

2011 GA H 1027 , Enacted - Final

Georgia

SUMMARY: Relates to income taxes; changes specified definitions relating to conditions for taking the job tax credit to include affiliates; changes specified provisions relating to the tax credit for film, video, or interactive entertainment production including, but not limited to, qualified interactive entertainment production company's affiliated group, production expenditures, the use of the State promotional logo or marketing service.~SAME AS:

State Net Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

02/15/2012 INTRODUCED.

02/16/2012 To HOUSE Committee on WAYS AND MEANS.

02/17/2012 In HOUSE: Read 2nd time.

02/29/2012 From HOUSE Committee on WAYS AND MEANS: Favorably reported as substituted.

03/07/2012 Recommitted to HOUSE Committee on WAYS AND MEANS.

03/07/2012 From HOUSE Committee on WAYS AND MEANS: Favorably reported as substituted.

03/07/2012 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.

03/07/2012 To SENATE Committee on FINANCE.

03/26/2012 From SENATE Committee on FINANCE: Favorably reported as substituted.

03/26/2012 In SENATE: Read 2nd time.

03/27/2012 In SENATE. Read third time. Passed SENATE. *****To HOUSE for concurrence.

03/27/2012 In HOUSE. HOUSE concurred in SENATE amendments.

03/27/2012 Eligible for GOVERNOR'S desk.

04/05/2012 *****To GOVERNOR.

05/02/2012 Signed by GOVERNOR.

05/02/2012 Act No. 714

~

session: Georgia 151st General Assembly -- 2011-12 Regular Session

cite: 2011 GA H 1027

Enacted - Final

May 2, 2012

Stephens R

Act No. 714

12 HB 1027/AP

House Bill 1027

(AS PASSED HOUSE AND SENATE)

By: Representatives Stephens of the 164th, Parrish of the 156th, Carter of the 175th, Hatchett of the 143rd, and Dollar of the 45th

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, so as to change certain definitions relating to the job tax credit; to change certain provisions relating to the tax credit for film, video, or interactive entertainment production in Georgia; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, is amended in Code Section 48-7-40.24, relating to conditions for taking the job tax credit, by adding a new paragraph and revising paragraph (1) of subsection (a) as follows:

” *(1) 'Affiliate' means the members of a business enterprise's affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code and also means any entity, notwithstanding its form of organization, that would otherwise qualify as a member of such affiliated group.*

(1) 'Business enterprise' *or 'taxpayer'* means any enterprise or organization, whether corporation, partnership, limited liability company, proprietorship, association, trust, business trust, real estate trust, or other form of organization *, and its affiliates,* which ~~is~~ *are* registered and authorized to use the federal employment verification system known as 'E-Verify' or any successor federal employment verification system and ~~is~~ *are* engaged in or carrying on any business activities within this state, except that such term shall not include retail businesses.“

SECTION 2.

Said chapter is further amended by revising Code Section 48-7-40.26, relating to a tax credit for film or video production in Georgia, 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) 'Multimarket commercial distribution' means *paid* commercial distribution which extends to markets outside the State of Georgia.

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

(5) 'Production expenditures' means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, *expenditures excluding license fees incurred with Georgia companies for sound recordings and musical compositions,* lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia ~~-based-~~ travel agency or travel company; insurance costs and bonding, if purchased through a Georgia ~~-based-~~ insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for *footage shot outside the State of Georgia,* marketing *, story rights, or* ~~and~~ *distribution , but shall not affect other qualified story rights. This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold Georgia income tax at the rate of 6 percent on all payments to loan-out companies for services performed in Georgia.*

Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of this title notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of this chapter, loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of Chapter 7 and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected .

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

(A) Qualified movie production which includes ~~an approximately~~ a five-second long *static or* animated logo that promotes Georgia ~~within its presentation and all promotional trailers worldwide in the end credits before the below-the-line crew crawl~~ for the life of the project *and which includes a link to Georgia on the project's web page* ;

(B) Qualified TV production which includes an ~~imbedded~~ *embedded* five-second long Georgia promotion during each broadcast ~~half hour~~ worldwide for the life of the project *and which includes a link to Georgia on the project's web page* ;

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

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

(7) 'Qualified interactive entertainment production company' means a company whose gross income is less than \$100 million that is primarily engaged in qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

~~(7)~~ (8) 'Qualified production activities' means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development, ~~such as~~ *including only the following:* feature films, series, pilots, movies for television, *televised* commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series , pilots, or movies for television. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, *video on demand, direct to DVD, digital platforms designed for the distribution of interactive games,* licensing for exhibition by individual television stations, groups of stations, networks, *advertiser supported sites,* cable television stations, *or* public broadcasting stations ~~, corporations, live venues, the Internet, or any other channel of exhibition~~ . Such term shall not include the ~~production of television~~ coverage of news and athletic events , *local interest programming, instructional videos, corporate videos, or projects not shot, recorded, or originally created in Georgia* .

~~(8)~~ (9) 'Resident' means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.

~~(9)~~ (10) 'State certified production' means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. *In the instance of a 'work for hire' in which one production company or qualified interactive entertainment production company hires another production company or qualified interactive entertainment production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.*

~~(10)~~ (11) 'Total aggregate payroll' means the total sum expended by a production company *or qualified interactive entertainment production company* on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

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

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

payment or distribution.

(c) For any production company *or qualified interactive entertainment production company* and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals or exceeds \$500,000.00 for qualified production activities and shall be calculated as follows:

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

(2) (A) The production company *or qualified interactive entertainment production company* shall be allowed an additional tax credit equal to 10 percent of such base investment if the qualified production activity includes a qualified Georgia promotion. *In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer alternative marketing opportunities to be evaluated by the Georgia Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.*

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

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

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

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

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

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

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

(1) If the excess base investment in this state equals or exceeds \$500,000.00, the production company *or qualified interactive entertainment production company* and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and

(2) (A) The production company *or qualified interactive entertainment production company* and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess base investment if the qualified production activities include a qualified Georgia promotion. *In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.*

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

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

(ii) The names of all production companies approved by the Department of Economic Development to provide

alternative marketing opportunities;

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

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

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

(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates exceed \$25 million. The maximum credit for any qualified interactive entertainment production company and its affiliates shall be \$5 million.

(2) The commissioner shall allow the tax credits for qualified interactive entertainment production companies on a first come, first served basis based on the date the credits are claimed. When the \$25 million cap is reached, the tax credit for qualified interactive entertainment production companies shall expire.

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

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

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

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

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

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

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

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company *or qualified interactive entertainment production company* at the time of the transfer, except for the use of the credit in

paragraph (1) of subsection ~~(e)~~ (f) of this Code section. To the extent that such production company *or qualified interactive entertainment production company* did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such production company *or qualified interactive entertainment production company*; and

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

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

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

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

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

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

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

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

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

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

(2) In the initial year in which the production company *or qualified interactive entertainment production company* claims the credit granted in this Code section, the production company *or qualified interactive entertainment production company* shall include in the description of the qualified production activities required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the activities included in the base investment or excess base investment equal or exceed \$500,000.00 during such year; and

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

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

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

~~(j)~~ (k) Any production company *or qualified interactive entertainment production company* claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in this Code section."

SECTION 3.

(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Section 1 of this Act shall be applicable to all tax years beginning on or after January 1, 2012.

(c) Section 2 of this Act shall be applicable to all tax years beginning on or after January 1, 2013.

SECTION 4.

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