

GA H 1037, Substituted

Georgia

SUMMARY: Relates to the Georgia Entertainment Industry Investment Act; moves certain sound recordings from qualified production activities to production expenditures; provides exemptions from certain requirements.

Legislative History and Analysis Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status 02/26/2020 INTRODUCED.

02/27/2020 To HOUSE Committee on WAYS AND MEANS. 02/28/2020 In HOUSE: Read 2nd time.

03/09/2020 From HOUSE Committee on WAYS AND MEANS: Favorably reported as substituted. 03/12/2020 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.

03/13/2020 To SENATE Committee on ASSIGNMENTS.

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session: Georgia 155th General Assembly 2019-20 Regular Session cite: 2019 GA H 1037

Substituted March 9, 2020 Dollar

The House Committee on Ways and Means offers the following substitute to HB 1037:

A BILL TO BE ENTITLED AN ACT

To amend Code Section 48-7-40.26 of the Official Code of Georgia Annotated, relating to the "Georgia Entertainment Industry Investment Act," so as to move certain sound recordings from qualified production activities to production expenditures; to exempt presentations from the requirement that productions must be intended for multimarket commercial distribution; to add commercial advertisements made for paid or subscription supported video streaming services; to add coverage of certain major sporting events to qualified production activities; to reinforce the disallowance of the additional 10 percent credit allowed for including a qualifying Georgia promotion for certain productions and hold the issuance of such credit until public distribution of the project; to limit the recapture of certain tax credits; to change the timing when a tax credit can be claimed and its carry forward period; to require expenditures with vendors to include W-9 forms; to provide for applications for certificates of final certification; to require an audit prior to issuance of a final certification by the Department of Revenue; to phase in such requirement; to provide for certification of accountants as eligible auditors for conducting such audits; to provide for recouping of certain audit costs and prescribe actions to be taken by the Department of Revenue; to provide for definitions; to provide for rules and regulations; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"(6.1) 'Presentation' means a production combining visual and audio elements primarily created for the purpose of promoting, showcasing, or selling a film, television, or streaming project and which is not intended for theatrical release, airing over television, VOD, cable or streaming platforms, or any other form of commercial distribution. "

"(8) 'Production expenditures' means :

(A) Preproduction, ~~preproduction~~, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including , but not limited to, ~~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 ; **sound recording projects used in feature films, series, pilots, or movies**; 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.

(B) This term shall not include :

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

(ii) Any expenditure for work or services not conducted or rendered in Georgia. Expenditures for services not performed at the filming site shall only qualify if the vendor is a Georgia vendor.

Expenditures for services conducted or rendered both in Georgia and outside Georgia shall only qualify to the extent the service is conducted or rendered in Georgia;

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

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

(C) 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~~ **imposed by subsection (a) of Code Section 48-7-21** 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 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 this chapter and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.

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

"(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 ***as state certified productions***, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, ***commercial advertisements made for paid or subscription supported video streaming services***, music videos, ***presentations***, interactive entertainment, ***or*** 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. ***Except for presentations, such activities shall be projects, 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 or*** athletic events ~~;~~; local interest programming ~~;~~; instructional videos ~~;~~; corporate videos ~~;~~; ***any project that is not a presentation and is not intended for multimarket commercial distribution;*** or projects not shot, recorded, or originally created in Georgia."

"(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 qualified production that includes a qualified Georgia promotion upon its release to 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. ***The Department of Economic Development shall electronically certify to the Department of Revenue when the***

requirements of this paragraph and paragraph (2) of subsection (d) of this Code section have been met.

- (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 and Tourism Committee, the House Committee on Economic Development and Tourism, and the Governor.

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

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

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

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

(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; **provided, however, that the Department of Revenue shall not recapture a tax credit from the transferee if the tax credit was issued a valid final certification pursuant to subsection (l) of this Code section.** The transferee's recourse is against such production company or qualified interactive entertainment production company; and”

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

- (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 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.

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

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

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

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

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

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

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

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

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

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

(I) The total amount of the tax credit sought for the state certified production; and

(J) A statement affirming that the contents of the application are true and correct.

