

House Bill 1037 (AS PASSED HOUSE AND SENATE)

By: Representatives Dollar of the 45th, Stephens of the 164th, Silcox of the 52nd, Williams of the 168th, and Frye of the 118th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 48-7-40.26 of the Official Code of Georgia Annotated, relating to
2 the "Georgia Entertainment Industry Investment Act," so as to move certain sound recordings
3 from qualified production activities to production expenditures; to reinforce the disallowance
4 of the additional 10 percent credit allowed for including a qualifying Georgia promotion for
5 certain productions and hold the issuance of such credit until public distribution of the
6 project; to limit the recapture of certain tax credits; to change the timing when a tax credit
7 can be claimed and its carry forward period; to require expenditures with vendors to include
8 W-9 forms; to provide for applications for certificates of final certification; to require an
9 audit prior to issuance of a final certification by the Department of Revenue; to phase in such
10 requirement; to provide for certification of accountants as eligible auditors for conducting
11 such audits; to provide for recouping of certain audit costs and prescribe actions to be taken
12 by the Department of Revenue; to provide for definitions; to provide for rules and
13 regulations; to provide for related matters; to provide for an effective date; to repeal
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Code Section 48-7-40.26 of the Official Code of Georgia Annotated, relating to the "Georgia
18 Entertainment Industry Investment Act," is amended by revising paragraphs (8) and (11) of
19 subsection (b), by revising paragraph (2) of and adding a new paragraph to subsection (c),
20 by revising paragraphs (4) and (5) of subsection (g), subsection (h), and subsection (k), and
21 by adding new subsections as follows:

22 "(8) 'Production expenditures' means:

23 (A) Preproduction, ~~preproduction~~, production, and postproduction expenditures
24 incurred in this state that are directly used in a qualified production activity, including,
25 but not limited to, ~~without limitation~~ the following: set construction and operation;
26 wardrobes, make-up, accessories, and related services; costs associated with

27 photography and sound synchronization; expenditures excluding license fees incurred
 28 with Georgia companies for sound recordings and musical compositions; sound
 29 recording projects used in feature films, series, pilots, or movies; lighting; and related
 30 services and materials; editing and related services; rental of facilities and equipment;
 31 leasing of vehicles; costs of food and lodging; digital or tape editing; film processing;
 32 transfers of film to tape or digital format; sound mixing; computer graphics services;
 33 special effects services; ~~and~~ animation services; total aggregate payroll; airfare, if
 34 purchased through a Georgia travel agency or travel company; insurance costs and
 35 bonding, if purchased through a Georgia insurance agency; and other direct costs of
 36 producing the project in accordance with generally accepted entertainment industry
 37 practices.

38 (B) This term shall not include:

39 (i) ~~Postproduction~~ ~~postproduction~~ expenditures for footage shot outside the State of
 40 Georgia, marketing, story rights, or distribution, ~~but shall not affect other qualified~~
 41 story rights;

42 (ii) Any expenditure for work or services not conducted or rendered in Georgia.
 43 Expenditures for services not performed at the filming site shall only qualify if the
 44 vendor is a Georgia vendor. Expenditures for services conducted or rendered both
 45 in Georgia and outside Georgia shall only qualify to the extent the service is
 46 conducted or rendered in Georgia;

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

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

54 (C) This term includes payments to a loan-out company by a production company or
 55 qualified interactive entertainment production company that has met its withholding tax
 56 obligations as set out below. The production company or qualified interactive
 57 entertainment production company shall withhold Georgia income tax at the rate of 6
 58 percent imposed by subsection (a) of Code Section 48-7-21 on all payments to loan-out
 59 companies for services performed in Georgia. Any amounts so withheld shall be
 60 deemed to have been withheld by the loan-out company on wages paid to its employees
 61 for services performed in Georgia pursuant to Article 5 of this chapter notwithstanding
 62 the exclusion provided in subparagraph (K) of paragraph (10) of Code Section
 63 48-7-100. The amounts so withheld shall be allocated to the loan-out company's

64 employees based on the payments made to the loan-out company's employees for
 65 services performed in Georgia. For purposes of this chapter, loan-out company
 66 nonresident employees performing services in Georgia shall be considered taxable
 67 nonresidents and the loan-out company shall be subject to income taxation in the
 68 taxable year in which the loan-out company's employees perform services in Georgia,
 69 notwithstanding any other provisions in this chapter. Such withholding liability shall
 70 be subject to penalties and interest in the same manner as the employee withholding
 71 taxes imposed by Article 5 of this chapter and the commissioner shall provide by
 72 regulation the manner in which such liability shall be assessed and collected.

