

The Senate Committee on Finance offered the following substitute to HB 1180:

A BILL TO BE ENTITLED
AN ACT

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12 outdated and unnecessary language; to provide a short title; to provide for definitions; to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

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16

SECTION 1.

17 Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes,
18 is amended in paragraph (11) of Code Section 48-7-1, relating to definitions, by deleting
19 "and" at the end of subparagraph (D), by deleting the period at the end of subparagraph (E)
20 and inserting in lieu thereof "; and", and by adding a new subparagraph to read as follows:

21 "(F)(i) Every person that is not otherwise a resident of this state for income tax
22 purposes that receives income which is, at any time, derived from residual or royalty
23 payments due to a performing arts activity, including employment, trade, business,
24 profession, or other activity performed or carried on within this state, with respect to
25 a state certified production as defined in Code Sections 48-7-40.26.

26 (ii) For the purposes of this subparagraph and subsection (b) of Code Section
27 48-7-30, the term:

28 (I) 'Performing arts activity' means any activity performed or completed as a part
29 of a state certified production as defined in Code Sections 48-7-40.26.

30 (II) 'Residual payments' means payments to writers, directors, or actors from
31 rebroadcast or exploitation in a secondary market of a recorded production.

32 (III) 'Royalty payments' means payments to an author or composer from the
33 proceeds of a sale or performance of his or her work."

34

SECTION 2.

35 Said chapter is further amended by revising subsection (b) of Code Section 48-7-30, relating
36 to taxation of nonresident's entire net income derived from activities within state, separate
37 accounting possible, applicability, allowed deductions, and applicability of provisions for
38 corporations to nonresidents, as follows:

39 "(b) A taxable nonresident whose income is derived from employment, trade, business,
40 professional, or other activity, including but not limited to performing arts activity,
41 performed or carried on within and outside this state shall be taxed only upon the income

42 derived from carrying on the activity within this state; provided, however, that all income
 43 derived from residual or royalty payments to a taxable nonresident due to employment,
 44 trade, business, profession, or other performing arts activity performed or carried on within
 45 this state, with respect to a state certified production as defined in Code Section 48-7-40.26,
 46 shall be taxable income whether such income is received within or outside of this state.
 47 The amount of taxable income may be determined by a separate accounting of the income
 48 if the commissioner is satisfied that the separate accounting reflects correctly the income
 49 fairly attributable to this state. Otherwise, the amount of taxable income shall be
 50 determined in the manner prescribed by this chapter for the allocation and apportionment
 51 of income of corporations engaged in business within and outside this state."

52

SECTION 3.

53 Said chapter is further amended by revising Code Section 48-7-40.26, relating to income tax
 54 credits for film, gaming, video, or digital production, as follows:

55 "48-7-40.26.

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

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

59 (1) 'Affiliates' means those entities that are included in the production company's ~~or~~
 60 ~~qualified interactive entertainment production company's~~ affiliated group as defined in
 61 Section 1504(a) of the Internal Revenue Code and all other entities that are directly or
 62 indirectly owned 50 percent or more by members of the affiliated group. For purposes
 63 of this Code section, notwithstanding its form of organization, a production company
 64 shall be deemed a member of an affiliated group if it is directly or indirectly owned 50
 65 percent or more by one or more members of an affiliated group.

66 (2) 'Base investment' means the aggregate funds actually invested and expended by a
 67 production company ~~or qualified interactive entertainment production company~~ as

68 production expenditures incurred in this state that are directly used in a state certified
69 production or productions.

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

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

75 ~~(5)~~(3) 'Multimarket commercial distribution' means paid commercial distribution with
76 media buys which extend to markets outside the State of Georgia.

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

81 ~~(7)~~(4) 'Production company' means a company, other than a qualified interactive
82 entertainment production company, primarily engaged in qualified production activities
83 which have been approved by the Department of Economic Development. This Such
84 term shall not mean or include any form of business owned, affiliated, or controlled, in
85 whole or in part, by any company or person which is in default on any tax obligation of
86 the state, or a loan made by the state or a loan guaranteed by the state.

87 ~~(8)~~(5) 'Production expenditures' means:

88 (A) Preproduction, production, and postproduction expenditures incurred in this state
89 that are directly used in a qualified production activity, including, but not limited to, the
90 following: set construction and operation; wardrobes, make-up, accessories, and related
91 services; costs associated with photography and sound synchronization; expenditures
92 excluding license fees incurred with Georgia companies for sound recordings and
93 musical compositions; sound recording projects used in feature films, series, pilots, or
94 movies; lighting and related services and materials; editing and related services; rental

95 of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or
96 tape editing; film processing; transfers of film to tape or digital format; sound mixing;
97 computer graphics services; special effects services; visual effects services; animation
98 services; total aggregate payroll; airfare, if purchased through a Georgia travel agency
99 or travel company; insurance costs and bonding, if purchased through a Georgia
100 insurance agency; and other direct costs of producing the project in accordance with
101 generally accepted entertainment industry practices;

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

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

105 (ii) Any expenditure for work or services not conducted or rendered in ~~Georgia~~ this
106 state. Expenditures for services not performed at the filming site shall only qualify
107 if the vendor is a Georgia vendor. Expenditures for services conducted or rendered
108 both in ~~Georgia~~ and outside ~~Georgia~~ this state shall only qualify to the extent the
109 service is conducted or rendered in Georgia;

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

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

117 (C) ~~This~~ Such term includes payments to a loan-out company by a production company
118 ~~or qualified interactive entertainment production company~~ that has met its withholding
119 tax obligations ~~as set out below~~ provided in this paragraph. The production company
120 ~~or qualified interactive entertainment production company~~ shall withhold Georgia
121 income tax at the rate imposed by subsection (a) of Code Section 48-7-21 on all

