

House Bill 956

By: Representatives Reeves of the 34th, Stephens of the 164th, Hawkins of the 27th, Harrell of the 106th, Carter of the 175th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation of and exemptions from state income taxes,
3 so as to create an income tax credit for certain expenditures by music, film, television, or
4 interactive entertainment production companies related to the incorporation of a recorded
5 musical performance that was written, created, arranged, recorded, or synchronized in this
6 state into a state certified production; to provide for rules and regulations and an application
7 process related to such income tax credit; to provide for certain conditions and limitations;
8 to provide for definitions; to provide a short title; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

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

15 "48-7-40.31.

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

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

19 (1) 'Production company' means a company, including, but not limited, to a qualified
20 interactive entertainment company, primarily engaged in qualified production activities.

21 Such term shall exclude any form of business owned, affiliated, or controlled, in whole
22 or in part, by any company or person which is in default on any tax obligation of the state,
23 or a loan made by the state or a loan guaranteed by the state.

24 (2) 'Project' means new film, video, or digital projects, including feature films, series,
25 pilots, movies for television, televised commercial advertisements, music videos, or
26 interactive entertainment, provided that such term excludes television coverage of news

27 and athletic events, local interest programming, instructional videos, corporate videos,
28 or any obscene material as defined by subsection (b) or (c) of Code Section 16-12-80.

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

31 (A) An approximately five-second long static or animated logo that promotes Georgia
32 and includes a link to Georgia on the project's web page within the presentation of all
33 promotional trailers worldwide and the project itself at the end credits before the
34 below-the-line crew crawl for the life of the project;

35 (B) An embedded five-second long Georgia promotion for the life of the project and
36 which includes a link to Georgia on the project's web page for each broadcast half hour
37 worldwide;

38 (C) A 15 second long Georgia advertisement within each unit sold and a Georgia logo
39 and link to Georgia within each online promotion for an interactive entertainment
40 project;

41 (D) A copy of the Georgia logo with each unit sold and the web address for the
42 Georgia website included with the packaging for each musical recording; or

43 (E) An alternative marketing opportunity evaluated by the Department of Economic
44 Development and determined to offer equal or greater promotional value to the State
45 of Georgia as provided for in subparagraph (A) of this paragraph.

46 (4) 'Qualified interactive entertainment production company' means a company that:

47 (A) Maintains a business location physically located in Georgia;

48 (B) In the calendar year directly preceding the start of the taxable year of the qualified
49 interactive entertainment production company, had a total aggregate payroll of
50 \$500,00.00 or more for employees working within this state;

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

52 (D) Is primarily engaged in qualified production activities related to interactive
53 entertainment.

54 (5) 'Qualified production activities' means activities related to the incorporation of a
55 recorded musical performance into a state certified production.

56 (6) 'Qualified production expenditures' means expenditures incurred in this state on
57 direct account of qualified production activities. Such expenditures include, but are not
58 limited to:

59 (A) Costs associated with writing, composing, arranging, recording, mixing, mastering,
60 engineering, and synchronization of sound;

61 (B) License fees incurred with Georgia companies for previously existing sound
62 recordings or musical compositions and related services and materials;

- 63 (C) Editing and related services, including, but not limited to, automated dialogue
 64 reproduction;
- 65 (D) Tuning of musical equipment;
- 66 (E) Rental of facilities and equipment, including the leasing of vehicles;
- 67 (F) Costs of food and lodging;
- 68 (G) Total aggregate payroll;
- 69 (H) Talent, producer, crew, and technical fees;
- 70 (I) Per diem costs paid to employees and crew;
- 71 (J) Airfare, if purchased through a Georgia travel agency or travel company;
- 72 (K) Insurance costs and bonding, if purchased through a Georgia insurance agency;
- 73 (L) Other direct costs of producing and recording the recorded musical performance
 74 for incorporation into a certified state production in accordance with generally accepted
 75 entertainment industry practices; and
- 76 (M) Payments to a loan-out company by a production company that has met its
 77 withholding tax obligations as provided in subsection (h) of this Code section,
 78 provided that such expenditures shall not include any expenditures claimed for a tax
 79 credit under Code Section 48-7-40.24, music producer fees that are greater than 20
 80 percent of the total of qualified production expenditures, or expenditures incurred prior
 81 to July 1, 2016.
- 82 (7) 'Recorded musical performance' means a sound recording that was written, created,
 83 arranged, recorded, synchronized, edited, mastered, or performed in Georgia.
- 84 (8) 'Resident' shall have the same meaning as set forth in paragraph (10) of Code Section
 85 48-7-1.
- 86 (9) 'State certified production' means a project that has been approved by the Department
 87 of Economic Development in accordance with subsection (i) of this Code section.
- 88 (10) 'Total aggregate payroll' means the total sum expended by a production company
 89 on salaries paid to employees working within this state in a state certified production or
 90 productions. For purposes of this paragraph:
- 91 (A) With respect to a single employee, the portion of any salary which exceeds
 92 \$500,000.00 for a single production shall not be included when calculating total
 93 aggregate payroll; and
- 94 (B) All payments to a single employee and any legal entity in which the employee has
 95 any direct or indirect ownership interest shall be considered as having been paid to the
 96 employee and shall be aggregated regardless of the means of payment or distribution.
- 97 (c) A production company that invests in a state certified production shall be allowed an
 98 income tax credit against the tax imposed under this article if such production company's
 99 qualified production expenditures equal or exceeds \$300,000.00 as follows:

