

The House Committee on Ways and Means offers the following substitute to HB 1180:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
2 income taxes, so as to separate into a new Code section provisions related to tax credits for  
3 qualified interactive entertainment production companies; to provide for base investment  
4 requirements for a qualified production company to qualify for a credit; to provide for a  
5 maximum amount of credits that may be transferred each year; to provide for the  
6 implementation of such maximum; to provide for conditions related to transferability of  
7 credits; to provide for the circumstances under which a company qualifies for an additional  
8 credit; to authorize certain fees; to require companies to pay court costs if the denial of  
9 certification is upheld by a court on appeal; to provide for an application requirement; to  
10 remove outdated and unnecessary language; to provide a short title; to provide for  
11 definitions; to provide for related matters; to provide for an effective date and applicability;  
12 to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 1180 (SUB)

**SECTION 1.**

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40

Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, is amended by revising Code Section 48-7-40.26, relating to income tax credits for film, gaming, video, or digital production, as follows:

"48-7-40.26.

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

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

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

(2) 'Base investment' means the aggregate funds actually invested and expended by a production company ~~or qualified interactive entertainment production company~~ as production expenditures ~~incurred in this state~~ that are directly used in a state certified production or productions.

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

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

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

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

41 ~~(7)(4)~~ 'Production company' means a company, ~~other than a qualified interactive~~  
42 ~~entertainment production company~~, primarily engaged in qualified production activities  
43 which have been approved by the Department of Economic Development. ~~This~~ Such  
44 term shall not mean or include any form of business owned, affiliated, or controlled, in  
45 whole or in part, by any company or person which is in default on any tax obligation of  
46 the state, or a loan made by the state or a loan guaranteed by the state.

47 ~~(8)(5)~~ 'Production expenditures' means:

48 (A) Preproduction, production, and postproduction expenditures incurred in this state  
49 that are directly used in a qualified production activity, including, but not limited to, the  
50 following: set construction and operation; wardrobes, make-up, accessories, and related  
51 services; costs associated with photography and sound synchronization; expenditures  
52 excluding license fees incurred with Georgia companies for sound recordings and  
53 musical compositions; sound recording projects used in feature films, series, pilots, or  
54 movies; lighting and related services and materials; editing and related services; rental  
55 of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or  
56 tape editing; film processing; transfers of film to tape or digital format; sound mixing;  
57 computer graphics services; special effects services; animation services; total aggregate  
58 payroll; airfare, if purchased through a Georgia travel agency or travel company;  
59 insurance costs and bonding, if purchased through a Georgia insurance agency; and  
60 other direct costs of producing the project in accordance with generally accepted  
61 entertainment industry practices.

62 (B) ~~This~~ Such term shall not include:

63 (i) Postproduction expenditures for footage shot outside the ~~State of Georgia~~ this  
64 state, marketing, story rights, or distribution;

65 (ii) Any expenditure for work or services not conducted or rendered in ~~Georgia~~ this  
66 state. Expenditures for services not performed at the filming site shall only qualify  
67 if the vendor is a Georgia vendor. Expenditures for services conducted or rendered

68 both in ~~Georgia~~ and outside ~~Georgia~~ this state shall only qualify to the extent the  
69 service is conducted or rendered in Georgia;

70 (iii) Expenditures for goods that were not purchased or rented or leased in this state  
71 from a Georgia vendor. Expenditures for goods shall only qualify to the extent such  
72 goods are used in this state. A vendor that acts as a conduit to enable purchases or  
73 rentals to qualify that would not otherwise qualify shall not be considered a Georgia  
74 vendor with respect to such purchases, rentals, or leases; or

75 (iv) Any transaction subject to taxation imposed by Chapter 8 or 13 of this title for  
76 which taxes have not been demonstrably paid.

77 (C) ~~This~~ Such term includes payments to a loan-out company by a production company  
78 ~~or qualified interactive entertainment production company~~ that has met its withholding  
79 tax obligations as set out below. The production company ~~or qualified interactive~~  
80 ~~entertainment production company~~ shall withhold Georgia income tax at the rate  
81 imposed by subsection (a) of Code Section 48-7-21 on all payments to loan-out  
82 companies for services performed in Georgia. Any amounts so withheld shall be  
83 deemed to have been withheld by the loan-out company on wages paid to its employees  
84 for services performed in Georgia pursuant to Article 5 of this chapter notwithstanding  
85 the exclusion provided in subparagraph (K) of paragraph (10) of Code Section  
86 48-7-100. The amounts so withheld shall be allocated to the loan-out company's  
87 employees based on the payments made to the loan-out company's employees for  
88 services performed in Georgia. For purposes of this chapter, loan-out company  
89 nonresident employees performing services in Georgia shall be considered taxable  
90 nonresidents and the loan-out company shall be subject to income taxation in the  
91 taxable year in which the loan-out company's employees perform services in Georgia,  
92 notwithstanding any other provisions in this chapter. Such withholding liability shall  
93 be subject to penalties and interest in the same manner as the employee withholding

94 taxes imposed by Article 5 of this chapter and the commissioner shall provide by  
 95 regulation the manner in which such liability shall be assessed and collected.

96 (D) Production expenditures by a production company shall be subject to any  
 97 limitations or reductions imposed by subsection ~~(f)~~ (k) of this Code section.

98 ~~(9)~~(6) 'Qualified Georgia promotion' means a qualified promotion of this state approved  
 99 by the Department of Economic Development consisting of a:

100 (A) Qualified movie production which includes a five-second long static or animated  
 101 logo that promotes Georgia in the end credits before the below-the-line crew crawl for  
 102 the life of the project and which includes a link to Georgia on the project's web page;

103 (B) Qualified TV production which includes an embedded five-second long Georgia  
 104 promotion during each broadcast worldwide for the life of the project and which  
 105 includes a link to Georgia on the project's web page; or

106 (C) Qualified music video which includes the Georgia logo at the end of each video  
 107 and within online promotions; ~~or~~

108 ~~(D) Qualified interactive game which includes a 15 second long Georgia advertisement  
 109 in units sold and embedded in online promotions.~~

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

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

112 ~~(B)(i) Through December 31, 2017, in the calendar year directly preceding the start  
 113 of the taxable year of the qualified interactive entertainment production company, had  
 114 a total aggregate payroll of \$500,000.00 or more for employees working within the  
 115 state; or~~

116 ~~(ii) On or after January 1, 2018, had a total aggregate payroll of \$250,000.00 or more  
 117 for employees working within the state in the taxable year the qualified interactive  
 118 entertainment production company claims the tax credits;~~

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

120 ~~(D) Is primarily engaged in qualified production activities related to interactive~~  
121 ~~entertainment which have been approved by the Department of Economic~~  
122 ~~Development.~~

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

126 ~~(11)(7)~~ (7) 'Qualified production activities' means the production of new film, video, or  
127 digital projects produced in this state and approved by the Department of Economic  
128 Development as state certified productions, including only the following: feature films,  
129 series, pilots, movies for television, televised commercial advertisements, and music  
130 videos, ~~interactive entertainment, or prereleased interactive games.~~ Such activities term  
131 shall include projects recorded in this state, in whole or in part, in either short or long  
132 form, animation and music, fixed on a delivery system which includes without limitation  
133 film, videotape, computer disc, laser disc, and any element of the digital domain, from  
134 which the program is viewed or reproduced, and which is intended for multimarket  
135 commercial distribution via theaters, video on demand, direct to DVD, ~~digital platforms~~  
136 ~~designed for the distribution of interactive games,~~ licensing for exhibition by individual  
137 television stations, groups of stations, networks, advertiser supported sites, cable  
138 television stations, or public broadcasting stations. Such term shall not include the  
139 coverage of news or athletic events, local interest programming, instructional videos,  
140 corporate videos, any project that is not intended for multimarket commercial  
141 distribution, or any project not shot, recorded, or originally created in Georgia.

