

GA H 1330 , Substituted

Georgia

SUMMARY: Relates to imposition, rate, computation, exemptions, and credits from state income tax, so as to provide that all expenditures of a production companys state certified productions may be combined to meet spending thresholds; lowers spending thresholds; increases the value of the tax credit; provides for transferability of the tax credit; provides for conditions and limitations; revises a definition; provides for related matters; provides for an effective date and applicability; repeals conflicting laws.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

02/11/2022 INTRODUCED.

02/14/2022 To HOUSE Committee on WAYS AND MEANS.

02/15/2022 In HOUSE: Read 2nd time.

03/11/2022 From HOUSE Committee on WAYS AND MEANS: Favorably reported as substituted.

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session: Georgia 156th General -- 2020-21 Regular Session

cite: 2021 GA H 1330

Substituted

March 11, 2022

Smyre

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

1330:

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, so as to revise the definition and taxation of income of taxable nonresidents with respect to the Georgia Music and Theatre Jobs Recovery Act; to revise the allocation and apportionment of income from state certified productions for corporations; to require the promulgation of rules and regulations necessary to obtain the requisite information needed to enforce such provisions; to provide that all expenditures of a production company's state certified productions may be combined to meet spending thresholds; to revise a short title; to lower spending thresholds; to increase the value of the tax credit; to provide for conditions and limitations; to revise a definition; 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.

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

” (F) Every person that is not otherwise a resident of this state for income tax purposes that receives income which is, at any time, derived from residual

payments due to employment, trade, business, profession, or other activity performed or carried on within this state with respect to a state certified production as defined in Code Section 48-7-40.33. “

SECTION 2.

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

”(b) A taxable nonresident whose income is derived from employment, trade, business, professional, or other activity performed or carried on within and outside this state shall be taxed only upon the income derived from carrying on the activity within this state ; ***provided, however, that all income derived from residual payments to a taxable nonresident due to employment, trade, business, profession, or other activity performed or carried on within this state, with respect to a state certified production as defined in Code Section 48-7-40.33, shall be taxable income whether such income is received within or outside of this state.*** The amount of taxable income may be determined by a separate accounting of the income if the commissioner is satisfied that the separate accounting reflects correctly the income fairly attributable to this state. Otherwise, the amount of taxable income shall be determined in the manner prescribed by this chapter for the allocation and apportionment of income of corporations engaged in business within and outside this state.“

SECTION 3.

Said chapter is further amended by adding a new subsection to Code Section 48-7-31, relating to taxation of corporations, allocation and apportionment of income, formula for apportionment, to read as follows:

” ***(f) To the full extent permitted by the United States Constitution, the tax imposed by this chapter shall apply to the entire net income of any foreign or domestic corporation which is derived directly or indirectly from the sale, use, or lease of any state certified production for which a tax credit was claimed pursuant to Code Section 48-7-40.33. “***

SECTION 4.

Said chapter is further amended by revising Code Section 48-7-40.33, relating to tax credits for musical or theatrical performances, as follows:

”48-7-40.33.

(a) This Code section shall be known and may be cited as the 'Georgia ~~Musical Investment~~ ***Music and Theatre Jobs Recovery*** Act.'

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

(1) 'Musical or theatrical performance' means a live performance of a concert, musical tour, ballet, dance, opera, live variety entertainment, or a series of any such performances ~~—occurring over the course of a 12-month period or longer—~~ that originates, is developed, and has ~~—its initial—~~ a public performance before a live audience within this state ~~—or that prepares and rehearses a minimum of seven days within this state and has its United States debut within this state—~~ . Such term excludes a single musical performance that is not intended for touring, a music or cultural festival that is not intended for touring, an industry seminar, a trade show, or a market.

(2) 'Production company' means a company primarily engaged in qualified production activities. Such 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.

(3) 'Qualified production activities' means activities related to the preparation, planning, recording, or staging of a state certified production.

(4) 'Qualified production expenditures' means expenditures incurred in this state on direct account of qualified production activities for which a tax credit has not been claimed pursuant to Code Section 48-7-40.26 and shall include, but are not limited to:

(A) Set construction and operation; wardrobe, makeup, 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; total aggregate payroll; talent and producer fees; technical fees; crew fees; per diem costs paid to employees; 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; and

(B) Payments to a loan-out company by a production company.

(5) 'Recorded musical performance' means a recording of a music composition affixed in a tangible medium, which includes but is not limited to the score and musical accompaniment of a motion picture, film, television, game, or interactive entertainment production.