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

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

139 ~~(9)~~(6) 'Qualified Georgia promotion' means a qualified promotion of this state approved
 140 by the Department of Economic Development consisting of a:

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

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

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

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

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

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

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

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

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

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

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

167 ~~(H)(7) 'Qualified production activities' means the production of new film, video, or~~
168 ~~digital projects produced in this state and approved by the Department of Economic~~
169 ~~Development as state certified productions, including only the following: feature films,~~
170 ~~series, pilots, movies for television, televised commercial advertisements, and music~~
171 ~~videos; ~~interactive entertainment, or prereleased interactive games.~~ Such activities term~~
172 ~~shall include projects recorded in this state, in whole or in part, in either short or long~~
173 ~~form, animation and music, fixed on a delivery system which includes without limitation~~
174 ~~film, videotape, computer disc, laser disc, and any element of the digital domain, from~~
175 ~~which the program is viewed or reproduced, and which is intended for multimarket~~

176 commercial distribution via theaters, video on demand, direct to DVD, ~~digital platforms~~
177 ~~designed for the distribution of interactive games~~, licensing for exhibition by individual
178 television stations, groups of stations, networks, ~~advertiser supported sites~~ paid
179 subscription based platform, cable television stations, or public broadcasting stations.
180 Such term shall not include the coverage of news or athletic events, local interest
181 programming, instructional videos, corporate videos, any project that is not intended for
182 multimarket commercial distribution, or any project not shot, recorded, or originally
183 created in Georgia.

184 ~~(12)~~(8) 'Resident' means an individual as designated pursuant to paragraph (10) of Code
185 Section 48-7-1, ~~as amended~~.

186 ~~(13)~~(9) 'State certified production' means a production engaged in qualified production
187 activities which have been approved by the Department of Economic Development in
188 accordance with regulations promulgated pursuant to this Code section. In the instance
189 of a ~~'work work for hire'~~ hire in which one production company ~~or qualified interactive~~
190 ~~entertainment production company~~ hires another production company ~~or qualified~~
191 ~~interactive entertainment production company~~ to produce a project or contribute elements
192 of a project for pay, the hired company shall be considered a service provider for the
193 hiring company, and the hiring company shall be entitled to the ~~film~~ tax credit allowed
194 under this Code section.

195 ~~(14)~~(10) 'Total aggregate payroll' means the total sum expended by a production
196 company ~~or qualified interactive entertainment production company~~ on salaries paid to
197 employees working within this state in a state certified production or productions. For
198 purposes of this paragraph:

199 (A) With respect to a single employee, the portion of any salary which exceeds
200 \$500,000.00 for a single production shall not be included when calculating total
201 aggregate payroll; and

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

205 (c) For any production company ~~or qualified interactive entertainment production~~
206 ~~company~~ and its affiliates that invest in a state certified production ~~approved by the~~
207 ~~Department of Economic Development~~ and whose average annual total production
208 expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall
209 be allowed an income tax credit against the tax imposed under this article. The tax credit
210 under this subsection shall be allowed if the base investment by a production company and
211 its affiliates that invest in state certified productions in this state equals or exceeds
212 ~~\$500,000.00~~ \$750,000.00 for ~~qualified production activities~~ a single state certified
213 production or \$8 million for all state certified productions, ~~except that any qualified~~
214 ~~interactive entertainment production company shall be allowed the tax credit under this~~
215 ~~subsection if the base investment in this state equals or exceeds \$250,000.00 for qualified~~
216 ~~production activities on or after January 1, 2018, and shall be calculated as follows:~~

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

219 (2)(A) The production company ~~or qualified interactive entertainment production~~
220 ~~company~~ shall be allowed an additional tax credit equal to 10 percent of such base
221 investment if, as determined as a result of the audit required by subsection (k) of this
222 Code section, the qualified production activity includes a qualified Georgia promotion.
223 ~~Such additional tax credit shall be allowed for any qualified production that includes~~
224 ~~a qualified Georgia promotion upon its release to the general public. In lieu of the~~
225 ~~inclusion of the Georgia promotional logo, the production company or qualified~~
226 ~~interactive entertainment production company may offer alternative marketing~~
227 ~~opportunities to be evaluated by the Department of Economic Development to ensure~~
228 ~~that they offer equal or greater promotional value to the State of Georgia. The~~

229 ~~Department of Economic Development shall electronically certify to the Department~~
230 ~~of Revenue when the requirements of this subparagraph and paragraph (2) of subsection~~
231 ~~(d) of this Code section have been met. state certified production meets at least four of~~
232 ~~the following criteria:~~

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

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

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

238 (iv) At least 50 percent of its principal photography days occur in one or more
239 counties that have been underutilized by production companies as listed by the
240 Department of Economic Development as of January 1, 2026;

241 (v) At least 50 percent of its principal photography days in studio facilities are in
242 studio facilities in this state, including, but not limited to, soundstages and backlots,
243 or the company or its affiliates:

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

247 (II) Owns a studio facility in this state or enters into a lease of at least five years in
248 duration with a studio facility in this state with at least 100,000 square feet of
249 production space, including, but not limited to, soundstages, backlots, and
250 production offices;

251 (vi) The company contracts with Georgia vendors for 20 percent of such production's
252 postproduction expenditures or contracts with Georgia vendors for 20 percent of such
253 production's visual effects expenditures;

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

257 (viii) It includes a qualified Georgia promotion, or the company engages in
258 alternative marketing opportunities approved by the Department of Economic
259 Development based on a determination that such activities offer promotional value
260 to the state equal to or greater than the promotional value of a qualified Georgia
261 promotion; or

262 (ix) The company contracts for the recording in Georgia of elements of the state
263 certified production's music score or one or more songs included in the state certified
264 production's soundtrack, licenses music from a Georgia resident or company doing
265 business in Georgia, or contracts with one or more Georgia residents for the
266 composition or performance of music for incorporation into the state certified
267 production's music score or one or more songs included into the state certified
268 production's soundtrack.

