House Bill 155 (AS PASSED HOUSE AND SENATE)
By: Representatives Carter of the 175th, Reeves of the 34th, Hatchett of the 150th, Frye of the 118th, Hawkins of the 27th, and others

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"48-7-40.32.
(a) This Code section shall be known and may be cited as the 'Georgia Musical Investment Act.'

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

(1) 'Musical or theatrical performance' means a live performance of a concert, musical tour, ballet, dance, opera, live variety entertainment, or a series of any such performances occurring over the course of a 12 month period or longer that originates, is developed, and has its initial public performance before a live audience within this state or that prepares and rehearses a minimum of seven days within this state and has its United States debut within this state. Such term excludes a single musical performance that is not intended for touring, a music or cultural festival that is not intended for touring, an industry seminar, a trade show, or a market.
(2) 'Production company' means a company primarily engaged in qualified production activities. Such term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

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

(4) 'Qualified production expenditures' means expenditures incurred in this state on direct account of qualified production activities for which a tax credit has not been claimed pursuant to Code Section 48-7-40.26 and shall include, but are not limited to:

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

(B) Payments to a loan-out company by a production company.

(5) 'Recorded musical performance' means a recording of a music composition affixed in a tangible medium, which includes but is not limited to the score and musical accompaniment of a motion picture, film, television, game, or interactive entertainment production.

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

(7) 'Spending threshold' means:

(A) For a musical or theatrical performance, $500,000.00 during a taxable year; and

(B) For a recorded musical performance which is incorporated into or synchronized with a movie, television, or interactive entertainment production, $250,000.00 during a taxable year, and for any other recorded musical performance, $100,000.00 during a taxable year.

(8) 'State certified production' means a musical or theatrical performance or recorded musical performance that is approved by the Department of Economic Development in accordance with rules and regulations promulgated pursuant to this Code section.
(9) ‘Total aggregate payroll’ means the total sum expended by a production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

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

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

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

(1) A production company shall be allowed a tax credit equal to 15 percent of such production company's qualified production expenditures; and

(2) A production company shall be allowed an additional tax credit equal to 5 percent for such production company's qualified production expenditures incurred in a county designated as tier 1 or tier 2 by the commissioner of community affairs pursuant to Code Section 48-7-40.

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

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

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

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

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

(e) (1) The maximum allowable tax credit under this Code section claimed by a single production company and its affiliates shall not exceed, in any single taxable year, 20 percent of the aggregate amount of tax credits available for such taxable year under subsection (d) of this Code section, including the amount of any aggregate annual caps rolled over from prior years.
(2) Production companies seeking to claim a tax credit under this Code section shall submit an application to the department for preapproval of such tax credit. The department shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the department shall prorate the available funds between or among the applicants.

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

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

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

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

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

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

(C) The amount of tax credit claimed for the taxable year;
(D) Any tax credit previously taken by the production company against Georgia income tax liabilities or the production company's quarterly or monthly payments under Code Section 48-7-103;

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

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

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

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

(3) Tax credits claimed under this Code section shall not be refundable, transferable, or saleable.

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

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

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

SECTION 2.

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

SECTION 3.

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