(6) 'Resident' shall have the same meaning as set forth in paragraph (10) of Code Section 48-7-1.

(7) 'Spending threshold' means:

(A) For ~~a~~ **all** musical or theatrical ~~performance, \$500,000.00~~ **performances of a production company, which equals or exceeds \$100,000.00 in the aggregate** during a taxable year; ~~and~~

(B) For ~~a~~ recorded musical ~~performance~~ **performances of a production company** which ~~is~~ **are** incorporated into or synchronized with ~~a~~ movie, television, or interactive entertainment ~~production, \$250,000.00~~ **productions, which equals or exceeds \$50,000.00 in the aggregate** during a taxable year ~~;~~ **; ~~and~~**

(C) For all ~~for any~~ other recorded musical ~~performance, \$100,000.00~~ performances of a production company, which equals or exceeds \$50,000.00 in the aggregate during a taxable year ~~;~~ **;** ~~and~~

(D) A production company shall be able to aggregate qualified expenditures for one or more musical or theatrical and recorded musical performances over the course of a taxable year to meet or exceed the spending threshold.

(8) 'State certified production' means a musical or theatrical performance or recorded musical performance that is approved by the Department of Economic Development in accordance with rules and regulations promulgated pursuant to this Code section.

(9) 'Total aggregate payroll' means the total sum expended by a 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) A production company that invests in a state certified production shall be allowed an income tax credit against the tax imposed under this article if such production company's qualified production expenditures equal or exceed the spending threshold as follows:

(1) A production company shall be allowed a tax credit equal to ~~15~~ **30** percent of such production company's qualified production expenditures; and

(2) A production company shall be allowed an additional tax credit equal to 5 percent for such production company's qualified production expenditures incurred in a county designated as tier 1 or tier 2 by the commissioner of community affairs pursuant to Code Section 48-7-40.

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

(1) 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 \$5 million;

(2) For taxable years beginning on or after January 1, 2019, and before January 1, 2020, 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, 2020, and before January 1, 2023, the aggregate amount of tax credits allowed under this Code section shall not exceed \$15 million per year; ~~and~~

(4) For taxable years beginning on or after January 1, 2023, and before January 1, 2024, the aggregate amount of tax credits allowed under this Code section shall not exceed \$5 million;

(5) For taxable years beginning on or after January 1, 2024, and before January 1, 2026, the aggregate amount of tax credits allowed under this Code section shall not exceed \$10 million;

(6) For taxable years beginning on or after January 1, 2026, and before January 1, 2028, the aggregate amount of tax credits allowed under this Code section shall not exceed \$15 million per year; and

~~(4)~~ ***(7)*** The tax credits allowed under this Code section shall not be available for taxable years beginning on or after January 1, ~~2023~~ ***2028*** .

(e)(1) The maximum allowable tax credit under this Code section claimed by a single production 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) Production companies seeking to claim a tax credit under this Code section shall submit an application to the department for preapproval of such tax credit. ***Subject to any applicable caps, production companies shall be permitted to submit an application at any time during a taxable year during which qualified expenditures occur.*** The department 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 shall prorate the available funds between or among the applicants.

(f)(1) Where the amount of such credit or credits exceeds the production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such 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.

(2) If a production company claims 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 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 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) 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 has met the investment requirement. For each year in which such production company claims the

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) A description of the qualified production expenditures showing categorized spending that meets or exceeds the spending threshold, along with the certification from the Department of Economic Development;

(B) A detailed listing of employees' 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 against Georgia income tax liabilities or the 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 in the current taxable year; and

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

(2) In no event shall the amount of the tax credit under 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 ~~five~~ **three** years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company against prior years' tax liability; and

(3) Tax credits claimed under this Code section shall not be refundable, transferable, or saleable.

(h) Any production company claiming the tax credit provided for by this Code section shall be required to reimburse the department 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 a review of the credit provided in this Code section.

(i) The Department of Economic Development shall determine through the promulgation of rules and regulations which 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) The department shall promulgate such rules and regulations necessary to ensure that the department is able to obtain all information through this Code section necessary to enforce the provisions of subparagraph (F) of paragraph (11) of Code Section 48-7-1, subsection (b) of Code Section 48-7-30, and subsection (f) of Code Section 48-7-31. "

SECTION 5.

This Act shall become effective on January 1, 2023, and shall be applicable to:

(1) Taxable years beginning on or after January 1, 2023; and

(2) State certified productions first approved by the Department of Economic Development on or after January 1, 2023.

SECTION 6.

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