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

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

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

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

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

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

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

290 (D) The additional percentage of tax credit that is allowed by this paragraph and by
291 paragraph (2) of subsection (d) of this Code section shall not be issued final
292 certification pursuant to subsection ~~(f)~~ (k) of this Code section unless and until the state
293 certified production has been commercially distributed in multiple markets within five
294 years of the date that the project was first certified by the Department of Economic
295 Development; and

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

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

308 (1) If the excess base investment by a production company and its affiliates that invest
309 in state certified productions in this state equals or exceeds \$500,000.00 \$750,000.00 for
310 a single state certified production or \$8 million for all state certified productions, or
311 \$250,000.00 for qualified interactive entertainment production activities on or after
312 January 1, 2018, the production company or qualified interactive entertainment
313 production company and its affiliates shall be allowed a tax credit of 20 percent of such
314 excess base investment; and

315 (2)(A) The production company or qualified interactive entertainment production
316 company and its affiliates shall be allowed an additional tax credit equal to 10 percent of
317 the excess base investment if, as determined as a result of the audit required by subsection
318 (k) of this Code section, the qualified production activities include a qualified Georgia
319 promotion. Such additional tax credit shall be allowed for any qualified production that
320 includes a qualified Georgia promotion upon its release to the general public. In lieu of
321 the inclusion of the Georgia promotional logo, the production company or qualified
322 interactive entertainment production company may offer marketing opportunities to be
323 evaluated by the Department of Economic Development to ensure that they offer equal
324 or greater promotional value to the State of Georgia state certified production meets at
325 least four of the criteria provided in divisions (c)(2)(A)(i) through (c)(2)(A)(ix).

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

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

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

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

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

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

343 ~~(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code~~
344 ~~section for qualified interactive entertainment production companies and affiliates exceed~~
345 ~~\$25 million for taxable years beginning on or after January 1, 2013, and before January~~
346 ~~1, 2014. The maximum credit for any qualified interactive entertainment production~~
347 ~~company and its affiliates shall be \$5 million for such taxable year. When the \$25~~
348 ~~million cap is reached, the tax credit for qualified interactive entertainment production~~
349 ~~companies shall expire for such taxable years.~~

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

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

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

360 ~~(5)(A) For taxable years beginning on or after January 1, 2018, the amount of tax~~
361 ~~credits allowed under this Code section for qualified interactive entertainment~~

362 ~~production companies and affiliates shall not exceed \$12.5 million for each taxable~~
363 ~~year.~~

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

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

370 ~~(7) Qualified interactive entertainment production companies seeking to claim a tax~~
371 ~~credit under the provisions of this Code section shall submit an application to the~~
372 ~~commissioner for preapproval of such tax credit. The commissioner shall be authorized~~
373 ~~to promulgate any rules and regulations and forms necessary to implement and administer~~
374 ~~the provisions of this Code section. The commissioner shall preapprove the tax credits~~
375 ~~based on the order in which properly completed applications were submitted. In the~~
376 ~~event that two or more applications were submitted on the same day and the amount of~~
377 ~~funds available will not be sufficient to fully fund the tax credits requested, the~~
378 ~~commissioner shall prorate the available funds between or among the applicants.~~

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

388 ~~(9) Before the Department of Economic Development issues its approval to the qualified~~
389 ~~interactive entertainment production company for the qualified production activities~~
390 ~~related to interactive entertainment, the qualified interactive entertainment production~~
391 ~~company must certify to the department that:~~

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

394 ~~(B) The qualified interactive entertainment production company had expended a total~~
395 ~~aggregate payroll of \$500,000.00 or more, or \$250,000.00 or more on or after January~~
396 ~~1, 2018, for employees working within this state during the taxable year of the qualified~~
397 ~~interactive entertainment production company.~~

398 ~~The department shall issue a certification that the qualified interactive entertainment~~
399 ~~production company meets the requirements of this paragraph; provided, however, that~~
400 ~~the department shall not issue any certifications before July 1, 2014. The qualified~~
401 ~~interactive entertainment production company shall provide such certification to the~~
402 ~~Department of Economic Development. The Department of Economic Development~~
403 ~~shall not issue its approval until it receives such certification.~~

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

414 ~~(B) For taxable years beginning on or after January 1, 2016, and before January 1,~~
415 ~~2017, the qualified interactive entertainment production company shall report such~~
416 ~~number for such taxable year and separately for each of the prior two taxable years.~~

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

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

426 ~~(f)(1)(e)(1) Where~~ If the amount of such credit or credits tax credits allowed under this
427 Code section exceeds the production company's or qualified interactive entertainment
428 production company's liability for such taxes owed pursuant to this article in a taxable
429 year, the excess may be taken as a credit against such production company's ~~or qualified~~
430 ~~interactive entertainment production company's~~ quarterly or monthly payment under
431 Code Section 48-7-103. Each employee whose employer receives credit against such
432 production company's ~~or qualified interactive entertainment production company's~~
433 quarterly or monthly payment under Code Section 48-7-103 shall receive credit against
434 his or her income tax liability under Code Section 48-7-20 for the corresponding taxable
435 year for the full amount which would be credited against such liability prior to the
436 application of the credit provided for in this subsection. Credits against quarterly or
437 monthly payments under Code Section 48-7-103 and credits against liability under Code
438 Section 48-7-20 established by this subsection shall not constitute income to the
439 production company ~~or qualified interactive entertainment production company.~~

