

GA H 1180, Substituted

Georgia

SUMMARY: Relates to income taxes, so as to separate into a new Code section provisions related to tax credits for qualified interactive entertainment production companies; provides for base investment requirements for a qualified production company to qualify for a credit; provides for a maximum amount of credits that may be transferred each year.~SAME AS:

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

02/07/2024 INTRODUCED.

02/08/2024 To HOUSE Committee on WAYS AND MEANS.

02/09/2024 In HOUSE: Read 2nd time.

02/21/2024 From HOUSE Committee on WAYS AND MEANS: Favorably reported as substituted.

02/29/2024 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.

03/04/2024 To SENATE Committee on FINANCE.

~

session: Georgia 157th General Assembly 2023-24 Regular Session

cite: 2023 GA H 1180

Substituted

February 21, 2024

Carpenter

The House Committee on Ways and Means offers the following substitute to HB 1180:

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 separate into a new Code section provisions related to tax credits for qualified interactive entertainment production companies; to provide for base investment requirements for a qualified production company to qualify for a credit; to provide for a maximum amount of credits that may be transferred each year; to provide for the implementation of such maximum; to provide for conditions related to transferability of credits; to provide for the circumstances under which a company qualifies for an additional credit; to authorize certain fees; to require companies to pay court costs if the denial of certification is upheld by a court on appeal; to provide for an application requirement; to remove outdated and unnecessary language; to provide a short title; to provide for definitions; to provide for related matters; to provide for an effective date and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.

Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, is amended by revising Code Section 48-7-40.26, relating to income tax credits for film, gaming, video, or digital production, 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.~~

~~(5)~~ (3) 'Multimarket commercial distribution' means paid commercial distribution with media buys which extend 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.~~

~~(7)~~ (4) '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 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.

~~(8)~~ (5) 'Production expenditures' means:

(A) Preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including, but not limited to, 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; 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 Such** term shall not include:

(i) Postproduction expenditures for footage shot outside the **State of Georgia this state**, marketing, story rights, or distribution;

(ii) Any expenditure for work or services not conducted or rendered in **Georgia this state**. 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 this state** 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 Such** 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 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 ~~(h)~~ **(k)** of this Code section.

~~(9)~~ **(6)**' 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; **or**

(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.~~

~~(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 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, had a total aggregate payroll of \$250,000.00 or more for employees working within the state in the taxable year the qualified interactive entertainment production company claims the tax credits;~~

~~(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.~~

~~(11)~~ **(7)**' 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, **and** music videos, ~~interactive entertainment, or prereleased interactive games~~. Such **activities term** 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 or athletic events, local interest programming, instructional videos, corporate videos, any project that is not intended for multimarket commercial distribution, or any project not shot, recorded, or originally created in Georgia.

~~(12)~~ **(8)**' Resident' means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1 ~~;~~ **as amended.**

~~(13)~~ **(9)**' 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 work for hire' 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 **allowed under this Code section.**

~~(14)~~ **(10)**' 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 **by a production company and its affiliates that invest in state certified productions** in this state equals or exceeds \$500,000.00 for **qualified production activities a single state certified production or \$10 million for all state certified productions** ; ~~except that any qualified interactive entertainment production company shall be allowed the tax credit under this subsection 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, **as determined as a result of the audit required by subsection (k) of this Code section,** 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 subparagraph and paragraph (2) of subsection~~

~~(d) of this Code section have been met.~~ **state certified production meets at least four of the following criteria:**

(i) At least 50 percent of the number of crew members performing services in this state are Georgia residents;

(ii) At least 50 percent of the total number of vendors providing goods or services in this state are Georgia vendors;

(iii) It incurs at least \$30 million of production expenditures in this state;

(iv) At least 50 percent of its photography days occur in one or more counties that have been underutilized by production companies as determined by the Department of Economic Development;

(v) At least 50 percent of its total photography days in studio facilities are in studio facilities in this state, including, but not limited to, soundstages and backlots, or the company or its affiliates:

