

House Bill 155 (AS PASSED HOUSE AND SENATE)

By: Representatives Carter of the 175th, Reeves of the 34th, Hatchett of the 150th, Frye of the 118th, Hawkins of the 27th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to the imposition, rate, and computation of and exemptions from state income taxes,
3 so as to create an income tax credit for certain expenditures by a production company related
4 to certain state certified musical or theatrical productions or recorded musical performances;
5 to provide for rules and regulations and an application process related to such income tax
6 credit; to provide for certain conditions, procedures, and limitations; to provide for
7 definitions; to provide a short title; to provide for related matters; to provide for an effective
8 date and automatic repeal; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
12 imposition, rate, and computation of and exemptions from state income taxes, is amended
13 by adding a new Code section to read as follows:

14 "48-7-40.32.

15 (a) This Code section shall be known and may be cited as the 'Georgia Musical Investment
16 Act.'

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

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

- 26 (2) 'Production company' means a company primarily engaged in qualified production
 27 activities. Such term shall not mean or include any form of business owned, affiliated,
 28 or controlled, in whole or in part, by any company or person which is in default on any
 29 tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.
- 30 (3) 'Qualified production activities' means activities related to the preparation, planning,
 31 recording, or staging of a state certified production.
- 32 (4) 'Qualified production expenditures' means expenditures incurred in this state on
 33 direct account of qualified production activities for which a tax credit has not been
 34 claimed pursuant to Code Section 48-7-40.26 and shall include, but are not limited to:
- 35 (A) Set construction and operation; wardrobe, make-up, accessories, and related
 36 services; costs associated with photography and sound synchronization, expenditures
 37 excluding license fees incurred with Georgia companies for sound recordings and
 38 musical compositions, lighting, and related services and materials; editing and related
 39 services; rental of facilities and equipment; leasing of vehicles; costs of food and
 40 lodging; total aggregate payroll; talent and producer fees; technical fees; crew fees; per
 41 diem costs paid to employees; airfare, if purchased through a Georgia travel agency or
 42 travel company; insurance costs and bonding, if purchased through a Georgia insurance
 43 agency; and other direct costs of producing the project in accordance with generally
 44 accepted entertainment industry practices; and
- 45 (B) Payments to a loan-out company by a production company.
- 46 (5) 'Recorded musical performance' means a recording of a music composition affixed
 47 in a tangible medium, which includes but is not limited to the score and musical
 48 accompaniment of a motion picture, film, television, game, or interactive entertainment
 49 production.
- 50 (6) 'Resident' shall have the same meaning as set forth in paragraph (10) of Code Section
 51 48-7-1.
- 52 (7) 'Spending threshold' means:
- 53 (A) For a musical or theatrical performance, \$500,000.00 during a taxable year; and
 54 (B) For a recorded musical performance which is incorporated into or synchronized
 55 with a movie, television, or interactive entertainment production, \$250,000.00 during
 56 a taxable year, and for any other recorded musical performance, \$100,000.00 during a
 57 taxable year.
- 58 (8) 'State certified production' means a musical or theatrical performance or recorded
 59 musical performance that is approved by the Department of Economic Development in
 60 accordance with rules and regulations promulgated pursuant to this Code section.

61 (9) 'Total aggregate payroll' means the total sum expended by a production company on
62 salaries paid to employees working within this state in a state certified production or
63 productions. For purposes of this paragraph:

64 (A) With respect to a single employee, the portion of any salary which exceeds
65 \$500,000.00 for a single production shall not be included when calculating total
66 aggregate payroll; and

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

70 (c) A production company that invests in a state certified production shall be allowed an
71 income tax credit against the tax imposed under this article if such production company's
72 qualified production expenditures equal or exceed the spending threshold as follows:

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

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

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

81 (1) For taxable years beginning on or after January 1, 2018, and before January 1, 2019,
82 the aggregate amount of tax credits allowed under this Code section shall not exceed \$5
83 million;

84 (2) For taxable years beginning on or after January 1, 2019, and before January 1, 2020,
85 the aggregate amount of tax credits allowed under this Code section shall not exceed \$10
86 million;

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

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

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

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

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

114 (2) If a production company claims the credit authorized under Code Section 48-7-40,
 115 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company will only be allowed
 116 to claim the credit authorized under this Code section to the extent that the Georgia
 117 resident employees included in the credit calculation authorized under this Code section
 118 and taken by the production company on such tax return under this Code section have
 119 been permanently excluded from the credit authorized under Code Section 48-7-40,
 120 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

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

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

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

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

- 134 (D) Any tax credit previously taken by the production company against Georgia
135 income tax liabilities or the production company's quarterly or monthly payments under
136 Code Section 48-7-103;
- 137 (E) The amount of tax credit carried over from prior years;
- 138 (F) The amount of tax credit utilized by the production company in the current taxable
139 year; and
- 140 (G) The amount of tax credit to be carried over to subsequent tax years;
- 141 (2) In no event shall the amount of the tax credit under this Code section for a taxable
142 year exceed the production company's income tax liability. Any unused credit amount
143 shall be allowed to be carried forward for five years from the close of the taxable year in
144 which the investment occurred. No such credit shall be allowed the production company
145 against prior years' tax liability.
- 146 (3) Tax credits claimed under this Code section shall not be refundable, transferable, or
147 saleable.
- 148 (h) Any production company claiming the tax credit provided for by this Code section
149 shall be required to reimburse the department for any department initiated audits relating
150 to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which
151 may include a review of the credit provided in this Code section.
- 152 (i) The Department of Economic Development shall determine through the promulgation
153 of rules and regulations which projects qualify for the tax credits authorized under this
154 Code section. Certification shall be submitted to the state revenue commissioner.
- 155 (j) The state revenue commissioner shall promulgate such rules and regulations as are
156 necessary to implement and administer this Code section."

157 **SECTION 2.**

158 This Act shall become effective on January 1, 2018, and shall stand repealed on January 1,
159 2023.

160 **SECTION 3.**

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