440 (2) If a production company and its affiliates, ~~or a qualified interactive entertainment~~
441 ~~production company and its affiliates~~, claim ~~the~~ a credit authorized under Code Section
442 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its
443 affiliates, ~~or the qualified interactive entertainment production company and its affiliates~~,
444 ~~will~~ shall only be allowed to claim the credit authorized under this Code section to the
445 extent that the Georgia resident employees included in the credit calculation authorized
446 under this Code section and taken by the production company and its affiliates, ~~or the~~
447 ~~qualified interactive entertainment production company and its affiliates~~, on such tax
448 return under this Code section have been permanently excluded from the credit
449 authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

457 (1)(A) The total amount of all transfers or sales in a calendar year shall not exceed an
458 amount equal to 2.3 percent of the total budget in the General Appropriations Act as
459 passed and signed into law for the corresponding fiscal year.

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

465 (C) Any tax credit certificates available to be issued by the Department of Revenue in
466 the current calendar year in excess of the amount of credits allowed to be transferred

467 or sold pursuant to subparagraph (A) of this paragraph shall be issued and available to
468 be transferred or sold in the next calendar year for which such amount has not been
469 reached in the order in which final certificates were available to be issued by the
470 department but for reaching the annual limit, and the amount of such credit certificates
471 shall count toward the amount of credits allowed to be transferred or sold pursuant to
472 subparagraph (A) of this paragraph for that year.

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

481 (E) A tax credit certificate issued pursuant to subparagraph (B) or subparagraph (C)
482 of this paragraph shall count toward the amount of credits allowed to be transferred or
483 sold pursuant to subparagraph (A) of this paragraph only in the year such certificate
484 was issued by the Department of Revenue;

485 ~~(1)(2)~~ Such production company ~~or qualified interactive entertainment production~~
486 ~~company~~ may make only a single transfer or sale of tax credits earned in a taxable year;
487 ~~provided,~~ however, ~~that~~ the transfer or sale may involve one or more transferees;

488 ~~(2)(3)~~ Such production company ~~or qualified interactive entertainment production~~
489 ~~company~~ shall submit to the Department of Economic Development and to the
490 Department of Revenue a written notification of any transfer or sale of tax credits within
491 30 days after the transfer or sale of such tax credits. The notification shall include such
492 production company's ~~or qualified interactive entertainment production company's~~ tax
493 credit balance prior to transfer, the credit certificate number, the remaining balance after

494 transfer, all tax identification numbers for each transferee, the date of transfer, the amount
495 transferred, and any other information required by the Department of Economic
496 Development or the Department of Revenue;

497 ~~(3)~~(4) Failure to comply with this subsection shall result in the disallowance of the tax
498 credit until the production company ~~or qualified interactive entertainment production~~
499 ~~company~~ is in full compliance;

500 ~~(4)~~(5) The transfer or sale of this tax credit does not extend the time in which such tax
501 credit can be used. The carry-forward period for a tax credit that is transferred or sold
502 shall begin on the date on which the tax credit was originally earned or for a tax credit
503 subject to the provisions of subsection ~~(f)~~ (k) of this Code section, the date on which the
504 final certification for such tax credit was issued pursuant to said subsection;

505 ~~(5)~~(6) A transferee shall have only such rights to claim and use the tax credit that were
506 available to such production company ~~or qualified interactive entertainment production~~
507 ~~company~~ at the time of the transfer, except for the use of the credit in paragraph ~~(f)~~ (k)
508 of subsection ~~(f)~~ (e) of this Code section. To the extent that such production company
509 ~~or qualified interactive entertainment production company~~ did not have rights to claim
510 or use the tax credit at the time of the transfer, the Department of Revenue shall ~~either~~
511 ~~disallow the tax credit claimed by the transferee or~~ recapture the tax credit from the
512 transferee; ~~provided, however, that the Department of Revenue shall not recapture a tax~~
513 ~~credit from the transferee if the tax credit was issued a valid final certification pursuant~~
514 ~~to subsection (l) (k) of this Code section. The transferee's recourse is against such~~
515 ~~production company or qualified interactive entertainment production company~~
516 transferor; and

517 ~~(6)~~(7) The transferee ~~must~~ shall acquire the tax credits in this Code section for a
518 minimum of 60 percent of the amount of the tax credits so transferred.

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

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

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

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

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

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

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

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

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

543 ~~(2) In the initial year in which the production company or qualified interactive~~
544 ~~entertainment production company claims the credit granted in this Code section, the~~
545 ~~production company or qualified interactive entertainment production company shall~~

546 include in the description of the qualified production activities required by subparagraph
547 (A) of paragraph (1) of this subsection information which demonstrates that the activities
548 included in the base investment or excess base investment equal or exceed \$500,000.00
549 during such year, or \$250,000.00 on or after January 1, 2018, for qualified interactive
550 entertainment production companies; and

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

557 (h.1)(1) For any projects certified by the Department of Economic Development on or
558 after January 1, 2021, the

559 (f.1)(1) As used in this subsection, the term 'Georgia based qualified production facility'
560 means a facility consisting of purpose-built studio sound stages:

561 (A) That was substantially completed between January 1, 2023, and June 30, 2027, and
562 in which the construction investment for such facility was in excess of \$100 million
563 dollars for such purpose-built studio sound stages; or

564 (B) That has more than 1.5 million square feet of stage space.