(I) Make capital improvements to a studio facility in this state that are in a form and manner approved by the Department of Economic Development based on the value of the capital improvements relative to the amount of tax credit sought; or

(II) Enters into a lease of at least five years in duration with a studio facility in this state with at least 100,000 square feet of production space, including, but not limited to, soundstages, backlots, and production offices;

(vi) The company agrees to contract with Georgia vendors for 20 percent of such production's postproduction expenditures or contracts with Georgia vendors for 20 percent of such production's visual effects expenditures;

(vii) The company participates in or supports at least one Georgia workforce development program, including, but not limited to, a Georgia Film Academy program;

(viii) It includes a qualified Georgia promotion, or the company engages in alternative marketing opportunities approved by the Department of Economic Development based on a determination that such activities offer promotional value to the state equal to or greater than the promotional value of a qualified Georgia promotion; or

(ix) The company contracts for the recording in Georgia of elements of the state certified production's music score or one or more songs included in the state certified production's soundtrack, licenses music from a Georgia resident or company doing business in Georgia, or contracts with one or more Georgia residents for the composition or performance of music for incorporation into the state certified production's music score or one or more songs included into the state certified production's soundtrack.

(B) The Department of Economic Development shall prepare an annual report detailing the **alternative** 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 **alternative** 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 that** 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 subparagraph** 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 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 **(h) (k)** 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 ~~(H)~~ **(k)** of this Code section.

(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 *by a production company and its affiliates that invest in state certified productions* in this state equals or exceeds \$500,000.00 *for a single state certified production or \$10 million for all state certified productions*, ~~or \$250,000.00 for qualified interactive entertainment production activities on or after January 1, 2018~~, 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, *as determined as a result of the audit required by subsection (k) of this Code section*, if the ~~qualified production activities include 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 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~~ *state certified production meets at least four of the criteria provided in divisions (c)(2)(A)(i) through (c)(2)(A)(ix).*

~~(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.~~

~~(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, 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.~~

~~(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; provided, however, that such credits shall not be available for a period which exceeds three years.~~

~~(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.~~

~~(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.~~

~~(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 that 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.~~

~~(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, or \$250,000.00 or more on or after January 1, 2018, for employees working within this state during 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.~~

~~(10)(A) For taxable years beginning on or after January 1, 2016, 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, 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) (e)(1) Where~~ *If* the amount of ~~such credit or credits~~ *tax credits allowed under this Code section* exceeds the production company's ~~or qualified interactive entertainment production company's~~ liability for ~~such~~ taxes *owed pursuant to this article* 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 a~~ 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~~ *shall* 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) (f)~~ 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 *liability* may be transferred or sold in whole or in part by such production company ~~or qualified interactive entertainment production company~~ to another Georgia taxpayer ~~; ; provided, however, that such transfers and sales shall~~ be subject to the following conditions:

(1)(A) The total amount of such transfers or sales in a calendar year shall not exceed an amount equal to 2.5 percent of the total budget in the General Appropriations Act as passed and signed into law for the corresponding fiscal year.

(B) The Department of Revenue shall issue tax credit certificates that identify the calendar year in which the credit may first be transferred or sold. Such tax credit certificates shall identify the current calendar year as the first year such certificates may be transferred or sold for the amount of credits allowed to be transferred or sold pursuant to subparagraph (A) of this paragraph.

(C) Any tax credit certificates available to be issued by the Department of Revenue in the current calendar year in excess of the amount of credits allowed to be transferred or sold pursuant to subparagraph (A) of this paragraph shall be issued and available to be transferred or sold in the next calendar year for which such amount has not been reached in the order in which final certificates were available to be issued by the department but for reaching the annual limit, and the amount of such credit certificates shall count toward the amount of credits allowed to be transferred or sold pursuant to subparagraph (A) of this paragraph for that year.

(D) A production company may elect to not transfer or sell in whole or in part tax credits with respect to a state certified production to another Georgia taxpayer pursuant to subsection (f) of this Code section and may use such tax credit in the taxable year it is issued final certification. Tax credits that a production company makes an election to not sell or transfer shall not count toward the maximum amount allowed to be transferred or sold pursuant to subparagraph (A) of this paragraph. The production company shall make the election on a form and manner provided by the department.