73 (D) Production expenditures by a production company shall be subject to any
 74 limitations or reductions imposed by subsection (l) of this Code section."

75 "(11) 'Qualified production activities' means the production of new film, video, or digital
 76 projects produced in this state and approved by the Department of Economic
 77 Development as state certified productions, including only the following: feature films,
 78 series, pilots, movies for television, televised commercial advertisements, music videos,
 79 interactive entertainment, or prereleased interactive games, ~~or sound recording projects~~
 80 ~~used in feature films, series, pilots, or movies for television~~. Such activities shall include
 81 projects recorded in this state, in whole or in part, in either short or long form, animation
 82 and music, fixed on a delivery system which includes without limitation film, videotape,
 83 computer disc, laser disc, and any element of the digital domain, from which the program
 84 is viewed or reproduced, and which is intended for multimarket commercial distribution
 85 via theaters, video on demand, direct to DVD, digital platforms designed for the
 86 distribution of interactive games, licensing for exhibition by individual television stations,
 87 groups of stations, networks, advertiser supported sites, cable television stations, or
 88 public broadcasting stations. Such term shall not include the coverage of news ~~and~~ or
 89 athletic events, local interest programming, instructional videos, corporate videos, any
 90 project that is not intended for multimarket commercial distribution, or ~~projects~~ any
 91 project not shot, recorded, or originally created in Georgia."

92 "(2)(A) The production company or qualified interactive entertainment production
 93 company shall be allowed an additional tax credit equal to 10 percent of such base
 94 investment if the qualified production activity includes a qualified Georgia promotion.
 95 Such additional tax credit shall be allowed for any qualified production that includes
 96 a qualified Georgia promotion upon its release to the general public. In lieu of the
 97 inclusion of the Georgia promotional logo, the production company or qualified
 98 interactive entertainment production company may offer alternative marketing
 99 opportunities to be evaluated by the Department of Economic Development to ensure
 100 that they offer equal or greater promotional value to the State of Georgia. The

101 Department of Economic Development shall electronically certify to the Department
 102 of Revenue when the requirements of this paragraph and paragraph (2) of subsection
 103 (d) of this Code section have been met.

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

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

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

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

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

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

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

125 (D) The additional percentage of tax credit that is allowed by this paragraph and by
 126 paragraph (2) of subsection (d) of this Code section shall not be issued final
 127 certification pursuant to subsection (l) of this Code section unless and until the state
 128 certified production has been commercially distributed in multiple markets within five
 129 years of the date that the project was first certified by the Department of Economic
 130 Development.

131 (3) The base investment and the amount of the credit allowed by this subsection and by
 132 subsection (d) of this Code section with respect to a production company shall be subject
 133 to the limitations of and any reductions required by subsection (l) of this Code section."

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

137 subject to the provisions of subsection (l) of this Code section, the date on which the final
 138 certification for such tax credit was issued pursuant to said subsection;

139 (5) A transferee shall have only such rights to claim and use the tax credit that were
 140 available to such production company or qualified interactive entertainment production
 141 company at the time of the transfer, except for the use of the credit in paragraph (1) of
 142 subsection (f) of this Code section. To the extent that such production company or
 143 qualified interactive entertainment production company did not have rights to claim or
 144 use the tax credit at the time of the transfer, the Department of Revenue shall either
 145 disallow the tax credit claimed by the transferee or recapture the tax credit from the
 146 transferee; provided, however, that the Department of Revenue shall not recapture a tax
 147 credit from the transferee if the tax credit was issued a valid final certification pursuant
 148 to subsection (l) of this Code section. The transferee's recourse is against such production
 149 company or qualified interactive entertainment production company; and"