565 (2) The conditions provided in paragraph (1) of subsection (f) shall not apply to tax
566 credits for state certified productions that meet one of the following criteria:

567 (A) The state certified production filmed at least 50 percent of its principal
568 photography days in a Georgia based qualified production facility; or

569 (B) The state certified production filmed at least 50 percent of its principal
570 photography days in one or more counties that have been underutilized by production
571 companies as listed by the Department of Economic Development as of January 1,
572 2026.

573 (3) To qualify for the exemption from the conditions provided in paragraph (1) of
574 subsection (f) pursuant to this subsection, the Georgia based qualified production facility
575 shall submit such documentation as required by the Department of Economic
576 Development to show that the criteria of paragraph (2) of this subsection have been met.

577 The Department of Economic Development shall certify each state certified production
578 that meets such requirements and submit such certification to the Department of Revenue.

579 (g)(1) The tax credit provided for in this Code section if covered under the schedule
580 provided in paragraph (1) of subsection (f) of this Code section shall not be allowed,
581 claimed, assigned, sold, transferred, or utilized in any manner by a production company
582 until final certification is issued pursuant to subsection (f) (k) of this Code section and
583 except under the following conditions and limitations of provided in this subsection.

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

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

591 (B) A detailed accounting of all qualified production activities and the attendant
592 production expenditures included in the base investment for the state certified
593 production;

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

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

- 599 (E) Contracts for goods or services included in the base investment as requested by the
600 Department of Revenue or the eligible auditor hired to conduct the audit for the state
601 certified production;
- 602 (F) An Internal Revenue Service Form W-9 completed and issued by each vendor for
603 which expenditures are included in the base investment as requested by the Department
604 of Revenue or the eligible auditor hired to conduct the audit for the state certified
605 production;
- 606 (G) Notification as provided for in paragraph (7) of subsection ~~(f)~~ (k) of this Code
607 section of any intent to utilize an eligible auditor;
- 608 (H) A description of the status of the distribution of the state certified production and
609 information related to any qualified Georgia promotion connected with such
610 production;
- 611 (I) For any projects certified by the Department of Economic Development on or after
612 January 1, 2026, a description of the status of satisfying the requirements of
613 subparagraph (c)(2)(A) or paragraph (2) of subsection (d) if the total amount of the tax
614 credit sought for the state certified production includes the additional credit allowed in
615 subparagraph (c)(2)(A) or paragraph (2) of subsection (d);
- 616 ~~(f)~~(J) The total amount of the tax credit sought for the state certified production; and
617 ~~(f)~~(K) A statement affirming that the contents of the application are true and correct.
- 618 (3) If a production company is issued final certification of a tax credit pursuant to
619 subsection ~~(f)~~ (k) of this Code section, such tax credit shall be considered earned in the
620 taxable year in which it is issued final certification.
- 621 (4) For each year in which the production company either claims or transfers the tax
622 credit, the production company shall attach a schedule to the production company's
623 Georgia income tax return which ~~will~~ shall set forth the following information, as a
624 minimum:
- 625 (A) The amount of tax credit claimed for the taxable year;

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

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

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

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

633 (5) In no event shall the amount of the tax credit subject to subsection ~~(f)~~ (k) of this Code
 634 section for a taxable year exceed the production company's income tax liability. Any
 635 unused credit amount shall be allowed to be carried forward for three years from the close
 636 of the taxable year in which the tax credit was issued its final certification pursuant to
 637 subsection ~~(f)~~ (k) of this Code section. No such credit shall be allowed the production
 638 company against prior years' tax liability.

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

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

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

646 (B) Establish an approval process for any criteria that require approval from the
 647 Department of Economic Development as provided in divisions (c)(2)(A)(v) and
 648 (c)(2)(A)(viii) of this Code section;

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

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

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

654 (3) If the Department of Economic Development prevails in court in an appeal of the
655 denial of certification, the production company shall pay all court costs.

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

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

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

671 ~~(B)~~ For any project certified by the Department of Economic Development on or after
672 January 1, 2022, a tax credit allowed by this Code section to a production company
673 shall not be claimed, assigned, sold, transferred, or utilized in any manner until the
674 production company applies for the tax credit as provided in subsection ~~(h.1)~~ of this
675 Code section and the department issues a final certification of the tax credit pursuant
676 to this subsection if the total amount of such tax credit sought for the project exceeds
677 \$1.25 million.

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

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

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

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

692 (i) Register with the department;

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

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

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

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

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

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

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

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

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

710 (4) Each audit shall:

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

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

714 (C) Follow regulations that shall be published by the department regarding
715 expenditures incurred with related persons or related members as such terms are
716 defined in Code Section 48-7-28.3;

717 (D) Verify each reported expenditure that is included in the audit and identify and
718 exclude each such expenditure that does not fully meet the conditions of this Code
719 section;

720 (E) Exclude any expenditure not submitted with or that was incurred after the
721 application required by subsection ~~(h.1)~~ (g) of this Code section was submitted;

722 (F) Not be performed by an eligible accounting entity that is not determined to be
723 independent as provided in the American Institute of Certified Public Accountants Code
724 of Professional Conduct with respect to the production company or any of its related
725 persons or related members as such terms are defined in Code Section 48-7-28.3 or as
726 otherwise provided by the Department of Revenue; and

727 (G) Be submitted to the department which shall review the audit, make adjustments as
728 necessary, and issue a final certification to the production company.