142 ~~(12)(8)~~ (8) 'Resident' means an individual as designated pursuant to paragraph (10) of Code  
143 Section 48-7-1, ~~as amended.~~

144 ~~(13)(9)~~ (9) 'State certified production' means a production engaged in qualified production  
145 activities which have been approved by the Department of Economic Development in  
146 accordance with regulations promulgated pursuant to this Code section. In the instance

147 of a ~~'work work for hire'~~ hire in which one production company ~~or qualified interactive~~  
 148 ~~entertainment production company~~ hires another production company ~~or qualified~~  
 149 ~~interactive entertainment production company~~ to produce a project or contribute elements  
 150 of a project for pay, the hired company shall be considered a service provider for the  
 151 hiring company, and the hiring company shall be entitled to the ~~film~~ tax credit allowed  
 152 under this Code section.

153 ~~(14)~~(10) 'Total aggregate payroll' means the total sum expended by a production  
 154 company ~~or qualified interactive entertainment production company~~ on salaries paid to  
 155 employees working within this state in a state certified production or productions. For  
 156 purposes of this paragraph:

157 (A) With respect to a single employee, the portion of any salary which exceeds  
 158 \$500,000.00 for a single production shall not be included when calculating total  
 159 aggregate payroll; and

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

163 (c) For any production company ~~or qualified interactive entertainment production~~  
 164 ~~company~~ and its affiliates that invest in a state certified production approved by the  
 165 Department of Economic Development and whose average annual total production  
 166 expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall  
 167 be allowed an income tax credit against the tax imposed under this article. The tax credit  
 168 under this subsection shall be allowed if the base investment by a production company and  
 169 its affiliates that invest in state certified productions in this state equals or exceeds  
 170 \$500,000.00 for ~~qualified production activities~~ a single state certified production or \$10  
 171 million for all state certified productions, ~~except that any qualified interactive~~  
 172 ~~entertainment production company shall be allowed the tax credit under this subsection if~~

173 ~~the base investment in this state equals or exceeds \$250,000.00 for qualified production~~  
174 ~~activities on or after January 1, 2018, and shall be calculated as follows:~~

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

177 (2)(A) ~~The production company or qualified interactive entertainment production~~  
178 ~~company shall be allowed an additional tax credit equal to 10 percent of such base~~  
179 ~~investment, as determined as a result of the audit required by subsection (k) of this~~  
180 ~~Code section, if the qualified production activity includes a qualified Georgia~~  
181 ~~promotion. Such additional tax credit shall be allowed for any qualified production that~~  
182 ~~includes a qualified Georgia promotion upon its release to the general public. In lieu~~  
183 ~~of the inclusion of the Georgia promotional logo, the production company or qualified~~  
184 ~~interactive entertainment production company may offer alternative marketing~~  
185 ~~opportunities to be evaluated by the Department of Economic Development to ensure~~  
186 ~~that they offer equal or greater promotional value to the State of Georgia. The~~  
187 ~~Department of Economic Development shall electronically certify to the Department~~  
188 ~~of Revenue when the requirements of this subparagraph and paragraph (2) of subsection~~  
189 ~~(d) of this Code section have been met. state certified production meets at least four of~~  
190 ~~the following criteria:~~

191 ~~(i) At least 50 percent of the number of crew members performing services in this~~  
192 ~~state are Georgia residents;~~

193 ~~(ii) At least 50 percent of the total number of vendors providing goods or services in~~  
194 ~~this state are Georgia vendors;~~

195 ~~(iii) It incurs at least \$30 million of production expenditures in this state;~~

196 ~~(iv) At least 50 percent of its photography days occur in one or more counties that~~  
197 ~~have been underutilized by production companies as determined by the Department~~  
198 ~~of Economic Development;~~

199 (v) At least 50 percent of its total photography days in studio facilities are in studio  
200 facilities in this state, including, but not limited to, soundstages and backlots, or the  
201 company or its affiliates:

202 (I) Make capital improvements to a studio facility in this state that are in a form  
203 and manner approved by the Department of Economic Development based on the  
204 value of the capital improvements relative to the amount of tax credit sought; or

205 (II) Enters into a lease of at least five years in duration with a studio facility in this  
206 state with at least 100,000 square feet of production space, including, but not limited  
207 to, soundstages, backlots, and production offices;

208 (vi) The company agrees to contract with Georgia vendors for 20 percent of such  
209 production's postproduction expenditures or contracts with Georgia vendors for 20  
210 percent of such production's visual effects expenditures;

211 (vii) The company participates in or supports at least one Georgia workforce  
212 development program, including, but not limited to, a Georgia Film Academy  
213 program;

214 (viii) It includes a qualified Georgia promotion, or the company engages in  
215 alternative marketing opportunities approved by the Department of Economic  
216 Development based on a determination that such activities offer promotional value  
217 to the state equal to or greater than the promotional value of a qualified Georgia  
218 promotion; or

219 (ix) The company contracts for the recording in Georgia of elements of the state  
220 certified production's music score or one or more songs included in the state certified  
221 production's soundtrack, licenses music from a Georgia resident or company doing  
222 business in Georgia, or contracts with one or more Georgia residents for the  
223 composition or performance of music for incorporation into the state certified  
224 production's music score or one or more songs included into the state certified  
225 production's soundtrack.

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

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

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

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

235 (iv) The names of all production companies ~~who~~ that chose to include the Georgia  
236 promotional logo in their final production instead of offering the state an alternative  
237 marketing proposal.

238 The report required under this ~~paragraph~~ subparagraph shall be completed no later than  
239 January 1 of each year and presented to each member of the House Committee on Ways  
240 and Means, the Senate Finance Committee, the Senate Economic Development and  
241 Tourism Committee, the House Committee on Economic Development and Tourism,  
242 and the Governor.

243 (C) The additional percentage of tax credit allowed by this paragraph and by paragraph  
244 (2) of subsection (d) of this Code section shall not be allowed to a production company  
245 for any qualified production activity or state certified production that has not been  
246 commercially distributed in multiple markets.

247 (D) The additional percentage of tax credit that is allowed by this paragraph and by  
248 paragraph (2) of subsection (d) of this Code section shall not be issued final  
249 certification pursuant to subsection ~~(f)~~ (k) of this Code section unless and until the state  
250 certified production has been commercially distributed in multiple markets within five  
251 years of the date that the project was first certified by the Department of Economic  
252 Development.

253 (3) The base investment and the amount of the credit allowed by this subsection and by  
254 subsection (d) of this Code section with respect to a production company shall be subject  
255 to the limitations of and any reductions required by subsection ~~(f)~~ (k) of this Code section.

