House Bill 199

By: Representatives Rhodes of the 120th, Efstration of the 104th, Rogers of the 10th, and Powell of the 171st

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from state income taxes, so as to change certain provisions regarding the income tax credit for interactive entertainment companies; to remove the sunset on such exemptions; to add an exemption for certain prereleased products; to provide for a new state income tax credit for qualified postproduction expenditures of postproduction companies; to provide for procedures, conditions, and limitations; to provide for definitions; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from state income taxes, is amended by revising Code Section 48-7-40.26, relating to the income tax credit for film, video, or digital production in this state, as follows:

"48-7-40.26.

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

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

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

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

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

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

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

~~(3)~~(5) 'Multimarket commercial distribution' means paid commercial distribution which extends to markets outside the State of Georgia.

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

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

~~(5)~~(8) 'Production expenditures' means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures excluding license fees incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for footage shot outside the State of Georgia, marketing, story rights, or distribution, but shall not affect other qualified story rights. This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold Georgia income tax at the rate of 6 percent on all payments to loan-out companies for services performed in Georgia. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of ~~Chapter 7 of this title~~ this chapter notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of this chapter, loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of ~~Chapter 7 of this title~~ this chapter and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.

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

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

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

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

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

~~(7)~~(10) 'Qualified interactive entertainment production company' means a company that:

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

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

(ii) On or after January 1, 2018, in the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company, had a total aggregate payroll of $250,000.00 or more for employees working within the state;

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

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

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

~~(8)~~(11) 'Qualified production activities' means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment, prereleased interactive games, or sound recording projects used in feature films, series, pilots, or movies for television. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, corporate videos, or projects not shot, recorded, or originally created in Georgia.

~~(9)~~(12) 'Resident' means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.

~~(10)~~(13) 'State certified production' means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. In the instance of a 'work for hire' in which one production company or qualified interactive entertainment production company hires another production company or qualified interactive entertainment production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.

~~(11)~~(14) 'Total aggregate payroll' means the total sum expended by a production company or qualified interactive entertainment production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

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

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

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

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

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

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

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

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

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

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

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

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

(1) If the excess base investment in this state equals or exceeds $500,000.00, <u>or $250,000.00 for qualified interactive entertainment production activities on or after January 1, 2018,</u> the production company or qualified interactive entertainment production company and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and

(2)(A) The production company or qualified interactive entertainment production company and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess base investment if the qualified production activities include a qualified Georgia promotion. <u>Such additional tax credit shall be allowed for any prereleased interactive entertainment production, provided that the production includes and maintains a qualified Georgia promotion upon making such production available to consumers or the general public.</u> In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

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

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

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

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

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

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

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

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

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

(4) For taxable years beginning on or after January 1, 2016, and before January 1, ~~2019~~ <u>2018</u>, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million for each taxable year. ~~The tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not be available for taxable years beginning on or after January 1, 2019.~~

(5)(A) For taxable years beginning on or after January 1, 2018, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million for each taxable year.

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

~~(5)~~(6) The maximum allowable credit claimed for any qualified interactive entertainment production company and its affiliates shall not exceed $1.5 million in any single year.

~~(6)~~(7) Qualified interactive entertainment production companies seeking to claim a tax credit under the provisions of this Code section shall submit an application to the commissioner for preapproval of such tax credit. The commissioner shall be authorized to promulgate any rules and regulations and forms necessary to implement and administer the provisions of this Code section. The commissioner shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

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

~~(8)~~(9) Before the Department of Economic Development issues its approval to the qualified interactive entertainment production company for the qualified production activities related to interactive entertainment, the qualified interactive entertainment production company must certify to the department that:

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

(B) The qualified interactive entertainment production company had expended a total aggregate payroll of $500,000.00 or more before January 1, 2018, or $250,000.00 or more on or after January 1, 2018, for employees working within this state during the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company.

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

~~(9)~~(10)(A) For taxable years beginning on or after January 1, 2016, ~~and before January 1, 2019,~~ the qualified interactive entertainment production company shall report to the Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year as provided in subparagraphs (B) and (C) of this paragraph. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

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

(C) For taxable years beginning on or after January 1, 2017, ~~and before January 1, 2019,~~ the qualified interactive entertainment production company shall report such number for each respective taxable year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2.

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

"48-7-40.26A.

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

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

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

(2) 'Multimarket commercial distribution' means paid commercial distribution which extends to markets outside the State of Georgia.

(3) 'Postproduction company' means a company that:

(A) Maintains a business location physically located in this state;

(B) In the calendar year directly preceding the start of the taxable year of the postproduction company, had a total aggregate payroll of $500,000.00 or more for employees working within this state;

(C) Is engaged in qualified postproduction activities; and

(D) Has been approved by the Department of Revenue.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state. In the instance of a 'work for hire' in which one postproduction company hires another postproduction company to engage in qualified postproduction activities for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the postproduction tax credit.

(4) 'Qualified postproduction activities' means the activities performed on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture, sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation, musical composition, and other activities performed after initial production and including activities performed on previously produced and edited content.

(5) 'Qualified postproduction expenditures' means expenditures incurred in this state directly in qualified postproduction activities, including without limitation the following:

(A) Costs associated with photography and sound synchronization;

(B) Expenditures, excluding license fees, incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials;

(C) Editing and related services;

(D) Rental of facilities and equipment;

(E) Leasing of vehicles;

(F) Costs of food and lodging;

(G) Digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services;

(H) Total aggregate payroll;

(I) Airfare, if purchased through a Georgia travel agency or travel company;

(J) Insurance costs and bonding, if purchased through a Georgia insurance agency; and

(K) Other direct postproduction costs for the project in accordance with generally accepted entertainment industry practices.