729 (5) The Department of Revenue shall:

730 (A) Promulgate rules and regulations and implement this subsection;

- 731 (B) Publish and regularly update a list of all eligible auditors that a production
732 company may hire to conduct the audit required by this subsection;
- 733 (C) Publish on its public website the application for certification of eligible auditors
734 as well as all requirements related to certification and conducting an audit pursuant to
735 this subsection;
- 736 (D) Publish the registration fee required by division (3)(B)(v) of this subsection and
737 any bond required pursuant to division (3)(B)(vi) of this subsection;
- 738 (E) Determine whether a sampling method shall be used for the audits required by this
739 subsection, the appropriate sample method and size, and if a sampling method is used,
740 ensure that it accurately captures a truly representative sample of all ineligible
741 expenditures across all submitted expenditures and projects the type, rate, and amount
742 of ineligible expenditures across all submitted expenditures;
- 743 (F) Perform the audit of expenditures when, due to confidentiality of information, the
744 eligible auditor is unable to access necessary information that the department is able
745 access;
- 746 (G) Review each audit conducted by an eligible auditor, conduct the portions of the
747 audit described in subparagraph (F) of this paragraph, perform additional auditing as
748 necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue
749 the final certification of the tax credit to the taxpayer; and
- 750 (H) For an audit that it conducts without an eligible auditor, complete the audit, adjust
751 the value of the tax credit as necessary, and issue the final certification of the tax credit
752 to the taxpayer.
- 753 (6) The production company applying for a final certification of a tax credit pursuant to
754 this subsection shall agree and be required to reimburse the department for all costs
755 incurred by the performance of a related audit, or any portion thereof, including for
756 review of an audit conducted by an eligible auditor, prior to the issuance of such final
757 certification.

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

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

763 **SECTION 4.**

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

765 "48-7-40.37.

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

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

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

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

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

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

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

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

787 (7) 'Production expenditures' means:

788 (A) Preproduction, production, and postproduction expenditures incurred in this state
789 that are directly used in a qualified production activity, including, but not limited to, the
790 following: set construction and operation; wardrobes, make-up, accessories, and related
791 services; costs associated with photography and sound synchronization; expenditures
792 excluding license fees incurred with Georgia companies for sound recordings and
793 musical compositions; lighting and related services and materials; editing and related
794 services; rental of facilities and equipment; leasing of vehicles; costs of food and
795 lodging; digital or tape editing; sound mixing; computer graphics services; special
796 effects services; animation services; total aggregate payroll; airfare, if purchased
797 through a Georgia travel agency or travel company; insurance costs and bonding, if
798 purchased through a Georgia insurance agency; and other direct costs of producing the
799 project in accordance with generally accepted interactive entertainment industry
800 practices;

801 (B) Such term shall not include:

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

804 (ii) Any expenditure for work or services not conducted or rendered in this state.
805 Expenditures for services not performed at the filming site shall only qualify if the
806 vendor is a Georgia vendor. Expenditures for services conducted or rendered both in
807 and outside this state shall only qualify to the extent the service is conducted or
808 rendered in Georgia;

809 (iii) Expenditures for goods that were not purchased or rented or leased in this state
810 from a Georgia vendor. Expenditures for goods shall only qualify to the extent such
811 goods are used in this state. A vendor that acts as a conduit to enable purchases or
812 rentals to qualify that would not otherwise qualify shall not be considered a Georgia
813 vendor with respect to such purchases, rentals, or leases; or
814 (iv) Any transaction subject to taxation imposed by Chapter 8 or 13 of this title for
815 which taxes have not been demonstrably paid; and
816 (C) Such term includes payments to a loan-out company by a qualified interactive
817 entertainment production company that has met its withholding tax obligations as
818 provided in this paragraph. The qualified interactive entertainment production
819 company shall withhold Georgia income tax at the rate imposed by subsection (a) of
820 Code Section 48-7-21 on all payments to loan-out companies for services performed
821 in Georgia. Any amounts so withheld shall be deemed to have been withheld by the
822 loan-out company on wages paid to its employees for services performed in Georgia
823 pursuant to Article 5 of this chapter notwithstanding the exclusion provided in
824 subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so
825 withheld shall be allocated to the loan-out company's employees based on the payments
826 made to the loan-out company's employees for services performed in Georgia. For
827 purposes of this chapter, loan-out company nonresident employees performing services
828 in Georgia shall be considered taxable nonresidents and the loan-out company shall be
829 subject to income taxation in the taxable year in which the loan-out company's
830 employees perform services in Georgia, notwithstanding any other provisions in this
831 chapter. Such withholding liability shall be subject to penalties and interest in the same
832 manner as the employee withholding taxes imposed by Article 5 of this chapter, and the
833 commissioner shall provide by regulation the manner in which such liability shall be
834 assessed and collected.

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

839 (9) 'Qualified interactive entertainment production company' means a company that:
840 (A) Maintains a business location physically located in this state;
841 (B) Has a total aggregate payroll of \$250,000.00 or more for employees working
842 within the state in the taxable year the qualified interactive entertainment production
843 company claims the tax credits;
844 (C) Has gross income of less than \$100 million for the taxable year; and
845 (D) Is primarily engaged in qualified production activities related to interactive
846 entertainment.

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

850 (10) 'Qualified production activities' means the production of new digital projects
851 produced in this state and approved by the Department of Economic Development as
852 state certified productions, including only the following: interactive entertainment or
853 prereleased interactive games. Such term shall include projects created in this state, in
854 whole or in part, animation, and music fixed on a delivery system which includes without
855 limitation computer disc, laser disc, and any element of the digital domain and which is
856 intended for multimarket commercial distribution via digital platforms designed for the
857 distribution of interactive games. Such term shall not include any project that is not
858 intended for multimarket commercial distribution or any project not originally created in
859 this state.