(E) A production company may revoke its election under subparagraph (D) of this paragraph at any point during the carry-forward period authorized under subsection (g) of this Code section by submitting a request to the department for the credit certificate to be transferred. The department shall issue a new tax credit certificate providing the first year a transferee may use the tax credit based on the amount of credits allowed to be transferred or sold pursuant to subparagraph (A) of this paragraph and the remaining carry forward period from the date of issuance of such new certificate.

~~(1) (2)~~ 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; **provided**, however, **that** the transfer or sale may involve one or more transferees;

~~(2) (3)~~ 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 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) (4)~~ 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) (5)~~ 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 ~~(h) (k)~~ of this Code section, the date on which the final certification for such tax credit was issued pursuant to said subsection;

~~(5) (6)~~ 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 ~~(h) (k)~~ of subsection ~~(f) (e)~~ 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 ~~(h) (k)~~ of this Code section. The transferee's recourse is against such production company ~~or qualified interactive entertainment production company~~; and

~~(6) (7)~~ The transferee **must shall** 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; 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~~

~~(g)(1) The tax credit provided for in this Code section if covered under the schedule provided in paragraph (1) of subsection (1) 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 (h) (k) of this Code section and except under the following conditions and limitations of provided in 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 (h) (k) 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 ~~(h)~~ **(k)** 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) For any projects certified by the Department of Economic Development on or after January 1, 2026, a description of the status of satisfying the requirements of subparagraph (c)(2)(A) or paragraph (2) of subsection (d) if the total amount of the tax credit sought for the state certified production includes the additional credit allowed in subparagraph (c)(2)(A) or paragraph (2) of subsection (d);

~~(H)~~ **(J)** The total amount of the tax credit sought for the state certified production; and

~~(I)~~ **(K)** 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 ~~(h)~~ **(k)** 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~~ **shall** 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 ~~(h)~~ **(k)** 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 ~~(h)~~ **(k)** 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.**~~

~~(h)~~ **(h)(1)** The Department of Economic Development shall:

(A) Certify each production that qualifies ~~determine through the promulgation of rules and regulations what projects qualify~~ for the tax credits authorized under ~~paragraph (1) of subsection (c) of this Code section and paragraph (1) of subsection (d)~~ of this Code section ;

(B) Establish an approval process for any criteria that requires approval from the Department of Economic Development as provided in divisions (c)(2)(A)(v) and (ix) of this Code section;

(C) Submit such certifications and approvals ~~Certification shall be submitted~~ to the ~~state revenue~~ commissioner ; and

(D) Promulgate rules and regulations as are necessary to implement this subsection.

(2) The Department of Economic Development may charge reasonable fees associated with the

certification process established pursuant to this paragraph.

(3) If the Department of Economic Development prevails in court in an appeal of the denial of certification, the production company or interactive entertainment production company shall pay all court costs.

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

~~(k)~~ **(j)** Any production company, except as provided in subsection ~~(H)~~ **(k)** 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.

~~(A)~~ **(k)(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~~ **No** 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)~~ **(g)** 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~~ **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.

(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 may require** 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.)~~ (g) 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;

(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 **public** 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) 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.

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

" 48-7-40.37.

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

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

(1) 'Affiliates' means those entities that are included in the 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 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.

(5) 'Multimarket commercial distribution' means paid commercial distribution with media buys which extend 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.

(7) 'Production expenditures' means:

(A) Preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including, but not limited to, 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; sound mixing; computer graphics services; special effects services; 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 interactive entertainment industry practices.

(B) Such term shall not include:

(i) Postproduction expenditures for footage shot outside this state, marketing, story rights, or distribution;

(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 and outside this state 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) Such term includes payments to a loan-out company by a qualified interactive entertainment production company that has met its withholding tax obligations as provided in this paragraph. The qualified interactive entertainment production company shall withhold Georgia income tax at the rate 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.

