

House Bill 1015

By: Representatives Dollar of the 45<sup>th</sup> and Ramsey of the 72<sup>nd</sup>

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 imposition, rate, computation, and exemptions from state income tax, so as to  
3 provide for a new income tax exemption for qualified music festivals; to provide a short title;  
4 to provide for conditions, procedures, and limitations; to provide for related matters; to  
5 provide for an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

11 "48-7-40.31.

12 (a) This Code section shall be known and may be cited as the 'Georgia Music Festival  
13 Tourism Act.'

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

15 (1) 'Affiliates' means those entities that are included in the qualified music festival  
16 production company's affiliated group as defined in Section 1504(a) of the Internal  
17 Revenue Code and all other entities that are directly or indirectly owned, in an amount  
18 of at least 50 percent, by members of the affiliated group.

19 (2) 'Base investment' means the aggregate funds actually invested and expended in this  
20 state by a qualified music festival production company as production expenditures  
21 directly used in a state certified music festival.

22 (3) 'Production expenditures' means preproduction, production, and postproduction  
23 expenditures incurred in this state that are directly used in a qualified production activity,  
24 including without limitation the following: set construction and operation; costs  
25 associated with photography and sound synchronization, expenditures excluding license  
26 fees incurred with Georgia companies for sound recordings, lighting, and related services

27 and materials; editing and related services; rental of facilities and equipment; leasing or  
28 rental of vehicles; costs of food and lodging; total aggregate payroll; airfare, if purchased  
29 through a Georgia travel agency or travel company; insurance costs and bonding, if  
30 purchased through a Georgia insurance agency; and other direct costs of producing the  
31 project in accordance with generally accepted music festival industry practices. This  
32 term shall not include expenditures incurred outside of the State of Georgia. This term  
33 includes payments to a loan-out company by a qualified music festival production  
34 company that has met its withholding tax obligations as set out below. The qualified  
35 music festival production company shall withhold Georgia income tax at the rate of 6  
36 percent on all payments to loan-out companies for services performed in Georgia. Any  
37 amounts so withheld shall be deemed to have been withheld by the loan-out company on  
38 wages paid to its employees for services performed in Georgia pursuant to Article 5 of  
39 this chapter notwithstanding the exclusion provided in subparagraph (K) of paragraph  
40 (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the  
41 loan-out company's employees based on the payments made to the loan-out company's  
42 employees for services performed in Georgia. For purposes of this chapter, loan-out  
43 company nonresident employees performing services in Georgia shall be considered  
44 taxable nonresidents and the loan-out company shall be subject to income taxation in the  
45 taxable year in which the loan-out company's employees perform services in Georgia,  
46 notwithstanding any other provisions in this chapter. Such withholding liability shall be  
47 subject to penalties and interest in the same manner as the employee withholding taxes  
48 imposed by Article 5 of this chapter and the state revenue commissioner shall provide by  
49 regulation the manner in which such liability shall be assessed and collected.

50 (4) 'Qualified Georgia music festival' means a music festival within Georgia, approved  
51 by the Department of Economic Development, which:

52 (A) Has qualified expenditures exceeding \$250,000.00 per festival;

53 (B) Projects at least 30,000 visitors per day at the festival; and

54 (C) Extends for at least three days.

55 (5) 'Qualified music festival production company' means a company primarily engaged  
56 in music festival activities which have been certified by the Department of Economic  
57 Development. This term shall not mean or include any form of business owned,  
58 affiliated, or controlled, in whole or in part, by any company or person which is in default  
59 on any tax obligation to the state, or a loan made by the state or a loan guaranteed by the  
60 state.

61 (6) 'Resident' means an individual as provided pursuant to paragraph (10) of Code  
62 Section 48-7-1, as amended.

63 (7) 'State certified music festival' means a music festival which has been certified by the  
64 Department of Economic Development in accordance with regulations promulgated  
65 pursuant to this Code section. In the instance of a 'work for hire' in which one qualified  
66 music festival production company hires another music festival production company to  
67 produce a project or contribute elements of a project for pay, the hired company shall be  
68 considered a service provider for the hiring company, and the hiring company shall be  
69 entitled to the tax credit under this Code section.

