

House Bill 1180 (COMMITTEE SUBSTITUTE)

By: Representatives Carpenter of the 4th, Williamson of the 112th, Blackmon of the 146th,
Martin of the 49th, Buckner of the 137th, and others

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10 remove outdated and unnecessary language; to provide a short title; to provide for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.

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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.