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

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

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

873 (A) With respect to a single employee, the portion of any salary which exceeds
874 \$500,000.00 for a single production shall not be included when calculating total
875 aggregate payroll; and

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

879 (c) For any qualified interactive entertainment production company and its affiliates that
880 invest in a state certified production and whose average annual total production
881 expenditures in this state did not exceed \$30 million for 2002, 2003, and 2004, there shall
882 be allowed an income tax credit against the tax imposed under this article. The tax credit
883 under this subsection shall be allowed if the base investment in this state equals or exceeds
884 \$250,000.00, and shall be calculated as follows:

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

887 (2)(A) The qualified interactive entertainment production company shall be allowed
888 an additional tax credit equal to 10 percent of such base investment if the qualified

889 production activity includes a qualified Georgia promotion. Such additional tax credit
890 shall be allowed for any qualified production that includes a qualified Georgia
891 promotion upon its release to the general public. In lieu of the inclusion of the Georgia
892 promotional logo, the qualified interactive entertainment production company may
893 offer alternative marketing opportunities to be evaluated by the Department of
894 Economic Development to ensure that they offer equal or greater promotional value to
895 the State of Georgia. The Department of Economic Development shall electronically
896 certify to the Department of Revenue when the requirements of this paragraph and
897 paragraph (2) of subsection (d) of this Code section have been met.

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

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

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

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

908 (iv) The names of all qualified interactive entertainment production companies that
909 chose to include the Georgia promotional logo in its final production instead of
910 offering the state an alternative marketing proposal.

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

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

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

927 (2)(A) The qualified interactive entertainment production company and its affiliates
928 shall be allowed an additional tax credit equal to 10 percent of the excess base
929 investment if the qualified production activities include a qualified Georgia promotion.
930 Such additional tax credit shall be allowed for any qualified production that includes
931 a qualified Georgia promotion upon its release to the general public. In lieu of the
932 inclusion of the Georgia promotional logo, the qualified interactive entertainment
933 production company may offer marketing opportunities to be evaluated by the
934 Department of Economic Development to ensure that they offer equal or greater
935 promotional value to the State of Georgia.

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

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

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

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

946 (iv) The names of all qualified interactive entertainment production companies that
947 chose to include the Georgia promotional logo in its final production instead of
948 offering the state an alternative marketing proposal.

949 The report required under this subparagraph shall be completed no later than January
950 1 of each year and presented to each member of the House Committee on Ways and
951 Means, the Senate Finance Committee, the Senate Economic Development and
952 Tourism Committee, the House Committee on Economic Development and Tourism,
953 and the Governor.

954 (e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
955 section for qualified interactive entertainment production companies and affiliates exceed
956 \$12.5 million for each taxable year.

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

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

962 (4) Qualified interactive entertainment production companies seeking to claim a tax
963 credit under the provisions of this Code section shall submit an application to the
964 commissioner for preapproval of such tax credit. The commissioner shall preapprove the
965 tax credits based on the order in which properly completed applications were submitted.

966 In the event that two or more applications were submitted on the same day and the

967 amount of funds available will not be sufficient to fully fund the tax credits requested, the
968 commissioner shall prorate the available funds between or among the applicants.

969 (5) No qualified interactive entertainment production company shall be allowed to claim
970 an amount of tax credits under this Code section for any single year in excess of its total
971 aggregate payroll expended to employees working within this state for the calendar year
972 that the qualified interactive entertainment production company claims the tax credits.
973 Any amount in excess of such limit shall not be eligible for carry forward to the
974 succeeding years' tax liability, nor shall such excess amount be eligible for use against
975 the qualified interactive entertainment production company's quarterly or monthly
976 payment under Code Section 48-7-103, nor shall such excess amount be assigned, sold,
977 or transferred to any other taxpayer.

978 (6) Before the Department of Economic Development issues its approval to the qualified
979 interactive entertainment production company for the qualified production activities, the
980 qualified interactive entertainment production company shall certify to the department
981 that:

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

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

987 The department shall issue a certification that the qualified interactive entertainment
988 production company meets the requirements of this paragraph. The qualified interactive
989 entertainment production company shall provide such certification to the Department of
990 Economic Development. The Department of Economic Development shall not issue its
991 approval until it receives such certification.

992 (7)(A) The qualified interactive entertainment production company shall report to the
993 Department of Revenue on its Georgia income tax return the monthly average number

994 of full-time employees subject to Georgia income tax withholding for the taxable year
995 as provided in subparagraph (B) of this paragraph. As used in this paragraph, the term
996 'full-time employee' means a person who performs a job that requires a minimum of 35
997 hours per week and receives compensation at or above the average wage earned in the
998 county with the lowest average wage earned in this state as reported in the most
999 recently available annual issue of the Georgia Employment and Wages Averages
1000 Report of the Department of Labor.

1001 (B) The qualified interactive entertainment production company shall report such
1002 number for each respective taxable year.

1003 (C) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable
1004 years, the commissioner shall report yearly to the House Committee on Ways and
1005 Means and the Senate Finance Committee. Such report shall include the name, tax year
1006 beginning, and monthly average number of full-time employees for each qualified
1007 interactive entertainment production company and shall be submitted by June 30 of
1008 each year.

1009 (f)(1) If the amount of tax credits allowed under this Code section exceeds the qualified
1010 interactive entertainment production company's liability for taxes owed under this article
1011 in a taxable year, the excess may be taken as a credit against such qualified interactive
1012 entertainment production company's quarterly or monthly payment under Code Section
1013 48-7-103. Each employee whose employer receives credit against such qualified
1014 interactive entertainment production company's quarterly or monthly payment under
1015 Code Section 48-7-103 shall receive credit against his or her income tax liability under
1016 Code Section 48-7-20 for the corresponding taxable year for the full amount which would
1017 be credited against such liability prior to the application of the credit provided for in this
1018 subsection. Credits against quarterly or monthly payments under Code Section 48-7-103
1019 and credits against liability under Code Section 48-7-20 established by this subsection
1020 shall not constitute income to the qualified interactive entertainment production company.