70 (c) The tax credit under this Code section shall be calculated as follows:

71 (1) The qualified music festival production company shall be allowed a tax credit equal  
72 to 15 percent of the base investment in this state in a taxable year;

73 (2) Qualified music festival production companies seeking to claim a tax credit under the  
74 provisions of this Code section shall submit an application to the state revenue  
75 commissioner for preapproval of such tax credit. The commissioner shall be authorized  
76 to promulgate any rules and regulations and forms necessary to implement and administer  
77 the provisions of this Code section. The commissioner shall preapprove the tax credits  
78 based on the order in which properly completed applications were submitted. In the  
79 event that two or more applications were submitted on the same day and the amount of  
80 funds available will not be sufficient to fully fund the tax credits requested, the  
81 commissioner shall prorate the available funds between or among the applicants.

82 (3) On or after July 1, 2016, the department shall issue a certification that the qualified  
83 music festival production company meets the requirements of this Code section and that  
84 the cap for credits under this Code section has not been exceeded. The qualified music  
85 festival production company shall provide such certification to the Department of  
86 Economic Development. The Department of Economic Development shall not issue its  
87 approval until it receives such certification.

88 (4) Where the amount of such tax credit exceeds the qualified music festival production  
89 company's liability for such taxes in a taxable year, the excess may be taken as a credit  
90 against such qualified music festival production company's quarterly or monthly payment  
91 under Code Section 48-7-103. Each employee whose employer receives credit against  
92 such qualified music festival production company's quarterly or monthly payment under  
93 Code Section 48-7-103 shall receive credit against his or her income tax liability under  
94 Code Section 48-7-20 for the corresponding taxable year for the full amount which would  
95 be credited against such liability prior to the application of the credit provided for in this  
96 subsection. Credits against quarterly or monthly payments under Code Section 48-7-103  
97 and credits against liability under Code Section 48-7-20 shall not constitute income to the  
98 qualified music festival production company.

99 (5) If a qualified music festival production company and its affiliates claim the credit  
100 authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the  
101 qualified music festival production company and its affiliates will only be allowed to  
102 claim the credit authorized under this Code section to the extent that the Georgia resident  
103 employees included in the credit calculation authorized under this Code section and taken  
104 by the qualified music festival production company and its affiliates on such tax return  
105 under this Code section have been permanently excluded from the credit authorized under  
106 Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

107 (d) In no event shall the aggregate amount of tax credits allowed under this Code section  
108 for qualified music festival production companies and affiliates exceed \$5 million for  
109 taxable years beginning on or after January 1, 2016, and before January 1, 2020. The  
110 maximum credit for any single qualified music festival production company and its  
111 affiliates shall be \$1.25 million for any single taxable year. When the \$5 million cap is  
112 reached, the tax credit for qualified music festival production companies shall expire for  
113 such taxable year.

114 (e)(1) Before the Department of Economic Development issues its certification to a  
115 qualified music festival production company for the qualified production activities related  
116 to festival activities, the qualified music festival production company must verify with  
117 the department that:

118 (A) It has been certified by the Department of Revenue;

119 (B) It intends to operate a music festival within this state; and

120 (C) It will expend a base investment of \$250,000.00 or more for the music festival.

121 (2) The Department of Economic Development shall submit a copy of its certification  
122 to the state revenue commissioner.

123 (3) The Department of Economic Development shall prepare an annual report detailing  
124 the aggregate amount of tax credits issued under this Code section. The report shall be  
125 completed no later than January 30 of each year and presented to each member of the  
126 House Committee on Ways and Means, the Senate Finance Committee, the Senate  
127 Economic Development and Tourism Committee, the House Committee on Economic  
128 Development and Tourism, and the Governor. The report shall include, but not be  
129 limited to:

130 (A) The number of state certified music festivals approved by the Department of  
131 Economic Development for the previous calendar year;

132 (B) The names of all qualified music festival production companies approved by the  
133 Department of Economic Development;

