of facilities and equipment; leasing of vehicles; costs of food and  
40 lodging; total aggregate payroll; talent and producer fees; technical fees; crew fees; per  
41 diem costs paid to employees; airfare, if purchased through a Georgia travel agency or  
42 travel company; insurance costs and bonding, if purchased through a Georgia insurance  
43 agency; and other direct costs of producing the project in accordance with generally  
44 accepted entertainment industry practices; and
- 45 (B) Payments to a loan-out company by a production company.
- 46 (5) 'Recorded musical performance' means a recording of a music composition affixed  
47 in a tangible medium, which includes but is not limited to the score and musical  
48 accompaniment of a motion picture, film, television, game, or interactive entertainment  
49 production.
- 50 (6) 'Resident' shall have the same meaning as set forth in paragraph (10) of Code Section  
51 48-7-1.
- 52 (7) 'Spending threshold' means:
- 53 (A) For a musical or theatrical performance, \$500,000.00 during a taxable year; and  
54 (B) For a recorded musical performance which is incorporated into or synchronized  
55 with a movie, television, or interactive entertainment production, \$250,000.00 during  
56 a taxable year, and for any other recorded musical performance, \$100,000.00 during a  
57 taxable year.
- 58 (8) 'State certified production' means a musical or theatrical performance or recorded  
59 musical performance that is approved by the Department of Economic Development in  
60 accordance with rules and regulations promulgated pursuant to this Code section.

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

64 (A) With respect to a single employee, the portion of any salary which exceeds  
65 \$500,000.00 for a single production shall not be included when calculating total  
66 aggregate payroll; and

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

70 (c) A production company that invests in a state certified production shall be allowed an  
71 income tax credit against the tax imposed under this article equal to 15 percent of such  
72 production company's qualified production expenditures if such production company's  
73 qualified production expenditures equal or exceed the spending threshold.

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

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

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

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

85 (4) The tax credits allowed under this Code section shall not be available for taxable  
86 years beginning on or after January 1, 2023.

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

92 (2) Production companies seeking to claim a tax credit under this Code section shall  
93 submit an application to the department for preapproval of such tax credit. The  
94 department shall preapprove the tax credits based on the order in which properly  
95 completed applications were submitted. In the event that two or more applications were  
96 submitted on the same day and the amount of funds available will not be sufficient to

97 fully fund the tax credits requested, the department shall prorate the available funds  
98 between or among the applicants.

99 (f)(1) Where the amount of such credit or credits exceeds the production company's  
100 liability for such taxes in a taxable year, the excess may be taken as a credit against such  
101 production company's quarterly or monthly payment under Code Section 48-7-103. Each  
102 employee whose employer receives credit against such production company's quarterly  
103 or monthly payment under Code Section 48-7-103 shall receive credit against his or her  
104 income tax liability under Code Section 48-7-20 for the corresponding taxable year for  
105 the full amount which would be credited against such liability prior to the application of  
106 the credit provided for in this subsection. Credits against quarterly or monthly payments  
107 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20  
108 established by this subsection shall not constitute income to the production company.

109 (2) If a production company claims the credit authorized under Code Section 48-7-40,  
110 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company will only be allowed  
111 to claim the credit authorized under this Code section to the extent that the Georgia  
112 resident employees included in the credit calculation authorized under this Code section  
113 and taken by the production company on such tax return under this Code section have  
114 been permanently excluded from the credit authorized under Code Section 48-7-40,  
115 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

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

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

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

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

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

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

- 133 (F) The amount of tax credit utilized by the production company in the current taxable  
134 year; and
- 135 (G) The amount of tax credit to be carried over to subsequent tax years;
- 136 (2) In no event shall the amount of the tax credit under this Code section for a taxable  
137 year exceed the production company's income tax liability. Any unused credit amount  
138 shall be allowed to be carried forward for five years from the close of the taxable year in  
139 which the investment occurred. No such credit shall be allowed the production company  
140 against prior years' tax liability.
- 141 (3) Tax credits claimed under this Code section shall not be refundable, transferable, or  
142 saleable.
- 143 (h) Any production company claiming the tax credit provided for by this Code section  
144 shall be required to reimburse the department for any department initiated audits relating  
145 to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which  
146 may include a review of the credit provided in this Code section.
- 147 (i) The Department of Economic Development shall determine through the promulgation  
148 of rules and regulations which projects qualify for the tax credits authorized under this  
149 Code section. Certification shall be submitted to the state revenue commissioner.
- 150 (j) The state revenue commissioner shall promulgate such rules and regulations as are  
151 necessary to implement and administer this Code section."

152 **SECTION 2.**

153 This Act shall become effective on January 1, 2018, and shall stand repealed on January 1,  
154 2023.

155 **SECTION 3.**

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