256 (d) For any production company ~~or qualified interactive entertainment production~~  
257 ~~company~~ and its affiliates that invest in a state certified production ~~approved by the~~  
258 ~~Department of Economic Development~~ and whose average annual total production  
259 expenditures in this state exceeded \$30 million for 2002, 2003, and 2004, there shall be  
260 allowed an income tax credit against the tax imposed under this article. For purposes of  
261 this subsection, the excess base investment in this state is computed by taking the current  
262 year production expenditures in a state certified production and subtracting the average of  
263 the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be  
264 calculated as follows:

265 (1) If the excess base investment by a production company and its affiliates that invest  
266 in state certified productions in this state equals or exceeds \$500,000.00 for a single state  
267 certified production or \$10 million for all state certified productions, ~~or \$250,000.00 for~~  
268 ~~qualified interactive entertainment production activities on or after January 1, 2018,~~ the  
269 production company ~~or qualified interactive entertainment production company~~ and its  
270 affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and  
271 (2)(A) The production company ~~or qualified interactive entertainment production~~  
272 ~~company~~ and its affiliates shall be allowed an additional tax credit equal to 10 percent of  
273 the excess base investment, as determined as a result of the audit required by subsection  
274 (k) of this Code section, if the ~~qualified production activities include a qualified Georgia~~  
275 ~~promotion.~~ Such additional tax credit shall be allowed for any qualified production that  
276 includes a qualified Georgia promotion upon its release to the general public. In lieu of  
277 ~~the inclusion of the Georgia promotional logo, the production company or qualified~~  
278 ~~interactive entertainment production company may offer marketing opportunities to be~~  
279 ~~evaluated by the Department of Economic Development to ensure that they offer equal~~

280 ~~or greater promotional value to the State of Georgia state certified production meets at~~  
281 ~~least four of the criteria provided in divisions (c)(2)(A)(i) through (c)(2)(A)(ix).~~

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

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

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

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

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

294 ~~The report required under this paragraph shall be completed no later than January 1 of~~  
295 ~~each year and presented to each member of the House Committee on Ways and Means,~~  
296 ~~the Senate Finance Committee, the Senate Economic Development and Tourism~~  
297 ~~Committee, the House Committee on Economic Development and Tourism, and the~~  
298 ~~Governor.~~

299 ~~(c)(1) In no event shall the aggregate amount of tax credits allowed under this Code~~  
300 ~~section for qualified interactive entertainment production companies and affiliates exceed~~  
301 ~~\$25 million for taxable years beginning on or after January 1, 2013, and before January~~  
302 ~~1, 2014. The maximum credit for any qualified interactive entertainment production~~  
303 ~~company and its affiliates shall be \$5 million for such taxable year. When the \$25~~  
304 ~~million cap is reached, the tax credit for qualified interactive entertainment production~~  
305 ~~companies shall expire for such taxable years.~~

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

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

312 ~~(4) For taxable years beginning on or after January 1, 2016, and before January 1, 2018,~~  
313 ~~the amount of tax credits allowed under this Code section for qualified interactive~~  
314 ~~entertainment production companies and affiliates shall not exceed \$12.5 million for each~~  
315 ~~taxable year.~~

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

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

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

326 ~~(7) Qualified interactive entertainment production companies seeking to claim a tax~~  
327 ~~credit under the provisions of this Code section shall submit an application to the~~  
328 ~~commissioner for preapproval of such tax credit. The commissioner shall be authorized~~  
329 ~~to promulgate any rules and regulations and forms necessary to implement and administer~~  
330 ~~the provisions of this Code section. The commissioner shall preapprove the tax credits~~  
331 ~~based on the order in which properly completed applications were submitted. In the~~  
332 ~~event that two or more applications were submitted on the same day and the amount of~~

333 ~~funds available will not be sufficient to fully fund the tax credits requested, the~~  
334 ~~commissioner shall prorate the available funds between or among the applicants.~~

335 ~~(8) No qualified interactive entertainment production company shall be allowed to claim~~  
336 ~~an amount of tax credits under this Code section for any single year in excess of its total~~  
337 ~~aggregate payroll expended to employees working within this state for the calendar year~~  
338 ~~that the qualified interactive entertainment production company claims the tax credits.~~  
339 ~~Any amount in excess of such limit shall not be eligible for carry forward to the~~  
340 ~~succeeding years' tax liability, nor shall such excess amount be eligible for use against~~  
341 ~~the qualified interactive entertainment production company's quarterly or monthly~~  
342 ~~payment under Code Section 48-7-103, nor shall such excess amount be assigned, sold,~~  
343 ~~or transferred to any other taxpayer.~~

344 ~~(9) Before the Department of Economic Development issues its approval to the qualified~~  
345 ~~interactive entertainment production company for the qualified production activities~~  
346 ~~related to interactive entertainment, the qualified interactive entertainment production~~  
347 ~~company must certify to the department that:~~

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

350 ~~(B) The qualified interactive entertainment production company had expended a total~~  
351 ~~aggregate payroll of \$500,000.00 or more, or \$250,000.00 or more on or after January~~  
352 ~~1, 2018, for employees working within this state during the taxable year of the qualified~~  
353 ~~interactive entertainment production company.~~

354 ~~The department shall issue a certification that the qualified interactive entertainment~~  
355 ~~production company meets the requirements of this paragraph; provided, however, that~~  
356 ~~the department shall not issue any certifications before July 1, 2014. The qualified~~  
357 ~~interactive entertainment production company shall provide such certification to the~~  
358 ~~Department of Economic Development. The Department of Economic Development~~  
359 ~~shall not issue its approval until it receives such certification.~~

360 ~~(10)(A) For taxable years beginning on or after January 1, 2016, the qualified~~  
361 ~~interactive entertainment production company shall report to the Department of~~  
362 ~~Revenue on its Georgia income tax return the monthly average number of full-time~~  
363 ~~employees subject to Georgia income tax withholding for the taxable year as provided~~  
364 ~~in subparagraphs (B) and (C) of this paragraph. For purposes of this paragraph, a~~  
365 ~~full-time employee shall mean a person who performs a job that requires a minimum~~  
366 ~~of 35 hours a week, and pays at or above the average wage earned in the county with~~  
367 ~~the lowest average wage earned in this state, as reported in the most recently available~~  
368 ~~annual issue of the Georgia Employment and Wages Averages Report of the~~  
369 ~~Department of Labor.~~

370 ~~(B) For taxable years beginning on or after January 1, 2016, and before January 1,~~  
371 ~~2017, the qualified interactive entertainment production company shall report such~~  
372 ~~number for such taxable year and separately for each of the prior two taxable years.~~

373 ~~(C) For taxable years beginning on or after January 1, 2017, the qualified interactive~~  
374 ~~entertainment production company shall report such number for each respective taxable~~  
375 ~~year.~~

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

382 ~~(f)(1)(e)(1) Where If the amount of such credit or credits tax credits allowed under this~~  
383 ~~Code section exceeds the production company's or qualified interactive entertainment~~  
384 ~~production company's liability for such taxes owed pursuant to this article in a taxable~~  
385 ~~year, the excess may be taken as a credit against such production company's or qualified~~  
386 ~~interactive entertainment production company's quarterly or monthly payment under~~

387 Code Section 48-7-103. Each employee whose employer receives credit against such  
388 production company's ~~or qualified interactive entertainment production company's~~  
389 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against  
390 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable  
391 year for the full amount which would be credited against such liability prior to the  
392 application of the credit provided for in this subsection. Credits against quarterly or  
393 monthly payments under Code Section 48-7-103 and credits against liability under Code  
394 Section 48-7-20 established by this subsection shall not constitute income to the  
395 production company ~~or qualified interactive entertainment production company~~.