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

(4) For each year in which the production company either claims or transfers

the tax credit, the production company shall attach a schedule to the production company's Georgia income tax return which will set forth the following information, as a minimum:

- (A) The amount of tax credit claimed for the taxable year;*
- (B) Any tax credit previously taken by the production company against Georgia income tax liabilities or the production company's quarterly or monthly payments under Code Section 48-7-103;*
- (C) The amount of tax credit carried over from prior years;*
- (D) The amount of tax credit utilized by the production company in the current taxable year; and*
- (E) The amount of tax credit to be carried over to subsequent tax years.*

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

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

"(k) Any production company , except as provided in subsection (l) of this Code section, 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.

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

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

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

subsection.

(2) *In accordance with the schedule provided in paragraph (1) of this subsection, prior to certifying a tax credit pursuant to this Code section, the Department of Revenue shall conduct or cause to be conducted an audit of each tax credit allowed by this Code section by either the department or an independent third party certified by the department in accordance with paragraph (3) of this subsection as an eligible auditor as shall be elected by the production company as provided in paragraph (7) of this subsection.*

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

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

(i) Register with the department;

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

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

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

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

(vi) Post and maintain any bond that the department establishes for each eligible auditor.

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

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

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

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

(4) Each audit shall:

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

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

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

- (D) Verify each reported expenditure that is included in the audit and identify and exclude each such expenditure that does not fully meet the conditions of this Code section;*
 - (E) Exclude any expenditure not submitted with or that was incurred after the application required by subsection (h.1) of this Code section was submitted;*
 - (F) Not be performed by an eligible accounting entity that is not determined to be independent as provided in the American Institute of Certified Public Accountants Code of Professional Conduct with respect to the production company or any of its related persons or related members as such terms are defined in Code Section 48-7-28.3 or as otherwise provided by the Department of Revenue; and*
 - (G) Be submitted to the department which shall review the audit, make adjustments as necessary, and issue a final certification to the production company.*
- (5) The Department of Revenue shall:*
- (A) Promulgate rules and regulations and implement this subsection on or before January 1, 2021;*
 - (B) Publish and regularly update a list of all eligible auditors that a production company may hire to conduct the audit required by this subsection;*
 - (C) Publish on its website the application for certification of eligible auditors as well as all requirements related to certification and conducting an audit pursuant to this subsection;*
 - (D) Publish the registration fee required by division (3)(B)(v) of this subsection and any bond required pursuant to division (3)(B)(vi) of this subsection;*
 - (E) Determine whether a sampling method shall be used for the audits required by this subsection, the appropriate sample method and size, and if a sampling method is used, ensure that it accurately captures a truly representative sample of all ineligible expenditures across all submitted expenditures and projects the type, rate, and amount of ineligible expenditures across all submitted expenditures;*
 - (F) Perform the audit of expenditures when, due to confidentiality of information, the eligible auditor is unable to access necessary information that the department is able access;*
 - (G) Review each audit conducted by an eligible auditor, conduct the portions of the audit described in subparagraph (F) of this paragraph, perform additional auditing as necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue the final certification of the tax credit to the taxpayer; and*
 - (H) For an audit that it conducts without an eligible auditor, complete the audit, adjust the value of the tax credit as necessary, and issue the final certification of the tax credit to the taxpayer.*
- (6) The production company applying for a final certification of a tax credit pursuant to this subsection shall agree and be required to reimburse the*

department for all costs incurred by the performance of a related audit, or any portion thereof, including for review of an audit conducted by an eligible auditor, prior to the issuance of such final certification.

(7)(A) Each audit required by this subsection shall be conducted by either the department or an eligible auditor. The production company shall notify the department in its application for the tax credit submitted pursuant to subsection (h.1) of this Code section of either its election to be audited by the department or the eligible auditor it has tentatively hired. If an eligible auditor has been elected, the production company shall supply all documentation related to the arrangement prior to the commencing of the audit. The audit shall not commence without the department's approval of the arrangement with any eligible auditor.

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

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

SECTION 2.

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