

House Bill 393

By: Representatives Carpenter of the 4th, Sharper of the 177th, Seabaugh of the 34th, Bonner of the 73rd, Gilliard of the 162nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
2 income taxes, so as to provide for tax credits for certain contributions made by taxpayers to
3 certain organizations investing in musical or theatrical performances or productions; to
4 provide for definitions; to provide for limitations on the amount of tax credits allowed; to
5 provide for terms and conditions; to provide for applications and certifications; to provide
6 for the revocation of qualified status; to provide for audits; to provide for certain penalties;
7 to require annual reporting; to provide for the discretion to refer certain acts to the Attorney
8 General for investigation and prosecution; to provide for the promulgation of rules and
9 regulations; to provide for a short title; to provide for related matters; to provide for an
10 effective date and applicability; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 This Act shall be known and may be cited as the "Georgia Music Investment Credit Act" or
14 the "Georgia MIC Act."

H. B. 393

SECTION 2.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to income taxes, is amended by adding a new Code section to read as follows:

"48-7-29.26.

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

(1) 'Musical or theatrical expenditures' means expenses incurred for a qualified music investment project, which shall include, but not be limited to, those expenses incurred for set construction and operation; wardrobe, makeup, accessories, and related services; costs associated with photography and sound synchronization; expenditures incurred with Georgia companies for sound recordings and musical compositions, excluding license fees; lighting and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; total aggregate payroll; talent and producer fees; technical fees; crew fees; per diem costs paid to employees; airfare purchased through a Georgia travel agency or travel company; insurance and bonding costs incurred with a Georgia insurance agency; other direct costs of producing the project in accordance with generally accepted entertainment industry practices; and payments made to loan-out companies.

(2) 'Musical or theatrical performance' means a live performance of a concert, musical or performing arts tour, ballet, dance, opera, live variety entertainment, or a series of any such performances that originates, is developed, and has at least one public performance before a live audience within this state, or that prepares and rehearses a minimum of five days within this state and has its United States debut within this state. Such term excludes a single musical performance that is not intended for touring, a music or cultural festival that is not intended for touring, an industry seminar, a trade show, or a market.

(3) 'Qualified contributions' means the preapproved contribution of funds made during the taxable year by a taxpayer to a qualified music investment organization under the terms and conditions of this Code section.

42 (4) 'Qualified expenditures' means musical or theatrical expenditures made by a qualified
43 music investment organization in support of a qualified music investment project in an
44 amount per project not to exceed 30 percent of the total outside investment in the
45 qualified music investment project.

46 (5) 'Qualified music investment organization' means any domestic corporation which has
47 been certified by the commissioner and the commissioner of the Department of Economic
48 Development as having the primary function of supporting one or more qualified music
49 investment projects.

50 (6) 'Qualified music investment project' means any music investment project certified
51 by the Department of Economic Development, which shall include musical or theatrical
52 performances and recorded music scored for or synchronized with any movie, television
53 show, music video, or interactive entertainment production, provided that such projects
54 equal or exceed their respective spending thresholds using qualified expenditures, which
55 are as follows:

56 (A) Tour rehearsal and preproduction of musical or theatrical performances,
57 \$100,000.00;

58 (B) Recorded music in a studio, \$15,000.00; or

59 (C) Recorded music scored for or synchronized with any movie, television show,
60 music video, or interactive entertainment production, \$25,000.00.

61 (b)(1) The aggregate amount of tax credits allowed under this Code section shall not
62 exceed:

63 (A) For 2024, \$7 million per year;

64 (B) For 2025, \$10 million per year;

65 (C) For 2026 and 2027, \$15 million; or

66 (D) For 2028, \$25 million.

67 (2) Subject to the aggregate limit provided in paragraph (1) of this subsection and the
68 limitations of subsection (b.1) of this Code section, each taxpayer shall be allowed a

69 credit against the tax imposed by this chapter for qualified contributions made by the
70 taxpayer on or after January 1, 2024, as follows:

71 (A) In the case of a single individual or a head of household, 70 percent of the actual
72 amount of qualified contributions made or \$2,500.00, whichever is less;

73 (B) In the case of a married couple filing a joint return, 70 percent of the actual amount
74 of qualified contributions made or \$5,000.00, whichever is less;

75 (C) Anything to the contrary contained in subparagraph (A) or (B) of this paragraph
76 notwithstanding, in the case of an individual taxpayer who is a member of a limited
77 liability company duly formed under state law, a shareholder of a Subchapter 'S'
78 corporation, or a partner in a partnership, 70 percent of the actual amount of qualified
79 contributions it made, or \$5,000.00, whichever is less; provided, however, that tax
80 credits pursuant to this paragraph shall only be allowed for the portion of the income
81 on which such tax was actually paid by such member of the limited liability company,
82 shareholder of a Subchapter 'S' corporation, or partner in a partnership; or

83 (D) A corporation or other entity not provided for in subparagraphs (A) through (C)
84 of this paragraph shall be allowed a credit against the tax imposed by this chapter for
85 qualified contributions in an amount not to exceed 70 percent of the actual amount of
86 qualified contributions made or 75 percent of such entity's income tax liability.