396 (2) If a production company and its affiliates, ~~or a qualified interactive entertainment~~  
397 ~~production company and its affiliates~~, claim the a credit authorized under Code Section  
398 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its  
399 affiliates, ~~or the qualified interactive entertainment production company and its affiliates~~,  
400 ~~will~~ shall only be allowed to claim the credit authorized under this Code section to the  
401 extent that the Georgia resident employees included in the credit calculation authorized  
402 under this Code section and taken by the production company and its affiliates, ~~or the~~  
403 ~~qualified interactive entertainment production company and its affiliates~~, on such tax  
404 return under this Code section have been permanently excluded from the credit  
405 authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

406 ~~(g)~~(f) Any tax credits with respect to a state certified production earned by a production  
407 company ~~or qualified interactive entertainment production company~~ and previously  
408 claimed but not used by such production company ~~or qualified interactive entertainment~~  
409 ~~production company~~ against its income tax liability may be transferred or sold in whole or  
410 in part by such production company ~~or qualified interactive entertainment production~~  
411 ~~company~~ to another Georgia taxpayer; provided, however, that such transfers and sales  
412 shall be subject to the following conditions:

413 (1)(A) The total amount of such transfers or sales in a calendar year shall not exceed  
414 an amount equal to 2.5 percent of the total budget in the General Appropriations Act  
415 as passed and signed into law for the corresponding fiscal year.

416 (B) The Department of Revenue shall issue tax credit certificates that identify the  
417 calendar year in which the credit may first be transferred or sold. Such tax credit  
418 certificates shall identify the current calendar year as the first year such certificates may  
419 be transferred or sold for the amount of credits allowed to be transferred or sold  
420 pursuant to subparagraph (A) of this paragraph.

421 (C) Any tax credit certificates available to be issued by the Department of Revenue in  
422 the current calendar year in excess of the amount of credits allowed to be transferred  
423 or sold pursuant to subparagraph (A) of this paragraph shall be issued and available to  
424 be transferred or sold in the next calendar year for which such amount has not been  
425 reached in the order in which final certificates were available to be issued by the  
426 department but for reaching the annual limit, and the amount of such credit certificates  
427 shall count toward the amount of credits allowed to be transferred or sold pursuant to  
428 subparagraph (A) of this paragraph for that year.

429 (D) A production company may elect to not transfer or sell in whole or in part tax  
430 credits with respect to a state certified production to another Georgia taxpayer pursuant  
431 to subsection (f) of this Code section and may use such tax credit in the taxable year it  
432 is issued final certification. Tax credits that a production company makes an election  
433 to not sell or transfer shall not count toward the maximum amount allowed to be  
434 transferred or sold pursuant to subparagraph (A) of this paragraph. The production  
435 company shall make the election on a form and manner provided by the department.

436 (E) A production company may revoke its election under subparagraph (D) of this  
437 paragraph at any point during the carry-forward period authorized under subsection (g)  
438 of this Code section by submitting a request to the department for the credit certificate  
439 to be transferred. The department shall issue a new tax credit certificate providing the

440 first year a transferee may use the tax credit based on the amount of credits allowed to  
441 be transferred or sold pursuant to subparagraph (A) of this paragraph and the remaining  
442 carry forward period from the date of issuance of such new certificate.

443 ~~(1)(2)~~ Such production company ~~or qualified interactive entertainment production~~  
444 ~~company~~ may make only a single transfer or sale of tax credits earned in a taxable year;  
445 provided, however, that the transfer or sale may involve one or more transferees;

446 ~~(2)(3)~~ Such production company ~~or qualified interactive entertainment production~~  
447 ~~company~~ shall submit to the Department of Economic Development and to the  
448 Department of Revenue a written notification of any transfer or sale of tax credits within  
449 30 days after the transfer or sale of such tax credits. The notification shall include such  
450 production company's ~~or qualified interactive entertainment production company's~~ tax  
451 credit balance prior to transfer, the credit certificate number, the remaining balance after  
452 transfer, all tax identification numbers for each transferee, the date of transfer, the amount  
453 transferred, and any other information required by the Department of Economic  
454 Development or the Department of Revenue;

455 ~~(3)(4)~~ Failure to comply with this subsection shall result in the disallowance of the tax  
456 credit until the production company ~~or qualified interactive entertainment production~~  
457 ~~company~~ is in full compliance;

458 ~~(4)(5)~~ The transfer or sale of this tax credit does not extend the time in which such tax  
459 credit can be used. The carry-forward period for a tax credit that is transferred or sold  
460 shall begin on the date on which the tax credit was originally earned or for a tax credit  
461 subject to the provisions of subsection ~~(f)~~ (k) of this Code section, the date on which the  
462 final certification for such tax credit was issued pursuant to said subsection;

463 ~~(5)(6)~~ A transferee shall have only such rights to claim and use the tax credit that were  
464 available to such production company ~~or qualified interactive entertainment production~~  
465 ~~company~~ at the time of the transfer, except for the use of the credit in paragraph ~~(f)~~ (k)  
466 of subsection ~~(f)~~ (e) of this Code section. To the extent that such production company

467 ~~or qualified interactive entertainment production company~~ did not have rights to claim  
468 or use the tax credit at the time of the transfer, the Department of Revenue shall either  
469 disallow the tax credit claimed by the transferee or recapture the tax credit from the  
470 transferee; provided, however, that the Department of Revenue shall not recapture a tax  
471 credit from the transferee if the tax credit was issued a valid final certification pursuant  
472 to subsection ~~(h)~~ (k) of this Code section. The transferee's recourse is against such  
473 production company ~~or qualified interactive entertainment production company~~; and  
474 ~~(6)~~(7) The transferee ~~must~~ shall acquire the tax credits in this Code section for a  
475 minimum of 60 percent of the amount of the tax credits so transferred.

476 ~~(h) The credit granted under this Code section shall be subject to the following conditions~~  
477 ~~and limitations; provided, however, that this subsection shall not apply to a production~~  
478 ~~company subject to the requirements of subsection (h.1) or (l) of this Code section:~~

479 ~~(1) The credit may be taken beginning with the taxable year in which the production~~  
480 ~~company or qualified interactive entertainment production company has met the~~  
481 ~~investment requirement. For each year in which such production company or qualified~~  
482 ~~interactive entertainment production company either claims or transfers the credit, the~~  
483 ~~production company or qualified interactive entertainment production company shall~~  
484 ~~attach a schedule to the production company's or qualified interactive entertainment~~  
485 ~~production company's Georgia income tax return which will set forth the following~~  
486 ~~information, as a minimum:~~

487 ~~(A) A description of the qualified production activities, along with the certification~~  
488 ~~from the Department of Economic Development;~~

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

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

492 ~~(D) Any tax credit previously taken by the production company or qualified interactive~~  
493 ~~entertainment production company against Georgia income tax liabilities or the~~

494 ~~production company's or qualified interactive entertainment production company's~~  
495 ~~quarterly or monthly payments under Code Section 48-7-103;~~  
496 ~~(E) The amount of tax credit carried over from prior years;~~  
497 ~~(F) The amount of tax credit utilized by the production company or qualified~~  
498 ~~interactive entertainment production company in the current taxable year; and~~  
499 ~~(G) The amount of tax credit to be carried over to subsequent tax years;~~  
500 ~~(2) In the initial year in which the production company or qualified interactive~~  
501 ~~entertainment production company claims the credit granted in this Code section, the~~  
502 ~~production company or qualified interactive entertainment production company shall~~  
503 ~~include in the description of the qualified production activities required by subparagraph~~  
504 ~~(A) of paragraph (1) of this subsection information which demonstrates that the activities~~  
505 ~~included in the base investment or excess base investment equal or exceed \$500,000.00~~  
506 ~~during such year, or \$250,000.00 on or after January 1, 2018, for qualified interactive~~  
507 ~~entertainment production companies; and~~  
508 ~~(3) In no event shall the amount of the tax credit under this Code section for a taxable~~  
509 ~~year exceed the production company's or qualified interactive entertainment production~~  
510 ~~company's income tax liability. Any unused credit amount shall be allowed to be carried~~  
511 ~~forward for five years from the close of the taxable year in which the investment~~  
512 ~~occurred. No such credit shall be allowed the production company or qualified~~  
513 ~~interactive entertainment production company against prior years' tax liability.~~  
514 ~~(h.1)(1) For any projects certified by the Department of Economic Development on or~~  
515 ~~after January 1, 2021, the~~  
516 ~~(g)(1) The tax credit provided for in this Code section if covered under the schedule~~  
517 ~~provided in paragraph (1) of subsection (l) of this Code section shall not be allowed,~~  
518 ~~claimed, assigned, sold, transferred, or utilized in any manner by a production company~~  
519 ~~until final certification is issued pursuant to subsection (t) (k) of this Code section and~~  
520 ~~except under the following conditions and limitations of provided in this subsection.~~