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

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

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

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

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

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

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

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

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

174 (2) In the initial year in which the production company or qualified interactive
 175 entertainment production company claims the credit granted in this Code section, the
 176 production company or qualified interactive entertainment production company shall
 177 include in the description of the qualified production activities required by subparagraph
 178 (A) of paragraph (1) of this subsection information which demonstrates that the activities
 179 included in the base investment or excess base investment equal or exceed \$500,000.00
 180 during such year, or \$250,000.00 on or after January 1, 2018, for qualified interactive
 181 entertainment production companies; and

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

188 (h.1)(1) For any projects certified by the Department of Economic Development on or
 189 after January 1, 2021, the tax credit provided for in this Code section if covered under the
 190 schedule provided in paragraph (1) of subsection (l) of this Code section shall not be
 191 allowed, claimed, assigned, sold, transferred, or utilized in any manner by a production
 192 company until final certification is issued pursuant to subsection (l) of this Code section
 193 and except under the following conditions and limitations of this subsection.

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

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

201 (B) A detailed accounting of all qualified production activities and the attendant
 202 production expenditures included in the base investment for the state certified
 203 production;

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

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

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

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

216 (G) Notification as provided for in paragraph (7) of subsection (l) of this Code section
 217 of any intent to utilize an eligible auditor;

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

221 (I) The total amount of the tax credit sought for the state certified production; and
 222 (J) A statement affirming that the contents of the application are true and correct.

223 (3) If a production company is issued final certification of a tax credit pursuant to
 224 subsection (l) of this Code section, such tax credit shall be considered earned in the
 225 taxable year in which it is issued final certification.

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

229 (A) The amount of tax credit claimed for the taxable year;
 230 (B) Any tax credit previously taken by the production company against Georgia
 231 income tax liabilities or the production company's quarterly or monthly payments under
 232 Code Section 48-7-103;

233 (C) The amount of tax credit carried over from prior years;
 234 (D) The amount of tax credit utilized by the production company in the current taxable
 235 year; and

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

237 (5) In no event shall the amount of the tax credit subject to subsection (l) of this Code
 238 section for a taxable year exceed the production company's income tax liability. Any
 239 unused credit amount shall be allowed to be carried forward for three years from the close
 240 of the taxable year in which the tax credit was issued its final certification pursuant to
 241 subsection (l) of this Code section. No such credit shall be allowed the production
 242 company against prior years' tax liability.

243 (6) This subsection shall not apply to qualified interactive entertainment production
 244 companies."

245 ”(k) Any production company, except as provided in subsection (l) of this Code section, or
246 qualified interactive entertainment production company claiming, transferring, or selling
247 the tax credit shall be required to reimburse the Department of Revenue for any department
248 initiated audits relating to the tax credit. This subsection shall not apply to routine tax
249 audits of a taxpayer which may include the review of the credit provided in this Code
250 section.

251 (l)(1)(A) For any project certified by the Department of Economic Development on or
252 after January 1, 2021, a tax credit allowed by this Code section to a production
253 company shall not be claimed, assigned, sold, transferred, or utilized in any manner
254 until the production company applies for the tax credit as provided in subsection (h.1)
255 of this Code section and the department issues a final certification of the tax credit
256 pursuant to this subsection if the total amount of such tax credit sought for the project
257 exceeds \$2.5 million.

258 (B) For any project certified by the Department of Economic Development on or after
259 January 1, 2022, a tax credit allowed by this Code section to a production company
260 shall not be claimed, assigned, sold, transferred, or utilized in any manner until the
261 production company applies for the tax credit as provided in subsection (h.1) of this
262 Code section and the department issues a final certification of the tax credit pursuant
263 to this subsection if the total amount of such tax credit sought for the project exceeds
264 \$1.25 million.

265 (C) For any project certified by the Department of Economic Development on or after
266 January 1, 2023, a tax credit allowed by this Code section to a production company
267 shall not be claimed, assigned, sold, transferred, or utilized in any manner until the
268 production company applies for the tax credit as provided in subsection (h.1) of this
269 Code section and the department issues a final certification of the tax credit pursuant
270 to this subsection.