87 (c) Not later than October 1, 2023, the commissioner shall establish a page on the
88 department's website for the purpose of implementing this Code section. Such page shall
89 contain, at a minimum:

90 (1) A link to the Department of Economic Development's web based application for
91 certification as a qualified music investment organization as provided for in
92 subsection (d) of this Code section;

93 (2) The current list of all qualified music investment organizations;

94 (3) The total amount of tax credits remaining and available for preapproval for each year;

95 (4) A web based method for taxpayers seeking the preapproval status for contributions;
96 and

97 (5) The information received by the department from each qualified music investment
98 organization pursuant to paragraph (1) of subsection (g) except for division (g)(1)(B)(iv)
99 of this Code section.

100 (d)(1) The Department of Economic Development shall establish and maintain a web
101 based application process for the purpose of certifying organizations as qualified music
102 investment organizations. At a minimum, such application created by the Department of
103 Economic Development shall include an agreement submitted by the applicant to fully
104 comply with the terms and conditions of this Code section.

105 (2) The Department of Economic Development shall certify any valid organization as
106 a qualified music investment organization upon successful completion of such application
107 process.

108 (3) The Department of Economic Development shall accept a first round of applications
109 for certification as qualified music investment organizations by October 1, 2023, and
110 shall certify and notify such applicants of the Department of Economic Development's
111 decision on or before November 30, 2023. Thereafter, the Department of Economic
112 Development shall establish a process for rolling applications and certifications.

113 (e)(1) Prior to making a contribution to any qualified music investment organization, the
114 taxpayer shall electronically notify the department, in a manner specified by the
115 commissioner, of the total amount of contribution that such taxpayer intends to make to
116 such organization.

117 (2) Within 30 days after receiving a request for preapproval of contributions, the
118 commissioner shall preapprove, deny, or prorate requested amounts on a first come, first
119 served basis and shall provide notice to such taxpayer and the qualified music investment
120 organization of such preapproval, denial, or proration. Such notices shall not require any
121 signed release or notarized approval by the taxpayer. The preapproval of contributions

122 by the commissioner shall be based solely on the availability of tax credits subject to the
123 aggregate total limit established under paragraph (1) of subsection (b) of this Code
124 section.

125 (3) Within 60 days after receiving the preapproval notice issued by the commissioner
126 pursuant to paragraph (2) of this subsection, the taxpayer shall contribute the preapproved
127 amount to the qualified music investment organization or such preapproved contribution
128 amount shall expire. The commissioner shall not include such expired amounts in
129 determining the remaining amount available under the aggregate limit for the respective
130 calendar year.

131 (f)(1) Each qualified music investment organization shall issue to each contributor a
132 letter of confirmation of contribution, which shall include the taxpayer's name, address,
133 tax identification number, the amount of the qualified contribution, the date of the
134 qualified contribution, and the total amount of the credit allowed to the taxpayer.

135 (2) In order for a taxpayer to claim the tax credit allowed under this Code section, all
136 such applicable letters as provided for in paragraph (1) of this subsection shall be attached
137 to the taxpayer's tax return. When the taxpayer files an electronic return such
138 confirmation shall only be required to be electronically attached to the return if the
139 Internal Revenue Service allows such attachments to be affixed and transmitted to the
140 department. In any such event, the taxpayer shall maintain such confirmation and such
141 confirmation shall only be made available to the commissioner upon request.

142 (3) The commissioner shall allow tax credits for any preapproved contributions made to
143 an organization at the time the contributions were made if such organization was a
144 qualified music investment organization at the time of the commissioner's preapproval
145 of the contributions and the taxpayer has otherwise complied with this Code section.