<u>This term includes expenditures incurred in this state for footage shot inside or outside this state.</u>

<u>(6) 'Qualified production' means a film, video, or digital project, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment, or sound recording projects used in feature films, series, pilots, or movies for television. This term shall include projects shot, recorded, or originally created in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, and corporate videos.</u>

<u>(7) 'Total aggregate payroll' means the total sum expended by a postproduction company on salaries paid to employees working within this state on qualified postproduction activities.</u>

<u>(c)(1) A postproduction company that has incurred qualified postproduction expenditures of at least $500,000.00 in a taxable year shall be allowed a tax credit against the tax imposed by this article, subject to the conditions and limitations set forth in this Code section.</u>

<u>(2) The tax credit allowed shall be equal to 20 percent of the qualified postproduction expenditures actually invested and expended by the postproduction company in a taxable year.</u>

<u>(3) The amount of tax credits allowed to a postproduction company under this Code section for any single taxable year shall not exceed the postproduction company's total aggregate payroll expended to employees working within this state for the calendar year directly preceding the start of the taxable year the postproduction company claims the tax credits.</u>

<u>(d) The tax credits allowed under this Code section for all postproduction companies shall be subject to the following aggregate annual caps:</u>

<u>(1) For taxable years beginning on or after January 1, 2017, and before January 1, 2018, the aggregate amount of tax credits allowed under this Code section shall not exceed $5 million;</u>

(2) For taxable years beginning on or after January 1, 2018, and before January 1, 2019, the aggregate amount of tax credits allowed under this Code section shall not exceed $10 million;

(3) For taxable years beginning on or after January 1, 2019, and before January 1, 2023, the aggregate amount of tax credits allowed under this Code section shall not exceed $15 million per year;

(4) The tax credits allowed under this Code section shall not be available for taxable years beginning on or after January 1, 2023; and

(5) If the aggregate amount of tax credits claimed by taxpayers under this Code section during a year is less than the aggregate annual cap applicable to such year, the unclaimed portion of the aggregate annual cap shall be added to the aggregate annual cap applicable to the next succeeding year or years until it is fully claimed.

(e)(1) The maximum allowable tax credit under this Code section claimed by a single postproduction company and its affiliates shall not exceed, in any single taxable year, 20 percent of the aggregate amount of tax credits available for such taxable year under subsection (d) of this Code section, including the amount of any aggregate annual caps rolled over from prior years.

(2) Postproduction companies seeking to claim a tax credit under this Code section shall submit an application to the Department of Revenue for preapproval of such tax credit. The Department of Revenue shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the Department of Revenue shall prorate the available funds between or among the applicants.

(f) For taxable years beginning on or after January 1, 2017, and before January 1, 2020, the postproduction company shall report to the Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year. For purposes of this subsection, the term 'full-time employee' shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall annually report to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each postproduction company. The first report shall be submitted by June 30, 2018, and each year thereafter by June 30.

(g)(1) Any qualified postproduction expenditures for which a postproduction company claims a tax credit under this Code section shall not be eligible production expenditures for purposes of the credit authorized under Code Section 48-7-40.26.

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

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

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

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

(B) A certification that the postproduction company maintains a business location physically located in this state;

(C) A certification that the postproduction company expended a total aggregate payroll of $500,000.00 or more for employees working within this state during the calendar year directly preceding the start of the taxable year of the postproduction company;

(D) In the initial year in which the postproduction company claims the credit granted in this Code section only, information demonstrating that the qualified postproduction expenditures equal or exceed $500,000.00 during such year;

(E) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the qualified postproduction expenditures;

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

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

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

(I) The amount of tax credit utilized by the postproduction company in the current taxable year; and

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

The postproduction company shall file a copy of the schedule with the Department of Economic Development within 30 days after the schedule is filed with its income tax return;

(2) Where the amount of tax credits under this Code section exceeds the postproduction company's income tax liability in a taxable year, any unused credit amount:

(A) May be carried forward for five years from the close of the taxable year in which the investment occurred; or

(B) May be taken as a credit against such postproduction company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such postproduction company's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subparagraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subparagraph shall not constitute income to the postproduction company.

No such credit shall be allowed the postproduction company against prior years' tax liability; and

(3) Any tax credits earned by a postproduction company under this Code section and previously claimed but not used by such postproduction company against its income tax or its monthly payment under Code Section 48-7-103 may be transferred or sold in whole or in part by such postproduction company to another Georgia taxpayer, subject to the following conditions:

(A) Such postproduction company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

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

(C) Failure to comply with this paragraph shall result in the disallowance of the tax credit until the postproduction company is in full compliance;

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

(E) A transferee shall have only such rights to claim and use the tax credit that were available to such postproduction company at the time of the transfer, except for the use of the credit in subparagraph (B) of paragraph (2) of this subsection. To the extent that such postproduction company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such postproduction company; and

(F) Any postproduction company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subparagraph shall not apply to routine tax audits of a taxpayer that may include the review of the credit provided in this Code section.

(i) The Department of Revenue and the Department of Economic Development shall promulgate such rules and regulations as are necessary to implement and administer this Code section.″

SECTION 3.

This Act shall become effective on July 1, 2017, and shall be applicable to tax years beginning on or after January 1, 2017.

SECTION 4.

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