1021 (2) If a qualified interactive entertainment production company and its affiliates claim
1022 the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18,
1023 then the qualified interactive entertainment production company and its affiliates shall
1024 only be allowed to claim the credit authorized under this Code section to the extent that
1025 the Georgia resident employees included in the credit calculation authorized under this
1026 Code section and taken by the qualified interactive entertainment production company
1027 and its affiliates on such tax return under this Code section have been permanently
1028 excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17,
1029 or 48-7-40.18.

1030 (g) Any tax credits with respect to a state certified production earned by a qualified
1031 interactive entertainment production company and previously claimed but not used by such
1032 qualified interactive entertainment production company against its income tax may be
1033 transferred or sold in whole or in part by such qualified interactive entertainment
1034 production company to another Georgia taxpayer, subject to the following conditions:

1035 (1) Such qualified interactive entertainment production company may make only a single
1036 transfer or sale of tax credits earned in a taxable year; provided, however, that the transfer
1037 or sale may involve one or more transferees;

1038 (2) Such qualified interactive entertainment production company shall submit to the
1039 Department of Economic Development and to the Department of Revenue a written
1040 notification of any transfer or sale of tax credits within 30 days after the transfer or sale
1041 of such tax credits. The notification shall include such qualified interactive entertainment
1042 production company's tax credit balance prior to transfer, the credit certificate number,
1043 the remaining balance after transfer, all tax identification numbers for each transferee, the
1044 date of transfer, the amount transferred, and any other information required by the
1045 Department of Economic Development or the Department of Revenue;

1046 (3) Failure to comply with this subsection shall result in the disallowance of the tax
1047 credit until the qualified interactive entertainment production company is in full
1048 compliance;

1049 (4) The transfer or sale of this tax credit does not extend the time in which such tax credit
1050 can be used. The carry-forward period for a tax credit that is transferred or sold shall
1051 begin on the date on which the tax credit was originally earned;

1052 (5) A transferee shall have only such rights to claim and use the tax credit that were
1053 available to such qualified interactive entertainment production company at the time of
1054 the transfer, except for the use of the credit in paragraph (1) of subsection (f) of this Code
1055 section. To the extent that such qualified interactive entertainment production company
1056 did not have rights to claim or use the tax credit at the time of the transfer, the
1057 Department of Revenue shall recapture the tax credit from the transferor. The transferee's
1058 recourse is against such qualified interactive entertainment production company; and

1059 (6) The transferee shall acquire the tax credits in this Code section for a minimum of 60
1060 percent of the amount of the tax credits so transferred.

1061 (h) The credit granted under this Code section shall be subject to the following conditions
1062 and limitations:

1063 (1) The credit may be taken beginning with the taxable year in which the qualified
1064 interactive entertainment production company has met the investment requirement. For
1065 each year in which such qualified interactive entertainment production company either
1066 claims or transfers the credit, the qualified interactive entertainment production company
1067 shall attach a schedule to the qualified interactive entertainment production company's
1068 Georgia income tax return which shall set forth the following information, as a minimum:

1069 (A) A description of the qualified production activities, along with the certification
1070 from the Department of Economic Development;

1071 (B) A detailed listing of the employee names, social security numbers, and Georgia
1072 wages when salaries are included in the base investment;

- 1073 (C) The amount of tax credit claimed for the taxable year;
- 1074 (D) Any tax credit previously taken by the qualified interactive entertainment
1075 production company against Georgia income tax liabilities or the qualified interactive
1076 entertainment production company's quarterly or monthly payments under Code Section
1077 48-7-103;
- 1078 (E) The amount of tax credit carried forward from prior years;
- 1079 (F) The amount of tax credit utilized by the qualified interactive entertainment
1080 production company in the current taxable year; and
- 1081 (G) The amount of tax credit to be carried forward to subsequent tax years;
- 1082 (2) In the initial year in which a qualified interactive entertainment production company
1083 claims the credit granted in this Code section, the qualified interactive entertainment
1084 production company shall include in the description of the qualified production activities
1085 required by subparagraph (A) of paragraph (1) of this subsection information which
1086 demonstrates that the activities included in the base investment or excess base investment
1087 equal or exceed \$250,000.00; and
- 1088 (3) In no event shall the amount of the tax credit under this Code section for a taxable
1089 year exceed the qualified interactive entertainment production company's income tax
1090 liability. Any unused credit amount shall be allowed to be carried forward for five years
1091 from the close of the taxable year in which the investment occurred. No such credit shall
1092 be allowed the qualified interactive entertainment production company against prior
1093 years' tax liability.
- 1094 (i)(1) The Department of Economic Development shall:
- 1095 (A) Certify each production that qualifies for the tax credits authorized under this Code
1096 section;
- 1097 (B) Submit such certifications to the commissioner; and
- 1098 (C) Promulgate rules and regulations as are necessary to implement this subsection.

1099 (2) The Department of Economic Development may charge reasonable fees associated
1100 with the certification process established pursuant to this paragraph.

1101 (j) The commissioner shall promulgate such rules and regulations as are necessary to
1102 implement and administer this Code section.

1103 (k) No qualified interactive entertainment production company shall be allowed a credit
1104 under this Code section and Code Section 48-7-40.26 in the same year."

1105 **SECTION 5.**

1106 (a) This Act shall become effective on January 1, 2026, and shall be applicable to taxable
1107 years beginning on or after such date.

1108 (b) Section 3 of this Act shall apply to projects certified by the Department of Economic
1109 Development on or after January 1, 2026.

1110 **SECTION 6.**

1111 All laws and parts of laws in conflict with this Act are repealed.