521 (2) A production company seeking the tax credit allowed by this Code section shall  
522 apply for the tax credit in the manner provided by the Department of Revenue within one  
523 year from the date that it completes a state certified production. The following  
524 information shall be submitted with the application or prior to the commencement of an  
525 audit required by subsection ~~(h)~~ (k) of this Code section:

526 (A) A description of the state certified production, along with its certification as a state  
527 certified production by the Department of Economic Development;

528 (B) A detailed accounting of all qualified production activities and the attendant  
529 production expenditures included in the base investment for the state certified  
530 production;

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

533 (D) Receipts for tangible personal property included in the base investment as  
534 requested by the Department of Revenue or the eligible auditor hired to conduct the  
535 audit for the state certified production;

536 (E) Contracts for goods or services included in the base investment as requested by the  
537 Department of Revenue or the eligible auditor hired to conduct the audit for the state  
538 certified production;

539 (F) An Internal Revenue Service Form W-9 completed and issued by each vendor for  
540 which expenditures are included in the base investment as requested by the Department  
541 of Revenue or the eligible auditor hired to conduct the audit for the state certified  
542 production;

543 (G) Notification as provided for in paragraph (7) of subsection ~~(h)~~ (k) of this Code  
544 section of any intent to utilize an eligible auditor;

545 (H) A description of the status of the distribution of the state certified production and  
546 information related to any qualified Georgia promotion connected with such  
547 production;

548 (I) For any projects certified by the Department of Economic Development on or after  
 549 January 1, 2026, a description of the status of satisfying the requirements of  
 550 subparagraph (c)(2)(A) or paragraph (2) of subsection (d) if the total amount of the tax  
 551 credit sought for the state certified production includes the additional credit allowed in  
 552 subparagraph (c)(2)(A) or paragraph (2) of subsection (d);

553 ~~(H)~~(J) The total amount of the tax credit sought for the state certified production; and

554 ~~(H)~~(K) A statement affirming that the contents of the application are true and correct.

555 (3) If a production company is issued final certification of a tax credit pursuant to  
 556 subsection ~~(H)~~ (k) of this Code section, such tax credit shall be considered earned in the  
 557 taxable year in which it is issued final certification.

558 (4) For each year in which the production company either claims or transfers the tax  
 559 credit, the production company shall attach a schedule to the production company's  
 560 Georgia income tax return which ~~will~~ shall set forth the following information, as a  
 561 minimum:

562 (A) The amount of tax credit claimed for the taxable year;

563 (B) Any tax credit previously taken by the production company against Georgia  
 564 income tax liabilities or the production company's quarterly or monthly payments under  
 565 Code Section 48-7-103;

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

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

569 (E) The amount of tax credit to be carried over to subsequent tax years.

570 (5) In no event shall the amount of the tax credit subject to subsection ~~(H)~~ (k) of this Code  
 571 section for a taxable year exceed the production company's income tax liability. Any  
 572 unused credit amount shall be allowed to be carried forward for three years from the close  
 573 of the taxable year in which the tax credit was issued its final certification pursuant to

574 subsection ~~(f)~~ (k) of this Code section. No such credit shall be allowed the production  
575 company against prior years' tax liability.

576 ~~(6) This subsection shall not apply to qualified interactive entertainment production~~  
577 ~~companies.~~

578 ~~(f)~~(h)(1) The Department of Economic Development shall:

579 (A) Certify each production that qualifies ~~determine through the promulgation of rules~~  
580 ~~and regulations what projects qualify~~ for the tax credits authorized under paragraph (1)  
581 of subsection (c) of this Code section and paragraph (1) of subsection (d) of this Code  
582 section;

583 (B) Establish an approval process for any criteria that requires approval from the  
584 Department of Economic Development as provided in divisions (c)(2)(A)(v) and (ix)  
585 of this Code section;

586 (C) Submit such certifications and approvals ~~Certification shall be submitted to the state~~  
587 ~~revenue commissioner; and~~

588 (D) Promulgate rules and regulations as are necessary to implement this subsection.

589 (2) The Department of Economic Development may charge reasonable fees associated  
590 with the certification process established pursuant to this paragraph.

591 (3) If the Department of Economic Development prevails in court in an appeal of the  
592 denial of certification, the production company or interactive entertainment production  
593 company shall pay all court costs.

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

596 ~~(k)~~(j) Any production company, except as provided in subsection ~~(f)~~ (k) of this Code  
597 section, ~~or qualified interactive entertainment production company~~ claiming, transferring,  
598 or selling the tax credit shall be required to reimburse the Department of Revenue for any  
599 department initiated audits relating to the tax credit. This subsection shall not apply to

600 routine tax audits of a taxpayer which may include the review of the credit provided in this  
601 Code section.

602 ~~(f)(k)(1)(A) For any project certified by the Department of Economic Development on~~  
603 ~~or after January 1, 2021, a tax credit allowed by this Code section to a production~~  
604 ~~company shall not be claimed, assigned, sold, transferred, or utilized in any manner until~~  
605 ~~the production company applies for the tax credit as provided in subsection (h.1) of this~~  
606 ~~Code section and the department issues a final certification of the tax credit pursuant to~~  
607 ~~this subsection if the total amount of such tax credit sought for the project exceeds \$2.5~~  
608 ~~million.~~

609 ~~(B) For any project certified by the Department of Economic Development on or after~~  
610 ~~January 1, 2022, a tax credit allowed by this Code section to a production company~~  
611 ~~shall not be claimed, assigned, sold, transferred, or utilized in any manner until the~~  
612 ~~production company applies for the tax credit as provided in subsection (h.1) of this~~  
613 ~~Code section and the department issues a final certification of the tax credit pursuant~~  
614 ~~to this subsection if the total amount of such tax credit sought for the project exceeds~~  
615 ~~\$1.25 million.~~

616 ~~(C) For any project certified by the Department of Economic Development on or after~~  
617 ~~January 1, 2023, a No tax credit allowed by this Code section to a production company~~  
618 ~~shall not be claimed, assigned, sold, transferred, or utilized in any manner until the~~  
619 ~~production company applies for the tax credit as provided in subsection ~~(h.1)~~ (g) of this~~  
620 ~~Code section and the department issues a final certification of the tax credit pursuant~~  
621 ~~to this subsection.~~

622 ~~(2) In accordance with the schedule provided in paragraph (1) of this subsection, prior~~  
623 ~~Prior to certifying a tax credit pursuant to this Code section, the Department of Revenue~~  
624 ~~shall conduct or cause to be conducted an audit of each tax credit allowed by this Code~~  
625 ~~section by either the department or an independent third party certified by the department~~  
626 ~~in accordance with paragraph (3) of this subsection as an eligible auditor.~~

627 (3)(A) The Department of Revenue shall provide for the certification and  
628 decertification of certified public accountants as eligible auditors.

