

Entertainment Industry Investment

This Act is targeted at retaining and expanding film, television, and digital media production in the state. The foundation of the Act is a 20% transferable tax credit. Production companies that spend a minimum of \$500,000 in the state on qualified production and post-production expenditures are eligible for this credit. This includes most materials, services and labor. For example, credits generated by qualified productions may be used by the production against income taxes or payroll taxes or sold/transferred to a third party for use against the purchaser's state tax liability. The 20% credit applies to both residential and out-of-town hires working in the state with a salary cap of \$500,000 per person, per production, when the employee is paid by "salary," which is defined as being paid by W2. If the production company uses a 1099 or a personal services contract to hire someone the \$500,000 limit does not apply.

The Act offers an additional 10% tax credit if a production company includes a state promotional logo in the qualified finished feature film, TV series, music video or digital media product.

Submitted as:

Georgia

[HB 1027/AP](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] An Act related to the creation of an entertainment industry
2 investment tax credit.

3
4 Section 2. [Definitions.]

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

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

14 Section 3. [Entertainment industry investment act.]

15 (A) This Code section shall be known and may be cited as the '[insert state] Entertainment
16 Industry Investment Act.'

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

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

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

5 (3) 'Multimarket commercial distribution' means paid commercial distribution
6 which extends to markets outside [insert state].

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

13 (5) 'Production expenditures' means preproduction, production, and
14 postproduction expenditures incurred in this state that are directly used in a qualified production
15 activity, including without limitation the following: set construction and operation; wardrobes,
16 48 make-up, accessories, and related services; costs associated with photography and sound
17 synchronization, expenditures excluding license fees incurred with [inset state] companies for sound
18 recordings and musical compositions, lighting, and related services and materials; editing and related
19 services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or
20 tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer
21 graphics services, special effects services, and animation services; total aggregate payroll; airfare, if
22 purchased through a [insert state] based travel agency or travel company; insurance costs and
23 bonding, if purchased through a [insert state] based insurance agency; and other direct costs of
24 producing the project in accordance with generally accepted entertainment industry practices. This
25 term shall not include postproduction expenditures for footage shot outside the State of [insert state],
26 marketing, story rights, or and distribution, but shall not affect other qualified story rights. This term
27 includes payments to a loan-out company by a production company or qualified interactive
28 entertainment production company that has met its withholding tax obligations as set out below. The
29 production company or qualified interactive entertainment production company shall withhold
30 [insert state] income tax at the srate of 6 percent on all payments to loan-out companies for services
31 performed in [insert state]. Any amounts so withheld shall be deemed to have been withheld by the
32 loan-out company on wages paid to its employees for services performed in [insert state] pursuant to
33 [insert citation]. The amounts so withheld shall be allocated to the loan-out company's employees
34 based on the payments made to the loan-out company's employees for services performed in [insert
35 state]. For purposes of this chapter, loan-out company nonresident employees performing services in
36 [insert state] shall be considered taxable nonresidents and the loan-out company shall be subject to
37 income taxation in the taxable year in which the loan-out company's employees perform services in
38 [insert state], notwithstanding any other provisions in this chapter. Such withholding liability shall
39 be subject to penalties and interest in the same manner as the employee withholding taxes imposed
40 by [insert citation] and the [appropriate state agency] shall provide by regulation the manner in
41 which such liability shall be assessed and collected.

42 (6) 'Qualified [insert state] promotion' means a qualified promotion of this
43 state approved by the Department of Economic Development consisting of a:

44 (a) Qualified movie production which includes an
45 approximately a five-second long static or animated logo that promotes [insert
46 state] within its presentation and all promotional trailers worldwide in the end
47 credits before the below-the-line crew crawl for the life of the project and
48 which includes a link to [insert state] on the project's web page;

1 (b) Qualified TV production which includes an
2 imbedded embedded five-second long [insert state] promotion during each
3 broadcast half hour worldwide for the life of the project and which includes a
4 link to [insert state] on the project's web page;

5 (c) Qualified music video which includes the [insert
6 state] logo at the end of each video and within online promotions; or (d)
7 Qualified interactive game which includes a 15 second long [insert state]
8 advertisement in units sold and imbedded embedded in online promotions.