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

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

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

279 (i) Register with the department;

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

- 281 (iii) Agree to and be capable of completing audits related to this Code section in
 282 accordance with this Code section and procedures developed by the department;
 283 (iv) Successfully complete all training required by the department;
 284 (v) Pay to the department a registration fee that the department shall set in an amount
 285 that reflects the expenses incurred by the department as a result of this paragraph; and
 286 (vi) Post and maintain any bond that the department establishes for each eligible
 287 auditor.
- 288 (C) The Department of Revenue shall decertify an eligible auditor if such auditor:
 289 (i) Fails to meet the conditions or comply with the provisions of subparagraph (B) of
 290 this paragraph; or
 291 (ii) Completes an audit and violates the requirements of subparagraph (E) of
 292 paragraph (4) of this subsection.
- 293 (D) The Department of Revenue may decertify an eligible auditor if such auditor fails
 294 to complete an audit in accordance with subparagraph (A), (B), (C), (D), (F), or (G) of
 295 paragraph (4) of this subsection or meets any other grounds for decertification as
 296 provided in regulations promulgated by the department.
- 297 (4) Each audit shall:
 298 (A) Be completed in accordance with this Code section and procedures developed by
 299 the department;
 300 (B) Utilize sampling methods that the department may adopt;
 301 (C) Follow regulations that shall be published by the department regarding
 302 expenditures incurred with related persons or related members as such terms are
 303 defined in Code Section 48-7-28.3;
 304 (D) Verify each reported expenditure that is included in the audit and identify and
 305 exclude each such expenditure that does not fully meet the conditions of this Code
 306 section;
 307 (E) Exclude any expenditure not submitted with or that was incurred after the
 308 application required by subsection (h.1) of this Code section was submitted;
 309 (F) Not be performed by an eligible accounting entity that is not determined to be
 310 independent as provided in the American Institute of Certified Public Accountants Code
 311 of Professional Conduct with respect to the production company or any of its related
 312 persons or related members as such terms are defined in Code Section 48-7-28.3 or as
 313 otherwise provided by the Department of Revenue; and
 314 (G) Be submitted to the department which shall review the audit, make adjustments as
 315 necessary, and issue a final certification to the production company.
- 316 (5) The Department of Revenue shall:
 317 (A) Promulgate rules and regulations and implement this subsection;

- 318 (B) Publish and regularly update a list of all eligible auditors that a production
 319 company may hire to conduct the audit required by this subsection;
- 320 (C) Publish on its website the application for certification of eligible auditors as well
 321 as all requirements related to certification and conducting an audit pursuant to this
 322 subsection;
- 323 (D) Publish the registration fee required by division (3)(B)(v) of this subsection and
 324 any bond required pursuant to division (3)(B)(vi) of this subsection;
- 325 (E) Determine whether a sampling method shall be used for the audits required by this
 326 subsection, the appropriate sample method and size, and if a sampling method is used,
 327 ensure that it accurately captures a truly representative sample of all ineligible
 328 expenditures across all submitted expenditures and projects the type, rate, and amount
 329 of ineligible expenditures across all submitted expenditures;
- 330 (F) Perform the audit of expenditures when, due to confidentiality of information, the
 331 eligible auditor is unable to access necessary information that the department is able
 332 access;
- 333 (G) Review each audit conducted by an eligible auditor, conduct the portions of the
 334 audit described in subparagraph (F) of this paragraph, perform additional auditing as
 335 necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue
 336 the final certification of the tax credit to the taxpayer; and
- 337 (H) For an audit that it conducts without an eligible auditor, complete the audit, adjust
 338 the value of the tax credit as necessary, and issue the final certification of the tax credit
 339 to the taxpayer.
- 340 (6) The production company applying for a final certification of a tax credit pursuant to
 341 this subsection shall agree and be required to reimburse the department for all costs
 342 incurred by the performance of a related audit, or any portion thereof, including for
 343 review of an audit conducted by an eligible auditor, prior to the issuance of such final
 344 certification.
- 345 (7) The cost of any such audit whether conducted in whole or in part by the department,
 346 an eligible auditor, or a combination of the two shall be borne by the production company
 347 and shall not be included as an expenditure claimed pursuant to this Code section.
- 348 (8) This subsection shall not apply to qualified interactive entertainment production
 349 companies."

350 **SECTION 2.**
 351 This Act shall become effective on January 1, 2021.

352

SECTION 3.

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