629 (B) To obtain certification as an eligible auditor, an accountant shall:

630 (i) Register with the department;

631 (ii) Maintain its registration with the Georgia State Board of Accountancy;

632 (iii) Agree to and be capable of completing audits related to this Code section in  
633 accordance with this Code section and procedures developed by the department;

634 (iv) Successfully complete all training required by the department;

635 (v) Pay to the department a registration fee that the department shall set in an amount  
636 that reflects the expenses incurred by the department as a result of this paragraph; and

637 (vi) Post and maintain any bond that the department ~~establishes~~ may require for each  
638 eligible auditor.

639 (C) The Department of Revenue shall decertify an eligible auditor if such auditor:

640 (i) Fails to meet the conditions or comply with the provisions of subparagraph (B) of  
641 this paragraph; or

642 (ii) Completes an audit and violates the requirements of subparagraph (E) of  
643 paragraph (4) of this subsection.

644 (D) The Department of Revenue may decertify an eligible auditor if such auditor fails  
645 to complete an audit in accordance with subparagraph (A), (B), (C), (D), (F), or (G) of  
646 paragraph (4) of this subsection or meets any other grounds for decertification as  
647 provided in regulations promulgated by the department.

648 (4) Each audit shall:

649 (A) Be completed in accordance with this Code section and procedures developed by  
650 the department;

651 (B) Utilize sampling methods that the department may adopt;

- 652 (C) Follow regulations that shall be published by the department regarding  
653 expenditures incurred with related persons or related members as such terms are  
654 defined in Code Section 48-7-28.3;
- 655 (D) Verify each reported expenditure that is included in the audit and identify and  
656 exclude each such expenditure that does not fully meet the conditions of this Code  
657 section;
- 658 (E) Exclude any expenditure not submitted with or that was incurred after the  
659 application required by subsection ~~(h.1)~~ (g) of this Code section was submitted;
- 660 (F) Not be performed by an eligible accounting entity that is not determined to be  
661 independent as provided in the American Institute of Certified Public Accountants Code  
662 of Professional Conduct with respect to the production company or any of its related  
663 persons or related members as such terms are defined in Code Section 48-7-28.3 or as  
664 otherwise provided by the Department of Revenue; and
- 665 (G) Be submitted to the department which shall review the audit, make adjustments as  
666 necessary, and issue a final certification to the production company.
- 667 (5) The Department of Revenue shall:
- 668 (A) Promulgate rules and regulations and implement this subsection;
- 669 (B) Publish and regularly update a list of all eligible auditors that a production  
670 company may hire to conduct the audit required by this subsection;
- 671 (C) Publish on its public website the application for certification of eligible auditors  
672 as well as all requirements related to certification and conducting an audit pursuant to  
673 this subsection;
- 674 (D) Publish the registration fee required by division (3)(B)(v) of this subsection and  
675 any bond required pursuant to division (3)(B)(vi) of this subsection;
- 676 (E) Determine whether a sampling method shall be used for the audits required by this  
677 subsection, the appropriate sample method and size, and if a sampling method is used,  
678 ensure that it accurately captures a truly representative sample of all ineligible

679 expenditures across all submitted expenditures and projects the type, rate, and amount  
680 of ineligible expenditures across all submitted expenditures;

681 (F) Perform the audit of expenditures when, due to confidentiality of information, the  
682 eligible auditor is unable to access necessary information that the department is able  
683 access;

684 (G) Review each audit conducted by an eligible auditor, conduct the portions of the  
685 audit described in subparagraph (F) of this paragraph, perform additional auditing as  
686 necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue  
687 the final certification of the tax credit to the taxpayer; and

688 (H) For an audit that it conducts without an eligible auditor, complete the audit, adjust  
689 the value of the tax credit as necessary, and issue the final certification of the tax credit  
690 to the taxpayer.

691 (6) The production company applying for a final certification of a tax credit pursuant to  
692 this subsection shall agree and be required to reimburse the department for all costs  
693 incurred by the performance of a related audit, or any portion thereof, including for  
694 review of an audit conducted by an eligible auditor, prior to the issuance of such final  
695 certification.

696 (7) The cost of any such audit whether conducted in whole or in part by the department,  
697 an eligible auditor, or a combination of the two shall be borne by the production company  
698 and shall not be included as an expenditure claimed pursuant to this Code section.

699 ~~(8) This subsection shall not apply to qualified interactive entertainment production~~  
700 ~~companies."~~

701 **SECTION 2.**

702 Said chapter is further amended by adding a new Code section to read as follows:

703 "48-7-40.37.

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

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

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

711 (2) 'Base investment' means the aggregate funds actually invested and expended by a  
712 qualified interactive entertainment production company as production expenditures  
713 incurred in this state that are directly used in a state certified production or productions.

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

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

719 (5) 'Multimarket commercial distribution' means paid commercial distribution with  
720 media buys which extend to markets outside the State of Georgia.

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

725 (7) 'Production expenditures' means:

726 (A) Preproduction, production, and postproduction expenditures incurred in this state  
727 that are directly used in a qualified production activity, including, but not limited to, the  
728 following: set construction and operation; wardrobes, make-up, accessories, and related  
729 services; costs associated with photography and sound synchronization; expenditures

730 excluding license fees incurred with Georgia companies for sound recordings and  
731 musical compositions; lighting and related services and materials; editing and related  
732 services; rental of facilities and equipment; leasing of vehicles; costs of food and  
733 lodging; digital or tape editing; sound mixing; computer graphics services; special  
734 effects services; animation services; total aggregate payroll; airfare, if purchased  
735 through a Georgia travel agency or travel company; insurance costs and bonding, if  
736 purchased through a Georgia insurance agency; and other direct costs of producing the  
737 project in accordance with generally accepted interactive entertainment industry  
738 practices.

739 (B) Such term shall not include:

740 (i) Postproduction expenditures for footage shot outside this state, marketing, story  
741 rights, or distribution;

742 (ii) Any expenditure for work or services not conducted or rendered in Georgia.  
743 Expenditures for services not performed at the filming site shall only qualify if the  
744 vendor is a Georgia vendor. Expenditures for services conducted or rendered both in  
745 and outside this state shall only qualify to the extent the service is conducted or  
746 rendered in Georgia;

747 (iii) Expenditures for goods that were not purchased or rented or leased in this state  
748 from a Georgia vendor. Expenditures for goods shall only qualify to the extent such  
749 goods are used in this state. A vendor that acts as a conduit to enable purchases or  
750 rentals to qualify that would not otherwise qualify shall not be considered a Georgia  
751 vendor with respect to such purchases, rentals, or leases; or

752 (iv) Any transaction subject to taxation imposed by Chapter 8 or 13 of this title for  
753 which taxes have not been demonstrably paid.

