

House Bill 958 (AS PASSED HOUSE AND SENATE)

By: Representatives Nimmer of the 178th, Coomer of the 14th, Riley of the 50th, England of the 116th, Harbin of the 122nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to change certain provisions relating to the state income tax credit for qualified
3 entertainment production companies; to provide for a new exemption from state sales and
4 use taxes to qualified food banks; to provide for a new exemption from state sales and use
5 taxes for covered items on specified dates; to provide a new exemption for purchase of
6 energy efficient products or water efficient products to extend the exemption from state sales
7 and use taxes for competitive projects of regional significance; to provide for related matters;
8 to provide for an effective date and applicability; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 SECTION 1.

12 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
13 amended by revising paragraph (7) of subsection (b) and subsection (e) of Code Section
14 48-7-40.26, relating to the income tax credit for film, video, or digital production, as follows:

15 "(7) 'Qualified interactive entertainment production company' means a company ~~whose~~
16 ~~gross income is less than \$100 million that is primarily engaged in qualified production~~
17 ~~activities related to interactive entertainment which has been approved by the Department~~
18 ~~of Economic Development. that:~~

- 19 (A) Maintains a business location physically located in Georgia;
- 20 (B) In the calendar year directly preceding the start of the taxable year of the qualified
21 interactive entertainment production company, had a total aggregate payroll of
22 \$500,000.00 or more for employees working within the state;
- 23 (C) Has gross income less than \$100 million for the taxable year; and
- 24 (D) Is primarily engaged in qualified production activities related to interactive
25 entertainment which have been approved by the Department of Economic
26 Development.

27 This term shall not mean or include any form of business owned, affiliated, or controlled,
28 in whole or in part, by any company or person which is in default on any tax obligation
29 of the state, or a loan made by the state or a loan guaranteed by the state."

30 "(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
31 section for qualified interactive entertainment production companies and affiliates exceed
32 \$25 million for taxable years beginning on or after January 1, 2013, and before January
33 1, 2014. The maximum credit for any qualified interactive entertainment production
34 company and its affiliates shall be \$5 million for such taxable year. When the \$25
35 million cap is reached, the tax credit for qualified interactive entertainment production
36 companies shall expire for such ~~period~~ taxable years.

37 (2) For taxable years beginning on or after January 1, 2014, and before January 1, 2015,
38 the amount of tax credits allowed under this Code section for qualified interactive
39 entertainment production companies and affiliates shall not exceed \$12.5 million.

40 (3) For taxable years beginning on or after January 1, 2015, and before January 1, 2016,
41 the amount of tax credits allowed under this Code section for qualified interactive
42 entertainment production companies and affiliates shall not exceed \$12.5 million.

43 (4) The tax credits allowed under this Code section for qualified interactive
44 entertainment production companies and affiliates shall not be available for taxable years
45 beginning on or after January 1, 2016.

46 (5) The maximum allowable credit claimed for any qualified interactive entertainment
47 production company and its affiliates shall not exceed \$1.5 million in any single year.

48 (6) The commissioner shall allow the tax credits for qualified interactive entertainment
49 production companies on a first come, first served basis based on the date the credits are
50 claimed.

51 (7) No qualified interactive entertainment production company shall be allowed to claim
52 an amount of tax credits under this Code section for any single year in excess of its total
53 aggregate payroll expended to employees working within this state for the calendar year
54 directly preceding the start of the year the qualified interactive entertainment production
55 company claims the tax credits. Any amount in excess of such limit shall not be eligible
56 for carry forward to the succeeding years' tax liability, nor shall such excess amount be
57 eligible for use against the qualified interactive entertainment production company's
58 quarterly or monthly payment under Code Section 48-7-103, nor shall such excess
59 amount be assigned, sold, or transferred to any other taxpayer.

60 (8) Before the Department of Economic Development issues its approval to the qualified
61 interactive entertainment production company for the qualified production activities
62 related to interactive entertainment, the qualified interactive entertainment production
63 company must certify to the department that:

64 (A) The qualified interactive entertainment production company maintains a business
 65 location physically located in this state; and

66 (B) The qualified interactive entertainment production company had expended a total
 67 aggregate payroll of \$500,000.00 or more for employees working within this state
 68 during the calendar year directly preceding the start of the taxable year of the qualified
 69 interactive entertainment production company.

70 The department shall issue a certification that the qualified interactive entertainment
 71 production company meets the requirements of this paragraph; provided, however, that
 72 the department shall not issue any certifications before July 1, 2014. The qualified
 73 interactive entertainment production company shall provide such certification to the
 74 Department of Economic Development. The Department of Economic Development
 75 shall not issue its approval until it receives such certification.