9 (7) 'Qualified interactive entertainment production company' means a
10 company whose gross income is less than \$100 million that is primarily engaged in qualified
11 production activities related to interactive entertainment which has been approved by the Department
12 of Economic Development. This term shall not mean or include any form of business owned,
13 affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax
14 obligation of the state, or a loan made by the state or a loan
15 99 guaranteed by the state.

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

31 (9) 'Resident' means an individual as designated pursuant to [insert citation].

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

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

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

47 (b) All payments to a single employee and any legal
48 entity in which the employee has any direct or indirect ownership interest

1 shall be considered as having been paid to the employee and shall be
2 aggregated regardless of the means of payment or distribution.

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

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

16 (2)(A) The production company
17 or qualified interactive entertainment production
18 company shall be allowed an additional tax credit equal
19 to 10 percent of such base investment if the qualified
20 production activity includes a qualified [insert state]
21 promotional logo. In lieu of the inclusion of the [insert state]
22 promotional logo, the production company or qualified
23 interactive entertainment production company may
24 offer alternative marketing opportunities to be
25 evaluated by the [insert] Department of Economic
26 Development to ensure that they offer equal or greater
27 promotional value to [insert state].

28 (B) The Department of Economic
29 Development shall prepare an annual report detailing
30 the marketing opportunities it has approved under the
31 provisions of subparagraph (A) of this paragraph. The
32 report shall include, but not be limited to: (i) The goals
33 and strategy behind each marketing opportunity
34 approved pursuant to the provisions of subparagraph
35 (A) of this paragraph; (ii) The names of all production
36 companies approved by the Department of Economic
37 Development to provide alternative marketing
38 opportunities; (iii) The estimated value to the state of
39 each approved alternative marketing opportunity
40 compared to the estimated value of the [insert state]
41 promotional logo; and (iv) The names of all production
42 companies who chose to include the [insert state]
43 promotional logo in their final production instead of
44 offering the state an alternative marketing proposal. The
45 report required under this paragraph shall be completed
46 no later than January 1 of each year and presented to
47 [insert legislative committees], and the Governor.

48 (d) For any production company or qualified interactive entertainment
49 production company and its affiliates that invest in a state certified production

1 approved by the Department of Economic Development and whose average
2 annual total production expenditures in this state exceeded \$30 million for
3 [insert years], there shall be allowed an income tax credit against the tax
4 imposed under this article. For purposes of this subsection, the excess base
5 investment in this state is computed by taking the current year production
6 expenditures in a state certified production and subtracting the average of the
7 annual total production expenditures for [insert years]. The tax credit shall be
8 calculated as follows:

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

13 (2)(A) The production company or qualified interactive
14 entertainment production company and its affiliates shall be allowed an
15 additional tax credit equal to 10 percent of the excess base investment if the
16 qualified production activities include a qualified [insert state] promotion. In
17 lieu of the inclusion of the [insert state] promotional logo, the production
18 company or qualified interactive entertainment production company may offer
19 marketing opportunities to be evaluated by the Department of Economic
20 Development to ensure that they offer equal or greater promotional value to
21 [insert state].

22 (B) The Department of Economic Development shall
23 prepare an annual report detailing the marketing opportunities it has approved
24 under the provisions of subparagraph (A) of this paragraph. The report shall
25 include, but not be limited to: (i) The goals and strategy behind each
26 marketing opportunity approved pursuant to the provisions of subparagraph
27 (A) of this paragraph; (ii) The names of all production companies approved by
28 the Department of Economic Development to provide alternative marketing
29 opportunities; (iii) The estimated value to the state of each approved
30 alternative marketing opportunity compared to the estimated value of the
31 [insert state] promotional logo; and (iv) The names of all production
32 companies who chose to include the [insert state] promotional logo in their
33 final production instead of offering the state an alternative marketing
34 proposal. The report required under this paragraph shall be completed no later
35 than January 1 of each year and presented to each member of [insert
36 legislative committees], and the Governor.