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

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

105 (B) The Department of Economic Development shall prepare an annual report detailing
106 the marketing opportunities it has approved as alternative marketing opportunities as
107 described in subparagraph (b)(3)(E) of this Code section. The report shall include, but
108 not be limited to:

109 (i) The goals and strategy behind each qualified Georgia promotion that is an
110 alternative marketing opportunity;

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

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

116 (iv) The names of all production companies who were approved for an alternative
117 marketing opportunity, but chose to offer the full-page advertisement instead.

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

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

133 (2) If a production company claims the credit authorized under Code Section 48-7-40,
134 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company will only be allowed
135 to claim the credit authorized under this Code section to the extent that the Georgia
136 resident employees included in the credit calculation authorized under this Code section

137 and taken by the production company on such tax return under this Code section have
138 been permanently excluded from the credit authorized under Code Section 48-7-40,
139 48-7-40.1, 48-7-40.17, or 48-7-40.18.

140 (e) Any tax credits with respect to a state certified production earned by a production
141 company and previously claimed but not used by such production company against its
142 income tax may be transferred or sold in whole or in part by such production company to
143 another Georgia taxpayer, subject to the following conditions:

144 (1) Such production company may make only a single transfer or sale of tax credits
145 earned in a taxable year; however, the transfer or sale may involve one or more
146 transferees;

147 (2) Such production company shall submit to the Department of Economic Development
148 and to the Department of Revenue a written notification of any transfer or sale of tax
149 credits within 30 days after the transfer or sale of such tax credits. The notification shall
150 include such production company's tax credit balance prior to transfer, the credit
151 certificate number, the remaining balance after transfer, all tax identification numbers for
152 each transferee, the date of transfer, the amount transferred, and any other information
153 required by the Department of Economic Development or the Department of Revenue;

154 (3) Failure to comply with this subsection shall result in the disallowance of the tax
155 credit until the production company is in full compliance;

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

159 (5) A transferee shall have only such rights to claim and use the tax credit that were
160 available to such production company at the time of the transfer, except for the use of the
161 credit in paragraph (1) of subsection (d) of this Code section. To the extent that such
162 production company did not have rights to claim or use the tax credit at the time of the
163 transfer, the Department of Revenue shall either disallow the tax credit claimed by the
164 transferee or recapture the tax credit from the transferee. The transferee's recourse is
165 against such production company; and

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

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

170 (1) The credit may be taken beginning with the taxable year in which the production
171 company has met the investment requirement. For each year in which such production
172 company either claims or transfers the credit, the production company shall attach a

173 schedule to the production company's Georgia income tax return which will set forth the
174 following information, as a minimum:

175 (A) A description of the qualified production expenditures, along with the certification
176 from the Department of Economic Development;

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

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

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

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

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

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

187 (2) In the initial year in which the production company claims the credit granted in this
188 Code section, the production company shall include in the description of the qualified
189 production expenditures required by subparagraph (A) of paragraph (1) of this subsection
190 information which demonstrates that its production expenditures equal or exceed
191 \$300,000.00 during such year; and

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

197 (g) Any production company claiming, transferring, or selling the tax credit shall be
198 required to reimburse the Department of Revenue for any department initiated audits
199 relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer
200 which may include the review of the credit provided in this Code section.

201 (h) A production company shall withhold Georgia income tax at the rate of 5 percent on
202 all payments to loan-out companies for services performed in Georgia. Any amounts so
203 withheld shall be deemed to have been withheld by the loan-out company on wages paid
204 to its employees for services performed in Georgia pursuant to Article 5 of this chapter,
205 notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code
206 Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's
207 employees based on the payments made to the loan-out company's employees for services
208 performed in Georgia. For purposes of this chapter and notwithstanding any other
209 provision in this chapter to the contrary, loan-out company nonresident employees

210 performing services in Georgia shall be considered taxable nonresidents and the loan-out
211 company shall be subject to income taxation in the taxable year in which the loan-out
212 company's employees perform services in Georgia. Such withholding liability shall be
213 subject to penalties and interest in the same manner as the employee withholding taxes
214 imposed by Article 5 of this chapter and the state revenue commissioner shall provide by
215 regulation the manner in which such liability shall be assessed and collected.

216 (i) The Department of Economic Development shall determine through the promulgation
217 of rules and regulations if a project qualifies as a state certified production and shall submit
218 a copy of any certifications for such projects to the state revenue commissioner.

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

221 **SECTION 2.**

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