

House Bill 718

By: Representatives Smyre of the 135th, Smith of the 133rd, Hugley of the 136th, and Buckner of the 137th

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 that all expenditures of a production company's state certified productions may be
4 combined to meet spending thresholds; to lower spending thresholds; to increase the value
5 of the tax credit; to provide for transferability of the tax credit; to provide for conditions and
6 limitations; to revise a definition; to provide for related matters; to provide for an effective
7 date and applicability; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
11 imposition, rate, computation, and exemptions from state income tax, is amended by revising
12 Code Section 48-7-40.33, relating to tax credits for musical or theatrical performances, as
13 follows:

14 "48-7-40.33.

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

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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~~ an 18 week period or longer that originates, is
21 developed, and has its initial public performance before a live audience ~~within this state~~
22 ~~or that prepares and rehearses a minimum of seven days~~ within this state and has its
23 United States debut within this state. Such term excludes a single musical performance
24 that is not intended for touring, a music or cultural festival that is not intended for touring,
25 an 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, makeup, 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
51 Section 48-7-1.

52 (7) 'Spending threshold' means:

53 (A) For a all musical or theatrical performance, \$500,000.00 performances of a
54 production company, which equals or exceeds \$100,000.00 in the aggregate during a
55 taxable year; ~~and~~

56 (B) For a recorded musical ~~performance~~ performances of a production company which
57 is are incorporated into or synchronized with a movie, television, or interactive
58 entertainment ~~production~~ productions, \$250,000.00 which equals or exceeds \$50,000.00
59 in the aggregate during a taxable year; ~~and~~

60 (C) For ~~all~~ for any other recorded musical ~~performance, \$100,000.00~~ performances of
61 a production company, which equals or exceeds \$50,000.00 in the aggregate during a
62 taxable year; ~~and~~

63 (D) A production company shall be able to aggregate qualified expenditures for one
64 or more musical or theatrical and recorded musical performances over the course of a
65 taxable year to meet or exceed the spending threshold.

66 (8) 'State certified production' means a musical or theatrical performance or recorded
67 musical performance that is approved by the Department of Economic Development in
68 accordance with rules and regulations promulgated pursuant to this Code section.

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

72 (A) With respect to a single employee, the portion of any salary which exceeds
73 \$500,000.00 for a single production shall not be included when calculating total
74 aggregate payroll; and

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

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

81 (1) A production company shall be allowed a tax credit equal to ~~15~~ 30 percent of such
82 production company's qualified production expenditures; and

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

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

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

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

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

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

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

105 (2) Production companies seeking to claim a tax credit under this Code section shall
106 submit an application to the department for preapproval of such tax credit. Subject to any
107 applicable caps, production companies shall be permitted to submit an application at any
108 time during a taxable year during which qualified expenditures occur. The department
109 shall preapprove the tax credits based on the order in which properly completed
110 applications were submitted. In the event that two or more applications were submitted
111 on the same day and the amount of funds available will not be sufficient to fully fund the
112 tax credits requested, the department shall prorate the available funds between or among
113 the applicants.

114 (f)(1) Where the amount of such credit or credits exceeds the production company's
115 liability for such taxes in a taxable year, the excess may be taken as a credit against such
116 production company's quarterly or monthly payment under Code Section 48-7-103. Each
117 employee whose employer receives credit against such production company's quarterly
118 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
119 income tax liability under Code Section 48-7-20 for the corresponding taxable year for
120 the full amount which would be credited against such liability prior to the application of
121 the credit provided for in this subsection. Credits against quarterly or monthly payments

122 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20
123 established by this subsection shall not constitute income to the production company.

124 (2) If a production company claims the credit authorized under Code Section 48-7-40,
125 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company will only be allowed
126 to claim the credit authorized under this Code section to the extent that the Georgia
127 resident employees included in the credit calculation authorized under this Code section
128 and taken by the production company on such tax return under this Code section have
129 been permanently excluded from the credit authorized under Code Section 48-7-40,
130 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

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

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

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

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

144 (D) Any tax credit previously taken by the production company against Georgia
145 income tax liabilities or the production company's quarterly or monthly payments under
146 Code Section 48-7-103;

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

148 (F) The amount of tax credit utilized by the production company in the current taxable
149 year; and

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

151 (2) In no event shall the amount of the tax credit under this Code section for a taxable
152 year exceed the production company's income tax liability. Any unused credit amount
153 shall be allowed to be carried forward for five years from the close of the taxable year in
154 which the investment occurred. No such credit shall be allowed the production company
155 against prior years' tax liability; and

156 ~~(3) Tax credits claimed under this Code section shall not be refundable, transferable, or~~
157 ~~saleable~~ Any tax credits with respect to a state certified production earned by a
158 production company and previously claimed but not used by such production company
159 against its income tax shall be transferrable or saleable to the extent provided in
160 subsection (g.1) of this Code section.

161 (g.1) A tax credit claimed pursuant to this Code section but not used by a production
162 company against its income tax may be transferred or sold, in whole or in part, subject to
163 the following conditions:

164 (1) Only the production company that earned and claimed a tax credit pursuant to this
165 Code section shall make the transfer or sale of such tax credit. Such production company
166 may only make a single transfer or sale of tax credits earned in a taxable year; however,
167 the transfer or sale may involve one or more transferees;

168 (2) The production company that earned and claimed a tax credit pursuant to this Code
169 section shall submit to the commissioner written notification of any transfer or sale of a
170 tax credit within 30 days after the transfer or sale of such tax credit. The notification
171 shall include:

172 (A) Such production company's tax credit balance prior to transfer;

173 (B) The credit certificate number;

174 (C) The remaining balance of credits after transfer;

- 175 (D) The tax identification number of the transferee;
176 (E) The date of transfer;
177 (F) The value of the tax credit transferred; and
178 (G) Any other information required by the department;
179 (3) Failure to comply with this subsection shall result in the disallowance of the tax
180 credit allowed pursuant to this Code section until the production company that earned and
181 claimed the credit is in full compliance;
182 (4) The transfer or sale of a tax credit does not extend the time during which such tax
183 credit can be used. The carry-forward period for a tax credit that is transferred or sold
184 shall begin on the date on which such tax credit was originally claimed;
185 (5) A transferee shall have only such rights to claim and use a tax credit that were
186 available to the transferor at the time of the transfer; provided, however, that a transferee
187 shall not be eligible to transfer or sell such tax credit. To the extent that the transferor did
188 not have rights to claim or use the tax credit at the time of the transfer, the commissioner
189 shall disallow the tax credit claimed by the transferee or recapture the tax credit from the
190 transferee or transferor. The transferee's recourse shall not be against the commissioner.
191 The transferor shall retain the right to challenge any disallowance of the tax credit; and
192 (6) The transferee must acquire the tax credit allowed pursuant to this Code section for
193 a minimum of 60 percent of the amount of the tax credit so transferred.
194 (h) Any production company claiming the tax credit provided for by this Code section
195 shall be required to reimburse the department for any department initiated audits relating
196 to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which
197 may include a review of the credit provided in this Code section.
198 (i) The Department of Economic Development shall determine through the promulgation
199 of rules and regulations which projects qualify for the tax credits authorized under this
200 Code section. Certification shall be submitted to the state revenue commissioner.

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

203 **SECTION 2.**

204 This Act shall become effective on July 1, 2021, and shall be applicable to taxable years
205 beginning on or after January 1, 2021.

206 **SECTION 3.**

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