146 (g)(1) Each qualified music investment organization shall annually submit to the
147 department no later than May 15 of each year:

148 (A) A complete copy of its IRS Form 990 including applicable attachments, or for any
149 qualified music investment organization that is not required by federal law to file an
150 IRS Form 990, such organization shall submit to the commissioner equivalent
151 information on a form prescribed by the commissioner; and

152 (B) A report detailing the contributions received during the calendar year pursuant to
153 this Code section on a date determined by, and on a form provided by, the
154 commissioner which shall include:

155 (i) The total number and dollar value of individual contributions and tax credits
156 approved. Individual contributions shall include contributions made by those filing
157 income tax returns as a single individual or head of household and those filing joint
158 returns;

159 (ii) The total number and dollar value of corporate contributions and tax credits
160 approved;

161 (iii) The total number and dollar value of all qualified expenditures made; and

162 (iv) A list of contributors, including the dollar value of each contribution and the
163 dollar value of each approved tax credit.

164 (2) Except for the information published in accordance with subsection (c) of this Code
165 section, all information or reports relative to this Code section that were provided by
166 qualified music investment organizations to the department shall be confidential taxpayer
167 information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether such
168 information relates to the contributor or such qualified organization.

169 (h) By April 1 of each year, each qualified music investment organization shall publicly
170 post on its website in a prominent place a copy of its prior year's annual budget containing
171 the total amount of funds received from all sources relative to the amount of qualified
172 contributions it received and the total amount and a description of how such contributions
173 were utilized.

174 (i)(1) A taxpayer shall not be allowed to designate or direct the taxpayer's qualified
175 contributions to any particular purpose or for the direct benefit of any particular
176 individual.

177 (2) A taxpayer that operates, owns, or is a subsidiary of an association, organization, or
178 other entity that contracts directly with a qualified music investment organization shall
179 not be eligible for tax credits allowed under this Code section for contributions made to
180 such qualified organization.

181 (3) In soliciting contributions, no person shall represent or direct that, in exchange for
182 making qualified contributions to any qualified music investment organization, a taxpayer
183 shall receive any direct or particular benefit. The status as a qualified music investment
184 organization shall be revoked for any organization determined to be in violation of this
185 paragraph and shall not be renewed for at least two years.

186 (j)(1) Each qualified music investment organization shall use at least 80 percent of the
187 funds received by it from qualified contributions to make qualified expenditures. Each
188 such qualified organization shall maintain accurate and current records of all expenditures
189 of such funds and provide such records to the commissioner upon his or her request.

190 (2) A qualified music investment organization that fails to comply with any of the
191 requirements under this Code section shall be given written notice by the department of
192 such failure to comply by certified mail and shall have 90 days from the receipt of such
193 notice to correct all deficiencies.

194 (3) Upon failure to correct all deficiencies within 90 days, the department shall revoke
195 such organization's status as a qualified music investment organization and such entity
196 shall be immediately removed from the department's list of organizations. All
197 applications for preapproval of tax credits for contributions to such organization under
198 this Code section made on or after the date of such removal shall be rejected.

199 (4) Each such organization that has had its status revoked and has been delisted pursuant
200 to this Code section, shall immediately cease all expenditures of funds received relative

201 to this Code section, and shall transfer all of such funds that are not yet expended, to a
202 properly operating qualified music investment organization within 30 calendar days of
203 its removal from the department's list of qualified music investment organizations.

204 (k)(1) No credit shall be allowed under this Code section to a taxpayer for any amount
205 of qualified contributions that were utilized as deductions or exemptions from taxable
206 income.

207 (2) In no event shall the total amount of the tax credit under this Code section for a
208 taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be
209 allowed the taxpayer against the succeeding five years' tax liability. No such credit shall
210 be allowed the taxpayer against prior years' tax liability.

211 (l) The chairperson of the House Appropriations Committee and the chairperson of the
212 Senate Committee on Appropriations shall have the authority to request an audit
213 concerning this Code section as a whole or of any one or more qualified music investment
214 organizations. The commissioner, the state auditor, and each qualified music investment
215 organization, and the commissioner of the Department of Economic Development shall
216 cooperate to the full extent necessary to conduct such audits.

217 (m) At the discretion of the commissioner, any suspected misuse of funds contributed or
218 expended pursuant to this Code section shall be forwarded to the Attorney General for
219 investigation and prosecution.

220 (n) The commissioner shall promulgate rules and regulations necessary to implement and
221 administer the provisions of this Code section."

222 **SECTION 3.**

223 (a) This Act shall become effective on July 1, 2023.

224 (b) This Act shall be applicable to taxable years beginning on or after January 1, 2024.

225

SECTION 4.

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