

House Bill 1037 (COMMITTEE SUBSTITUTE)

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

A BILL TO BE ENTITLED
AN ACT

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

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

25 "(6.1) 'Presentation' means a production combining visual and audio elements primarily
26 created for the purpose of promoting, showcasing, or selling a film, television, or

27 streaming project and which is not intended for theatrical release, airing over television,
 28 VOD, cable or streaming platforms, or any other form of commercial distribution."

29 "(8) 'Production expenditures' means:

30 (A) Preproduction, ~~preproduction~~, production, and postproduction expenditures
 31 incurred in this state that are directly used in a qualified production activity, including,
 32 but not limited to, ~~without limitation~~ the following: set construction and operation;
 33 wardrobes, make-up, accessories, and related services; costs associated with
 34 photography and sound synchronization; expenditures excluding license fees incurred
 35 with Georgia companies for sound recordings and musical compositions; sound
 36 recording projects used in feature films, series, pilots, or movies; lighting; and related
 37 services and materials; editing and related services; rental of facilities and equipment;
 38 leasing of vehicles; costs of food and lodging; digital or tape editing; film processing;
 39 transfers of film to tape or digital format; sound mixing; computer graphics services;
 40 special effects services; ~~and~~ animation services; total aggregate payroll; airfare, if
 41 purchased through a Georgia travel agency or travel company; insurance costs and
 42 bonding, if purchased through a Georgia insurance agency; and other direct costs of
 43 producing the project in accordance with generally accepted entertainment industry
 44 practices.

45 (B) This term shall not include:

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

49 (ii) ~~Any expenditure for work or services not conducted or rendered in Georgia.~~
 50 Expenditures for services not performed at the filming site shall only qualify if the
 51 vendor is a Georgia vendor. Expenditures for services conducted or rendered both
 52 in Georgia and outside Georgia shall only qualify to the extent the service is
 53 conducted or rendered in Georgia;

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

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

61 (C) This term includes payments to a loan-out company by a production company or
 62 qualified interactive entertainment production company that has met its withholding tax
 63 obligations as set out below. The production company or qualified interactive

64 entertainment production company shall withhold Georgia income tax at the rate of 6
 65 percent imposed by subsection (a) of Code Section 48-7-21 on all payments to loan-out
 66 companies for services performed in Georgia. Any amounts so withheld shall be
 67 deemed to have been withheld by the loan-out company on wages paid to its employees
 68 for services performed in Georgia pursuant to Article 5 of this chapter notwithstanding
 69 the exclusion provided in subparagraph (K) of paragraph (10) of Code Section
 70 48-7-100. The amounts so withheld shall be allocated to the loan-out company's
 71 employees based on the payments made to the loan-out company's employees for
 72 services performed in Georgia. For purposes of this chapter, loan-out company
 73 nonresident employees performing services in Georgia shall be considered taxable
 74 nonresidents and the loan-out company shall be subject to income taxation in the
 75 taxable year in which the loan-out company's employees perform services in Georgia,
 76 notwithstanding any other provisions in this chapter. Such withholding liability shall
 77 be subject to penalties and interest in the same manner as the employee withholding
 78 taxes imposed by Article 5 of this chapter and the commissioner shall provide by
 79 regulation the manner in which such liability shall be assessed and collected.

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

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

100 multimarket commercial distribution; or projects not shot, recorded, or originally created
 101 in Georgia.”

102 “(2)(A) The production company or qualified interactive entertainment production
 103 company shall be allowed an additional tax credit equal to 10 percent of such base
 104 investment if the qualified production activity includes a qualified Georgia promotion.
 105 Such additional tax credit shall be allowed for any qualified production that includes
 106 a qualified Georgia promotion upon its release to the general public. In lieu of the
 107 inclusion of the Georgia promotional logo, the production company or qualified
 108 interactive entertainment production company may offer alternative marketing
 109 opportunities to be evaluated by the Department of Economic Development to ensure
 110 that they offer equal or greater promotional value to the State of Georgia. The
 111 Department of Economic Development shall electronically certify to the Department
 112 of Revenue when the requirements of this paragraph and paragraph (2) of subsection
 113 (d) of this Code section have been met.