(8) 'Qualified Georgia promotion' means a qualified promotion of this state approved by the Department of Economic Development consisting of a qualified interactive game which includes a 15 second long Georgia advertisement in units sold and embedded in online promotions.

(9) 'Qualified interactive entertainment production company' means a company that:

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

(B) Has a total aggregate payroll of \$250,000.00 or more for employees working within the state in the taxable year the qualified interactive entertainment production company claims the tax credits;

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

(D) Is primarily engaged in qualified production activities related to interactive entertainment.

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.

(10) 'Qualified production activities' means the production of new digital projects produced in this state and approved by the Department of Economic Development as state certified productions, including only the following: interactive entertainment or prereleased interactive games. Such term shall include projects created in this state, in whole or in part, animation, and music fixed on a delivery system which includes without limitation computer disc, laser disc, and any element of the digital domain and which is intended for multimarket commercial distribution via digital platforms designed for the distribution of interactive games. Such term shall not include any project that is not intended for multimarket commercial distribution or any project not originally created in this state.

(11) 'Resident' means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1.

(12) '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 qualified interactive entertainment production company hires another 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.

(13) 'Total aggregate payroll' means the total sum expended by a 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 qualified interactive entertainment production company and its affiliates that invest in a state certified production 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 \$250,000.00, and shall be calculated as follows:

(1) The 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 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 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 qualified interactive entertainment 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 qualified interactive entertainment 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.

(d) For any qualified interactive entertainment production company and its affiliates that invest in a state certified production 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 \$250,000.00, the 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 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. 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 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 and Tourism 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 \$12.5 million for each taxable year.

(2) Qualified interactive entertainment production companies are eligible for tax credits for prereleased interactive game production; provided, however, that such credits shall not be available for a period which exceeds three years.

(3) 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.

(4) 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 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.

(5) 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 that 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.

(6) Before the Department of Economic Development issues its approval to the qualified interactive entertainment production company for the qualified production activities, the

qualified interactive entertainment production company shall 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 \$250,000.00 or more for employees working within this state during 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. 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.

(7)(A) 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 subparagraph (B) of this paragraph. For purposes of this paragraph the term, 'full-time employee' means a person who performs a job that requires a minimum of 35 hours a week and receives compensation 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) The qualified interactive entertainment production company shall report such number for each respective taxable year.

(C) 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. Such report shall include the name, tax year beginning, and monthly average number of full-time employees for each qualified interactive entertainment production company and shall be submitted by June 30 each year.

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

(2) If 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 qualified interactive entertainment production company and its affiliates shall 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 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 qualified interactive entertainment production company and previously claimed but not used by such qualified interactive entertainment production company against its income tax may be transferred or sold in whole or in part by such qualified interactive entertainment production company to another Georgia taxpayer, subject to the following conditions:

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

(2) Such 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 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 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 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 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 qualified interactive entertainment production company; and

(6) The transferee shall 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 qualified interactive entertainment production company has met the investment requirement. For each year in which such qualified interactive entertainment production company either claims or transfers the credit, the qualified interactive entertainment production company shall attach a schedule to the qualified interactive entertainment production company's Georgia income tax return which shall 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 qualified interactive entertainment production company against Georgia income tax liabilities or the 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 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 a qualified interactive entertainment production company claims the credit granted in this Code section, the 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 \$250,000.00; and

(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the 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 qualified interactive entertainment production company against prior years' tax liability.

(i)(1) The Department of Economic Development shall:

(A) Certify each production that qualifies for the tax credits authorized under this Code section;

(B) Submit such certifications to the commissioner; and

(C) Promulgate rules and regulations as are necessary to implement this subsection.

(2) The Department of Economic Development may charge reasonable fees associated with the certification process established pursuant to this paragraph.

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

(k) No qualified interactive entertainment production company shall be allowed a credit under this Code section and Code Section 48-7-40.26 in the same year."

SECTION 3.

This Act shall become effective on January 1, 2026, and shall be applicable to taxable years beginning on or after such date.

SECTION 4.

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