76 ~~(2) The commissioner shall allow the tax credits for qualified interactive entertainment~~
 77 ~~production companies on a first come, first served basis based on the date the credits are~~
 78 ~~claimed. When the \$25 million cap is reached, the tax credit for qualified interactive~~
 79 ~~entertainment production companies shall expire."~~

80 **SECTION 2.**

81 Said title is further amended by revising subparagraph (A) of paragraph (57.1), paragraph
 82 (75), paragraph (82), and subparagraphs (A) and (B) of paragraph (93) of Code Section
 83 48-8-3, relating to state sales and use tax exemptions, as follows:

84 ~~"(57.1)(A) From July 1, 2006 2014, until June 30, 2010 2016, sales of food and food~~
 85 ~~ingredients to a qualified food bank."~~

86 ~~"(75)(A) The sale of any covered item eligible property. The exemption provided by~~
 87 ~~this paragraph shall apply applies only to sales occurring during periods:~~

88 (i) Commencing at 12:01 A.M. on ~~August 10, 2012~~ August 1, 2014, and concluding
 89 at 12:00 Midnight on ~~August 11, 2012~~ August 2, 2014; and

90 (ii) Commencing at 12:01 A.M. on ~~August 9, 2013~~ July 31, 2015, and concluding at
 91 12:00 Midnight on ~~August 10, 2013~~ August 1, 2015.

92 (B) As used in this paragraph, the term 'covered item' shall mean:

93 (i) 'Clothing' means all human wearing apparel suitable for general use and includes
 94 footwear. The term 'clothing' excludes belt buckles sold separately; costume masks
 95 sold separately; patches and emblems sold separately; sewing equipment and supplies,
 96 including but not limited to knitting needles, patterns, pins, scissors, sewing machines,
 97 sewing needles, tape measures, and thimbles; sewing materials that become part of
 98 clothing, including but not limited to buttons, fabric, lace, thread, yarn, and zippers;
 99 and clothing accessories or equipment.

100 (ii) 'Clothing accessories or equipment' means incidental items worn on the person
 101 or in conjunction with clothing.

102 (iii) 'Computer' means an electronic device that accepts information in digital or
 103 similar form and manipulates it for a result based on a sequence of instructions. The
 104 term 'computer' excludes cellular phones.

105 (iv) 'Computer software' means a set of coded instructions designed to cause a
 106 computer or automatic data processing equipment to perform a task.

107 (v) 'Eligible property' means:

108 ~~(i)(I) Articles of clothing and footwear with a sales price of \$100.00 or less per~~
 109 ~~article of clothing or pair of footwear, excluding accessories such as jewelry,~~
 110 ~~handbags, umbrellas, eyewear, watches, and watchbands item;~~

111 ~~(ii)(II) A single purchase, with a sales price of \$1,000.00 or less, of personal~~
 112 ~~computers and personal computer related accessories purchased for noncommercial~~
 113 ~~home or personal use, including personal computer base units and keyboards,~~
 114 ~~personal digital assistants, handheld computers, monitors, other peripheral devices,~~
 115 ~~modems for Internet and network access, and nonrecreational software, whether or~~
 116 ~~not they are to be utilized in association with the personal computer base unit.~~
 117 ~~Computer and computer related accessories shall not include furniture and any~~
 118 ~~systems, devices, software, or peripherals designed or intended primarily for~~
 119 ~~recreational use Computers, computer components, and prewritten computer~~
 120 ~~software purchased for noncommercial home or personal use with a sales price of~~
 121 ~~\$1,000.00 or less per item; and~~

122 ~~(iii)(III) Noncommercial purchases of general school School supplies, school art~~
 123 ~~supplies, school computer supplies, and school instructional materials purchased for~~
 124 ~~noncommercial use to be utilized in the classroom or in classroom related activities,~~
 125 ~~such as homework, up to with a sales price of \$20.00 or less per item including~~
 126 ~~pens, pencils, notebooks, paper, book bags, calculators, dictionaries, thesauruses,~~
 127 ~~and children's books and books listed on approved school reading lists for~~
 128 ~~pre-kindergarten through twelfth grade.~~

129 (vi) 'Prewritten computer software' means computer software, including prewritten
 130 upgrades, which is not designed and developed by the author or other creator to the
 131 specifications of a specific purchaser. The combining of two or more prewritten
 132 computer software programs or prewritten portions thereof does not cause the
 133 combination to be other than prewritten computer software. Prewritten computer
 134 software includes software designed and developed by the author or other creator to
 135 the specifications of a specific purchaser when it is sold to a person other than the
 136 specific purchaser. Where a person modifies or enhances computer software of which

137 the person is not the author or creator, the person shall be deemed to be the author or
 138 creator only of such person's modifications or enhancements. Prewritten computer
 139 software or a prewritten portion thereof that is modified or enhanced to any degree,
 140 where such modification or enhancement is designed and developed to the
 141 specifications of a specific purchaser, remains prewritten computer software;
 142 provided, however, that where there is a reasonable, separately stated charge or an
 143 invoice or other statement of the price given to the purchaser for such modification
 144 or enhancement, such modification or enhancement shall not constitute prewritten
 145 computer software.