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

- 117 (i) The goals and strategy behind each marketing opportunity approved pursuant to
- 118 the provisions of subparagraph (A) of this paragraph;
- 119 (ii) The names of all production companies approved by the Department of Economic
- 120 Development to provide alternative marketing opportunities;
- 121 (iii) The estimated value to the state of each approved alternative marketing
- 122 opportunity compared to the estimated value of the Georgia promotional logo; and
- 123 (iv) The names of all production companies who chose to include the Georgia
- 124 promotional logo in their final production instead of offering the state an alternative
- 125 marketing proposal.

126 The report required under this paragraph shall be completed no later than January 1 of
 127 each year and presented to each member of the House Committee on Ways and Means,
 128 the Senate Finance Committee, the Senate Economic Development and Tourism
 129 Committee, the House Committee on Economic Development and Tourism, and the
 130 Governor.

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

135 (D) The additional percentage of tax credit that is allowed by this paragraph and by
 136 paragraph (2) of subsection (d) of this Code section shall not be issued final

137 certification pursuant to subsection (l) of this Code section unless and until the state
 138 certified production has been commercially distributed in multiple markets within five
 139 years of the date that the project was first certified by the Department of Economic
 140 Development.

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

144 "(4) The transfer or sale of this tax credit does not extend the time in which such tax
 145 credit can be used. The carry-forward period for a tax credit that is transferred or sold
 146 shall begin on the date on which the tax credit was originally earned or for a tax credit
 147 subject to the provisions of subsection (l) of this Code section, the date on which the final
 148 certification for such tax credit was issued pursuant to said subsection;

149 (5) A transferee shall have only such rights to claim and use the tax credit that were
 150 available to such production company or qualified interactive entertainment production
 151 company at the time of the transfer, except for the use of the credit in paragraph (1) of
 152 subsection (f) of this Code section. To the extent that such production company or
 153 qualified interactive entertainment production company did not have rights to claim or
 154 use the tax credit at the time of the transfer, the Department of Revenue shall either
 155 disallow the tax credit claimed by the transferee or recapture the tax credit from the
 156 transferee; provided, however, that the Department of Revenue shall not recapture a tax
 157 credit from the transferee if the tax credit was issued a valid final certification pursuant
 158 to subsection (l) of this Code section. The transferee's recourse is against such production
 159 company or qualified interactive entertainment production company; and"

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

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

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

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

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

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

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

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

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

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

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

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

204 (2) A production company seeking the tax credit allowed by this Code section shall
205 apply for the tax credit in the manner provided by the Department of Revenue within one
206 year from the date that it completes a state certified production. The following
207 information shall be submitted with the application or prior to the commencement of an
208 audit required by subsection (1) of this Code section:

- 209 (A) A description of the state certified production, along with its certification as a state
 210 certified production by the Department of Economic Development;
- 211 (B) A detailed accounting of all qualified production activities and the attendant
 212 production expenditures included in the base investment for the state certified
 213 production;
- 214 (C) A detailed listing of the employee names, social security numbers, and Georgia
 215 wages when salaries are included in the base investment;
- 216 (D) Receipts for tangible personal property included in the base investment as
 217 requested by the Department of Revenue or the eligible auditor hired to conduct the
 218 audit for the state certified production;
- 219 (E) Contracts for goods or services included in the base investment as requested by the
 220 Department of Revenue or the eligible auditor hired to conduct the audit for the state
 221 certified production;
- 222 (F) An Internal Revenue Service Form W-9 completed and issued by each vendor for
 223 which expenditures are included in the base investment as requested by the Department
 224 of Revenue or the eligible auditor hired to conduct the audit for the state certified
 225 production;
- 226 (G) Notification as provided for in paragraph (7) of subsection (l) of this Code section
 227 of any intent to utilize an eligible auditor;
- 228 (H) A description of the status of the distribution of the state certified production and
 229 information related to any qualified Georgia promotion connected with such
 230 production;
- 231 (I) The total amount of the tax credit sought for the state certified production; and
- 232 (J) A statement affirming that the contents of the application are true and correct.
- 233 (3) If a production company is issued final certification of a tax credit pursuant to
 234 subsection (l) of this Code section, such tax credit shall be considered earned in the
 235 taxable year in which it is issued final certification.
- 236 (4) For each year in which the production company either claims or transfers the tax
 237 credit, the production company shall attach a schedule to the production company's
 238 Georgia income tax return which will set forth the following information, as a minimum:
- 239 (A) The amount of tax credit claimed for the taxable year;
- 240 (B) Any tax credit previously taken by the production company against Georgia
 241 income tax liabilities or the production company's quarterly or monthly payments under
 242 Code Section 48-7-103;
- 243 (C) The amount of tax credit carried over from prior years;
- 244 (D) The amount of tax credit utilized by the production company in the current taxable
 245 year; and