754 (C) Such term includes payments to a loan-out company by a qualified interactive  
755 entertainment production company that has met its withholding tax obligations as  
756 provided in this paragraph. The qualified interactive entertainment production

757 company shall withhold Georgia income tax at the rate imposed by subsection (a) of  
758 Code Section 48-7-21 on all payments to loan-out companies for services performed  
759 in Georgia. Any amounts so withheld shall be deemed to have been withheld by the  
760 loan-out company on wages paid to its employees for services performed in Georgia  
761 pursuant to Article 5 of this chapter notwithstanding the exclusion provided in  
762 subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so  
763 withheld shall be allocated to the loan-out company's employees based on the payments  
764 made to the loan-out company's employees for services performed in Georgia. For  
765 purposes of this chapter, loan-out company nonresident employees performing services  
766 in Georgia shall be considered taxable nonresidents and the loan-out company shall be  
767 subject to income taxation in the taxable year in which the loan-out company's  
768 employees perform services in Georgia, notwithstanding any other provisions in this  
769 chapter. Such withholding liability shall be subject to penalties and interest in the same  
770 manner as the employee withholding taxes imposed by Article 5 of this chapter, and the  
771 commissioner shall provide by regulation the manner in which such liability shall be  
772 assessed and collected.

773 (8) 'Qualified Georgia promotion' means a qualified promotion of this state approved by  
774 the Department of Economic Development consisting of a qualified interactive game  
775 which includes a 15 second long Georgia advertisement in units sold and embedded in  
776 online promotions.

777 (9) 'Qualified interactive entertainment production company' means a company that:  
778 (A) Maintains a business location physically located in this state;  
779 (B) Has a total aggregate payroll of \$250,000.00 or more for employees working  
780 within the state in the taxable year the qualified interactive entertainment production  
781 company claims the tax credits;  
782 (C) Has gross income of less than \$100 million for the taxable year; and

783 (D) Is primarily engaged in qualified production activities related to interactive  
784 entertainment.

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

788 (10) 'Qualified production activities' means the production of new digital projects  
789 produced in this state and approved by the Department of Economic Development as  
790 state certified productions, including only the following: interactive entertainment or  
791 prereleased interactive games. Such term shall include projects created in this state, in  
792 whole or in part, animation, and music fixed on a delivery system which includes without  
793 limitation computer disc, laser disc, and any element of the digital domain and which is  
794 intended for multimarket commercial distribution via digital platforms designed for the  
795 distribution of interactive games. Such term shall not include any project that is not  
796 intended for multimarket commercial distribution or any project not originally created in  
797 this state.

798 (11) 'Resident' means an individual as designated pursuant to paragraph (10) of Code  
799 Section 48-7-1.

800 (12) 'State certified production' means a production engaged in qualified production  
801 activities which have been approved by the Department of Economic Development in  
802 accordance with regulations promulgated pursuant to this Code section. In the instance  
803 of a work for hire in which one qualified interactive entertainment production company  
804 hires another qualified interactive entertainment production company to produce a project  
805 or contribute elements of a project for pay, the hired company shall be considered a  
806 service provider for the hiring company, and the hiring company shall be entitled to the  
807 film tax credit.

808 (13) 'Total aggregate payroll' means the total sum expended by a qualified interactive  
809 entertainment production company on salaries paid to employees working within this  
810 state in a state certified production or productions. For purposes of this paragraph:

811 (A) With respect to a single employee, the portion of any salary which exceeds  
812 \$500,000.00 for a single production shall not be included when calculating total  
813 aggregate payroll; and

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

817 (c) For any qualified interactive entertainment production company and its affiliates that  
818 invest in a state certified production and whose average annual total production  
819 expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall  
820 be allowed an income tax credit against the tax imposed under this article. The tax credit  
821 under this subsection shall be allowed if the base investment in this state equals or exceeds  
822 \$250,000.00, and shall be calculated as follows:

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

825 (2)(A) The qualified interactive entertainment production company shall be allowed  
826 an additional tax credit equal to 10 percent of such base investment if the qualified  
827 production activity includes a qualified Georgia promotion. Such additional tax credit  
828 shall be allowed for any qualified production that includes a qualified Georgia  
829 promotion upon its release to the general public. In lieu of the inclusion of the Georgia  
830 promotional logo, the qualified interactive entertainment production company may  
831 offer alternative marketing opportunities to be evaluated by the Department of  
832 Economic Development to ensure that they offer equal or greater promotional value to  
833 the State of Georgia. The Department of Economic Development shall electronically

834 certify to the Department of Revenue when the requirements of this paragraph and  
835 paragraph (2) of subsection (d) of this Code section have been met.

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

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

841 (ii) The names of all qualified interactive entertainment production companies  
842 approved by the Department of Economic Development to provide alternative  
843 marketing opportunities;

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

846 (iv) The names of all qualified interactive entertainment production companies who  
847 chose to include the Georgia promotional logo in their final production instead of  
848 offering the state an alternative marketing proposal.

849 The report required under this paragraph shall be completed no later than January 1 of  
850 each year and presented to each member of the House Committee on Ways and Means,  
851 the Senate Finance Committee, the Senate Economic Development and Tourism  
852 Committee, the House Committee on Economic Development and Tourism, and the  
853 Governor.

854 (d) For any qualified interactive entertainment production company and its affiliates that  
855 invest in a state certified production and whose average annual total production  
856 expenditures in this state exceeded \$30 million for 2002, 2003, and 2004, there shall be  
857 allowed an income tax credit against the tax imposed under this article. For purposes of  
858 this subsection, the excess base investment in this state is computed by taking the current  
859 year production expenditures in a state certified production and subtracting the average of

860 the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be  
861 calculated as follows:

862 (1) If the excess base investment in this state equals or exceeds \$250,000.00, the  
863 qualified interactive entertainment production company and its affiliates shall be allowed  
864 a tax credit of 20 percent of such excess base investment; and

865 (2)(A) The qualified interactive entertainment production company and its affiliates  
866 shall be allowed an additional tax credit equal to 10 percent of the excess base  
867 investment if the qualified production activities include a qualified Georgia promotion.  
868 Such additional tax credit shall be allowed for any qualified production that includes  
869 a qualified Georgia promotion upon its release to the general public. In lieu of the  
870 inclusion of the Georgia promotional logo, the qualified interactive entertainment  
871 production company may offer marketing opportunities to be evaluated by the  
872 Department of Economic Development to ensure that they offer equal or greater  
873 promotional value to the State of Georgia.

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

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

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

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

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

886 The report required under this paragraph shall be completed no later than January 1 of  
887 each year and presented to each member of the House Committee on Ways and Means,  
888 the Senate Finance Committee, the Senate Economic Development and Tourism  
889 Committee, the House Committee on Economic Development and Tourism, and the  
890 Governor.

891 (e)(1) In no event shall the aggregate amount of tax credits allowed under this Code  
892 section for qualified interactive entertainment production companies and affiliates exceed  
893 \$12.5 million for each taxable year.

894 (2) Qualified interactive entertainment production companies are eligible for tax credits  
895 for prereleased interactive game production; provided, however, that such credits shall  
896 not be available for a period which exceeds three years.

897 (3) The maximum allowable credit claimed for any qualified interactive entertainment  
898 production company and its affiliates shall not exceed \$1.5 million in any single year.

899 (4) Qualified interactive entertainment production companies seeking to claim a tax  
900 credit under the provisions of this Code section shall submit an application to the  
901 commissioner for preapproval of such tax credit. The commissioner shall preapprove the  
902 tax credits based on the order in which properly completed applications were submitted.  
903 In the event that two or more applications were submitted on the same day and the  
904 amount of funds available will not be sufficient to fully fund the tax credits requested, the  
905 commissioner shall prorate the available funds between or among the applicants.

906 (5) No qualified interactive entertainment production company shall be allowed to claim  
907 an amount of tax credits under this Code section for any single year in excess of its total  
908 aggregate payroll expended to employees working within this state for the calendar year  
909 that the qualified interactive entertainment production company claims the tax credits.  
910 Any amount in excess of such limit shall not be eligible for carry forward to the  
911 succeeding years' tax liability, nor shall such excess amount be eligible for use against  
912 the qualified interactive entertainment production company's quarterly or monthly

913 payment under Code Section 48-7-103, nor shall such excess amount be assigned, sold,  
914 or transferred to any other taxpayer.