134 (C) The estimated economic impact value to the state of each approved state certified  
135 music festival; and

- 136 (D) The estimated tax revenues derived from each state certified music festival.
- 137 (f) Any tax credits with respect to a state certified music festival earned by a qualified  
138 music festival production company and previously claimed but not used by such qualified  
139 music festival production company against its income tax liability may be transferred or  
140 sold in whole or in part by such qualified music festival production company to another  
141 Georgia taxpayer, subject to the following conditions:
- 142 (1) Such qualified music festival production company may make only a single transfer  
143 or sale of tax credits earned in a taxable year; however, the transfer or sale may involve  
144 one or more transferees;
- 145 (2) Such qualified music festival production company shall submit to the Department of  
146 Economic Development and to the Department of Revenue a written notification of any  
147 transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits.  
148 The notification shall include such qualified music festival production company's tax  
149 credit balance prior to transfer, the tax credit certificate number, the remaining balance  
150 after transfer, all tax identification numbers for each transferee, the date of transfer, the  
151 amount transferred, and any other information required by the Department of Economic  
152 Development or the Department of Revenue;
- 153 (3) Failure to comply with this subsection shall result in the disallowance of the transfer  
154 of the tax credit until the qualified music festival production company is in full  
155 compliance;
- 156 (4) The transfer or sale of this tax credit does not extend the time in which such tax credit  
157 can be used. The carry-forward period for tax credit that is transferred or sold shall begin  
158 on the date on which the tax credit was originally earned;
- 159 (5) A transferee shall have only such rights to claim and use the tax credit that were  
160 available to such qualified music festival production company at the time of the transfer.  
161 To the extent that such qualified music festival production company did not have rights  
162 to claim or use the tax credit at the time of the transfer, the Department of Revenue shall  
163 either disallow the tax credit claimed by the transferee or recapture the tax credit from the  
164 transferee. The transferee's recourse is against such qualified music festival production  
165 company; and
- 166 (6) Any qualified music festival production company claiming, transferring, or selling  
167 the tax credit shall be required to reimburse the Department of Revenue for any  
168 department initiated audits relating to the tax credit. This subsection shall not apply to  
169 routine tax audits of a taxpayer which may include the review of the credit provided in  
170 this Code section.
- 171 (g) The tax credit granted under this Code section shall be subject to the following  
172 conditions and limitations:

173 (1) The tax credit may be taken beginning with the taxable year in which the qualified  
 174 music festival production company has met the investment requirement. For each year  
 175 in which such qualified music festival production company either claims or transfers the  
 176 credit, the qualified music festival production company shall attach a schedule to the  
 177 qualified music festival production company's Georgia income tax return which, at a  
 178 minimum, contain the following information:

179 (A) A description of the qualified music festival activities, along with the certification  
 180 from the Department of Economic Development and the Department of Revenue;

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

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

184 (D) Any tax credit previously taken by the qualified music festival production  
 185 company against Georgia income tax liabilities or the qualified music festival  
 186 production company's quarterly or monthly payments under Code Section 48-7-103;

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

188 (F) The amount of tax credit utilized by the qualified music festival production  
 189 company in the current taxable year; and

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

191 (2) In the initial year in which the qualified music festival production company claims  
 192 the tax credit under this Code section, the qualified music festival production company  
 193 shall include in the description of the qualified production activities required by  
 194 subparagraph (A) of paragraph (1) of this subsection information which demonstrates that  
 195 the activities included in the base investment or excess base investment equal or exceed  
 196 \$250,000.00 during such year.

197 (h) In no event shall the amount of the tax credit under this Code section for a taxable year  
 198 exceed the qualified music festival production company's income tax liability. Any unused  
 199 credit amount shall be allowed to be carried forward for five years from the close of the  
 200 taxable year in which the investment occurred. No such credit shall be allowed the  
 201 qualified music festival production company against prior years' tax liability.

202 (i) The state revenue commissioner is authorized to promulgate such rules and regulations  
 203 as are necessary to implement and administer this Code section."

204 **SECTION 2.**

205 This Act shall become effective on July 1, 2016.

206 **SECTION 3.**

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