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

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

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

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

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

268 (B) For any project certified by the Department of Economic Development on or after
 269 January 1, 2022, a tax credit allowed by this Code section to a production company
 270 shall not be claimed, assigned, sold, transferred, or utilized in any manner until the
 271 production company applies for the tax credit as provided in subsection (h.1) of this
 272 Code section and the department issues a final certification of the tax credit pursuant
 273 to this subsection if the total amount of such tax credit sought for the project exceeds
 274 \$1.25 million.

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

281 (2) In accordance with the schedule provided in paragraph (1) of this subsection, prior
 282 to certifying a tax credit pursuant to this Code section, the Department of Revenue shall

283 conduct or cause to be conducted an audit of each tax credit allowed by this Code section
 284 by either the department or an independent third party certified by the department in
 285 accordance with paragraph (3) of this subsection as an eligible auditor as shall be elected
 286 by the production company as provided in paragraph (7) of this subsection.

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

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

290 (i) Register with the department;

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

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

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

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

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

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

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

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

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

308 (4) Each audit shall:

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

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

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

315 (D) Verify each reported expenditure that is included in the audit and identify and
 316 exclude each such expenditure that does not fully meet the conditions of this Code
 317 section;

318 (E) Exclude any expenditure not submitted with or that was incurred after the
 319 application required by subsection (h.1) of this Code section was submitted;

320 (F) Not be performed by an eligible accounting entity that is not determined to be
321 independent as provided in the American Institute of Certified Public Accountants Code
322 of Professional Conduct with respect to the production company or any of its related
323 persons or related members as such terms are defined in Code Section 48-7-28.3 or as
324 otherwise provided by the Department of Revenue; and

325 (G) Be submitted to the department which shall review the audit, make adjustments as
326 necessary, and issue a final certification to the production company.

327 (5) The Department of Revenue shall:

328 (A) Promulgate rules and regulations and implement this subsection on or before
329 January 1, 2021;

330 (B) Publish and regularly update a list of all eligible auditors that a production
331 company may hire to conduct the audit required by this subsection;

332 (C) Publish on its website the application for certification of eligible auditors as well
333 as all requirements related to certification and conducting an audit pursuant to this
334 subsection;

335 (D) Publish the registration fee required by division (3)(B)(v) of this subsection and
336 any bond required pursuant to division (3)(B)(vi) of this subsection;

337 (E) Determine whether a sampling method shall be used for the audits required by this
338 subsection, the appropriate sample method and size, and if a sampling method is used,
339 ensure that it accurately captures a truly representative sample of all ineligible
340 expenditures across all submitted expenditures and projects the type, rate, and amount
341 of ineligible expenditures across all submitted expenditures;

342 (F) Perform the audit of expenditures when, due to confidentiality of information, the
343 eligible auditor is unable to access necessary information that the department is able
344 access;

345 (G) Review each audit conducted by an eligible auditor, conduct the portions of the
346 audit described in subparagraph (F) of this paragraph, perform additional auditing as
347 necessary, adjust the value of the tax credit as necessary, finalize the audit, and issue
348 the final certification of the tax credit to the taxpayer; and

349 (H) For an audit that it conducts without an eligible auditor, complete the audit, adjust
350 the value of the tax credit as necessary, and issue the final certification of the tax credit
351 to the taxpayer.

352 (6) The production company applying for a final certification of a tax credit pursuant to
353 this subsection shall agree and be required to reimburse the department for all costs
354 incurred by the performance of a related audit, or any portion thereof, including for
355 review of an audit conducted by an eligible auditor, prior to the issuance of such final
356 certification.

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

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

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

371 **SECTION 2.**

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