146 (vii) 'School art supply' means an item commonly used by a student in a course of
 147 study for artwork.

148 (viii) 'School computer supply' means an item commonly used by a student in a
 149 course of study in which a computer is used.

150 (ix) 'School instructional material' means written material commonly used by a
 151 student in a course of study as a reference and to learn the subject being taught.

152 (x) 'School supply' means an item commonly used by a student in a course of study.

153 ~~(C) The exemption provided by this paragraph shall not apply to rentals, sales in a~~
 154 ~~theme park, entertainment complex, public lodging establishment, restaurant, or airport~~
 155 ~~or to purchases for trade, business, or resale.~~

156 ~~(D) The commissioner shall promulgate any rules and regulations necessary to~~
 157 ~~implement and administer this paragraph including but not be limited to a list of those~~
 158 ~~articles and items qualifying for the exemption pursuant to this paragraph;”~~

159 ~~”(82)(A) Purchase of energy efficient products Energy Star Qualified Products or water~~
 160 ~~efficient products WaterSense Products with a sales price of \$1,500.00 or less per~~
 161 ~~product purchased for noncommercial home or personal use. The exemption provided~~
 162 ~~by this paragraph shall apply only to sales occurring during periods:~~

163 ~~(i) Commencing at 12:01 A.M. on October 5, 2012 October 3, 2014, and concluding~~
 164 ~~at 12:00 Midnight on October 7, 2012 October 5, 2014; and~~

165 ~~(ii) Commencing at 12:01 A.M. on October 4, 2013 October 2, 2015, and concluding~~
 166 ~~at 12:00 Midnight on October 6, 2013 October 4, 2015.~~

167 (B) As used in this paragraph, the term:

168 ~~(i) 'Energy efficient product' 'Energy Star Qualified Product' means any energy~~
 169 ~~efficient product for noncommercial home or personal use consisting of any~~
 170 ~~dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb,~~
 171 ~~dehumidifier, programmable thermostat, refrigerator, door, or window which has been~~
 172 ~~designated by the United States Environmental Protection Agency and the United~~
 173 ~~States Department of Energy as meeting or exceeding each such agency's energy~~

174 ~~saving efficiency requirements or which have been designated as meeting or~~
 175 ~~exceeding such requirements under each such agency's Energy Star program that~~
 176 ~~meets the energy efficient guidelines set by the United States Environmental~~
 177 ~~Protection Agency and the United States Department of Energy and is authorized to~~
 178 ~~carry the Energy Star label.~~

179 (ii) ~~'Water efficient product' means any product used for the conservation or efficient~~
 180 ~~use of water which has been designated by the United States Environmental~~
 181 ~~Protection Agency as meeting or exceeding such agency's water saving efficiency~~
 182 ~~requirements or which has been designated as meeting or exceeding such~~
 183 ~~requirements under such agency's Water Sense program 'WaterSense Product' means~~
 184 ~~a product authorized to bear the United States Environmental Protection Agency~~
 185 ~~WaterSense label.~~

186 (C) The exemption provided for in subparagraph (A) of this paragraph shall not apply
 187 to purchases of ~~energy efficient products~~ Energy Star Qualified Products or ~~water~~
 188 ~~efficient products~~ WaterSense Products purchased for trade, business, or resale.

189 (D) The commissioner shall promulgate any rules and regulations necessary to
 190 implement and administer this paragraph;"

191 "(93)(A) For the period commencing January 1, 2012, until June 30, ~~2014~~ 2016, sales
 192 of tangible personal property used for and in the construction of a competitive project
 193 of regional significance.

194 (B) The exemption provided in subparagraph (A) of this paragraph shall apply to
 195 purchases made during the entire time of construction of the competitive project of
 196 regional significance so long as such project meets the definition of a 'competitive
 197 project of regional significance' within the period commencing January 1, 2012, until
 198 June 30, ~~2014~~ 2016."

199 **SECTION 3.**

200 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
 201 law without such approval.

202 (b) Section 1 of this Act shall be applicable to all taxable years beginning on or after January
 203 1, 2014.

204 **SECTION 4.**

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