37 (e)(1) In no event shall the aggregate amount of tax credits allowed under
38 [insert citation] section for qualified interactive entertainment production companies and affiliates
39 exceed \$25 million. The maximum credit for any qualified interactive entertainment production
40 company and its affiliates shall be \$5 million.

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

45 (f)(1) Where the amount of such credit or credits exceeds the production
46 company's or qualified interactive entertainment production company's liability for such taxes in a
47 taxable year, the excess may be taken as a credit against such production company's or qualified
48 interactive entertainment production company's quarterly or monthly payment under [insert citation].
49 Each employee whose employer receives credit against such production company's or qualified

1 interactive entertainment production company's quarterly or monthly payment under [insert citation]
2 shall receive credit against his or her income tax liability under [insert citation] for the corresponding
3 taxable year for the full amount which would be credited against such liability prior to the
4 application of the credit provided for in this subsection. Credits against quarterly or monthly
5 payments under [insert citation] and credits against liability under [insert citation] established by this
6 subsection shall not constitute income to the production company or qualified interactive
7 entertainment production company.

8 (2) If a production company and its affiliates, or a qualified interactive
9 entertainment production company and its affiliates, claim the credit authorized under [insert
10 citation] then the production company and its affiliates, or the qualified interactive entertainment
11 production company and its affiliates, will only be allowed to claim the credit authorized under this
12 Code section to the extent that the [insert state] resident employees included in the credit calculation
13 authorized under this Code section and taken by the production company and its affiliates, or the
14 qualified interactive entertainment production company and its affiliates, on such tax return under
15 this Code section have been permanently excluded from the credit authorized under [insert citation].

16 (g) Any tax credits with respect to a state certified production earned by a
17 production company or qualified interactive entertainment production company and previously
18 claimed but not used by such production company or qualified interactive entertainment production
19 company against its income tax may be transferred or sold in whole or in part by such production
20 company or qualified interactive entertainment production company to another [insert state]
21 taxpayer, subject to the following conditions:

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

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

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

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

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

1 credit at the time of the transfer, the Department of Revenue shall either
2 disallow the tax credit claimed by the transferee or recapture the tax credit
3 from the transferee. The transferee's recourse is against such production
4 company or qualified interactive entertainment production company; and

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

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

10 (1) The credit may be taken beginning with the taxable
11 year in which the production company or qualified interactive entertainment
12 production company has met the investment requirement. For each year in
13 which such production company or qualified interactive entertainment
14 production company either claims or transfers the credit, the production
15 company or qualified interactive entertainment production company shall
16 attach a schedule to the production company's or qualified interactive
17 entertainment production company's [insert state] income tax return which
18 will set forth the following information, as a minimum:

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

22 (B) A detailed listing of the
23 employee names, social security numbers, and [insert
24 state] wages when salaries are included in the base
25 investment;

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

28 (D) Any tax credit previously
29 taken by the production company or qualified
30 interactive entertainment production company against
31 [insert state] income tax liabilities or the production
32 company's or qualified interactive entertainment
33 production company's quarterly or monthly payments
34 under [insert citation];

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

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

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

43 (2) In the initial year in which the production company
44 or qualified interactive entertainment production company claims the credit
45 granted in this Code section, the production company or qualified interactive
46 entertainment production company shall include in the description of the
47 qualified production activities required by subparagraph (A) of paragraph (1)
48 of this subsection information which demonstrates that the activities included

1 in the base investment or excess base investment equal or exceed \$500,000.00
2 during such year; and

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

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

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

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

20
21 Section 4. [*Severability.*] Insert severability clause.

22
23 Section 5. [*Repealer.*] Insert repealer clause.

24
25 Section 6. [*Effective Date.*] Insert effective date.]