915 (6) Before the Department of Economic Development issues its approval to the qualified  
916 interactive entertainment production company for the qualified production activities, the  
917 qualified interactive entertainment production company shall certify to the department  
918 that:

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

921 (B) The qualified interactive entertainment production company had expended a total  
922 aggregate payroll of \$250,000.00 or more for employees working within this state  
923 during the taxable year of the qualified interactive entertainment production company.

924 The department shall issue a certification that the qualified interactive entertainment  
925 production company meets the requirements of this paragraph. The qualified interactive  
926 entertainment production company shall provide such certification to the Department of  
927 Economic Development. The Department of Economic Development shall not issue its  
928 approval until it receives such certification.

929 (7)(A) The qualified interactive entertainment production company shall report to the  
930 Department of Revenue on its Georgia income tax return the monthly average number  
931 of full-time employees subject to Georgia income tax withholding for the taxable year  
932 as provided in subparagraph (B) of this paragraph. For purposes of this paragraph the  
933 term, 'full-time employee' means a person who performs a job that requires a minimum  
934 of 35 hours a week and receives compensation at or above the average wage earned in  
935 the county with the lowest average wage earned in this state as reported in the most  
936 recently available annual issue of the Georgia Employment and Wages Averages  
937 Report of the Department of Labor.

938 (B) The qualified interactive entertainment production company shall report such  
939 number for each respective taxable year.

940 (C) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable  
941 years, the commissioner shall report yearly to the House Committee on Ways and  
942 Means and the Senate Finance Committee. Such report shall include the name, tax year  
943 beginning, and monthly average number of full-time employees for each qualified  
944 interactive entertainment production company and shall be submitted by June 30 each  
945 year.

946 (f)(1) If the amount of tax credits allowed under this Code section exceeds the qualified  
947 interactive entertainment production company's liability for taxes owed under this article  
948 in a taxable year, the excess may be taken as a credit against such qualified interactive  
949 entertainment production company's quarterly or monthly payment under Code Section  
950 48-7-103. Each employee whose employer receives credit against such qualified  
951 interactive entertainment production company's quarterly or monthly payment under  
952 Code Section 48-7-103 shall receive credit against his or her income tax liability under  
953 Code Section 48-7-20 for the corresponding taxable year for the full amount which would  
954 be credited against such liability prior to the application of the credit provided for in this  
955 subsection. Credits against quarterly or monthly payments under Code Section 48-7-103  
956 and credits against liability under Code Section 48-7-20 established by this subsection  
957 shall not constitute income to the qualified interactive entertainment production company.

958 (2) If a qualified interactive entertainment production company and its affiliates claim  
959 the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18,  
960 then the qualified interactive entertainment production company and its affiliates shall  
961 only be allowed to claim the credit authorized under this Code section to the extent that  
962 the Georgia resident employees included in the credit calculation authorized under this  
963 Code section and taken by the qualified interactive entertainment production company  
964 and its affiliates on such tax return under this Code section have been permanently  
965 excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17,  
966 or 48-7-40.18.

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

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

975 (2) Such qualified interactive entertainment production company shall submit to the  
976 Department of Economic Development and to the Department of Revenue a written  
977 notification of any transfer or sale of tax credits within 30 days after the transfer or sale  
978 of such tax credits. The notification shall include such qualified interactive entertainment  
979 production company's tax credit balance prior to transfer, the credit certificate number,  
980 the remaining balance after transfer, all tax identification numbers for each transferee, the  
981 date of transfer, the amount transferred, and any other information required by the  
982 Department of Economic Development or the Department of Revenue;

983 (3) Failure to comply with this subsection shall result in the disallowance of the tax  
984 credit until the qualified interactive entertainment production company is in full  
985 compliance;

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

989 (5) A transferee shall have only such rights to claim and use the tax credit that were  
990 available to such qualified interactive entertainment production company at the time of  
991 the transfer, except for the use of the credit in paragraph (1) of subsection (f) of this Code  
992 section. To the extent that such qualified interactive entertainment production company  
993 did not have rights to claim or use the tax credit at the time of the transfer, the

994 Department of Revenue shall either disallow the tax credit claimed by the transferee or  
995 recapture the tax credit from the transferee. The transferee's recourse is against such  
996 qualified interactive entertainment production company; and

997 (6) The transferee shall acquire the tax credits in this Code section for a minimum of 60  
998 percent of the amount of the tax credits so transferred.

999 (h) The credit granted under this Code section shall be subject to the following conditions  
1000 and limitations:

1001 (1) The credit may be taken beginning with the taxable year in which the qualified  
1002 interactive entertainment production company has met the investment requirement. For  
1003 each year in which such qualified interactive entertainment production company either  
1004 claims or transfers the credit, the qualified interactive entertainment production company  
1005 shall attach a schedule to the qualified interactive entertainment production company's  
1006 Georgia income tax return which shall set forth the following information, as a minimum:

1007 (A) A description of the qualified production activities, along with the certification  
1008 from the Department of Economic Development;

1009 (B) A detailed listing of the employee names, social security numbers, and Georgia  
1010 wages when salaries are included in the base investment;

1011 (C) The amount of tax credit claimed for the taxable year;

1012 (D) Any tax credit previously taken by the qualified interactive entertainment  
1013 production company against Georgia income tax liabilities or the qualified interactive  
1014 entertainment production company's quarterly or monthly payments under Code Section  
1015 48-7-103;

1016 (E) The amount of tax credit carried over from prior years;

1017 (F) The amount of tax credit utilized by the qualified interactive entertainment  
1018 production company in the current taxable year; and

1019 (G) The amount of tax credit to be carried over to subsequent tax years;

1020 (2) In the initial year in which a qualified interactive entertainment production company  
1021 claims the credit granted in this Code section, the qualified interactive entertainment  
1022 production company shall include in the description of the qualified production activities  
1023 required by subparagraph (A) of paragraph (1) of this subsection information which  
1024 demonstrates that the activities included in the base investment or excess base investment  
1025 equal or exceed \$250,000.00; and

1026 (3) In no event shall the amount of the tax credit under this Code section for a taxable  
1027 year exceed the qualified interactive entertainment production company's income tax  
1028 liability. Any unused credit amount shall be allowed to be carried forward for five years  
1029 from the close of the taxable year in which the investment occurred. No such credit shall  
1030 be allowed the qualified interactive entertainment production company against prior  
1031 years' tax liability.

1032 (i)(1) The Department of Economic Development shall:

1033 (A) Certify each production that qualifies for the tax credits authorized under this Code  
1034 section;

1035 (B) Submit such certifications to the commissioner; and

1036 (C) Promulgate rules and regulations as are necessary to implement this subsection.

1037 (2) The Department of Economic Development may charge reasonable fees associated  
1038 with the certification process established pursuant to this paragraph.

1039 (j) The commissioner shall promulgate such rules and regulations as are necessary to  
1040 implement and administer this Code section.

1041 (k) No qualified interactive entertainment production company shall be allowed a credit  
1042 under this Code section and Code Section 48-7-40.26 in the same year."

1043 **SECTION 3.**

1044 This Act shall become effective on January 1, 2026, and shall be applicable to taxable years  
1045 beginning on or after such date.

1046

**SECTION 4.**

1047 All laws and parts of laws in conflict with this Act are repealed.