

The Senate Committee on Finance offered the following substitute to SB 441:

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 lower the cap on credits for certain years; to provide for refundability of
6 the tax credit; to revise definitions; 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.'

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, or
21 is rehearsed within this state, and has ~~its initial~~ at least one public performance before a
22 live audience ~~within this state or that prepares and rehearses a minimum of seven days~~
23 ~~within this state and has its United States debut~~ within this state, and at least one public
24 performance before a live audience outside of this state. Such term excludes a single
25 musical performance that is not intended for touring, a music or cultural festival that is
26 not intended for touring, an industry seminar, a trade show, or a market.

27 (2) 'Production company' means a company primarily engaged in qualified production
 28 activities. Such term shall not mean or include any form of business owned, affiliated,
 29 or controlled, in whole or in part, by any company or person which is in default on any
 30 tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

31 (3) 'Qualified production activities' means activities related to the preparation, planning,
 32 recording, or staging of a state certified production.

33 (4) 'Qualified production expenditures' means expenditures incurred in this state on
 34 direct account of qualified production activities for which a tax credit has not been
 35 claimed pursuant to Code Section 48-7-40.26 and shall include, but are not limited to:

36 (A) Set construction and operation; wardrobe, ~~make-up~~ makeup, accessories, and
 37 related services; costs associated with photography and sound synchronization,
 38 expenditures, excluding license fees, incurred with Georgia companies for sound
 39 recordings and musical compositions, lighting, and related services and materials;
 40 editing and related services; rental of facilities and equipment; leasing of vehicles; costs
 41 of food and lodging; total aggregate payroll; talent and producer fees; technical fees;
 42 crew fees; per diem costs paid to employees; airfare, if purchased through a Georgia
 43 travel agency or travel company; insurance costs and bonding, if purchased through a
 44 Georgia insurance agency; and other direct costs of producing the project in accordance
 45 with generally accepted entertainment industry practices; and

46 (B) Payments to a loan-out company by a production company.

47 (5) 'Recorded musical performance' means a recording of a music composition affixed
 48 in a tangible medium, which includes, but is not limited to the score and musical
 49 accompaniment of a motion picture, film, television, game, or interactive entertainment
 50 production.

51 (6) 'Resident' shall have the same meaning as set forth in paragraph (10) of Code
 52 Section 48-7-1.

53 (7) 'Spending threshold' means:

54 (A) For a all musical or theatrical ~~performance, \$500,000.00~~ performances of a
 55 production company, \$100,000.00 in the aggregate during a 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 \$50,000.00 in the aggregate during
 59 a taxable year; ~~and~~

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

62 (D) Qualified expenditures for one or more musical or theatrical and recorded musical
 63 performances may be aggregated by a production company over the course of a taxable
 64 year to meet or exceed the spending threshold.

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

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

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

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

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

80 (1) A production company shall be allowed a tax credit equal to ~~15~~ 25 percent of such
 81 production company's qualified production expenditures; and

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

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

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

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

94 (3) For taxable years beginning on or after January 1, 2020, and before January 1, 2023,
 95 the aggregate amount of tax credits allowed under this Code section shall not exceed \$~~15~~
 96 \$5 million per year; and

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

99 (d.1) Any amount of tax credits remaining from the aggregate cap for any year as provided
100 in subsection (d) of this Code section shall be rolled forward to increase the aggregate cap
101 for the next year.

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

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

117 (f)(1) Where the amount of such credit or credits exceeds the production company's
118 liability for such taxes in a taxable year, the excess may be taken as a credit against such
119 production company's quarterly or monthly payment under Code Section 48-7-103. Each
120 employee whose employer receives credit against such production company's quarterly
121 or monthly payment under Code Section 48-7-103 shall receive credit against his or her
122 income tax liability under Code Section 48-7-20 for the corresponding taxable year for
123 the full amount which would be credited against such liability prior to the application of
124 the credit provided for in this subsection. Credits against quarterly or monthly payments
125 under Code Section 48-7-103 and credits against liability under Code Section 48-7-20
126 established by this subsection shall not constitute income to the production company.

127 (2) If a production company claims the credit authorized under Code Section 48-7-40,
128 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company will only be allowed
129 to claim the credit authorized under this Code section to the extent that the Georgia
130 resident employees included in the credit calculation authorized under this Code section
131 and taken by the production company on such tax return under this Code section have
132 been permanently excluded from the credit authorized under Code Section 48-7-40,
133 48-7-40.1, 48-7-40.17, or 48-7-40.18.

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

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

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

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

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

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

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

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

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

154 (2) ~~In no event shall~~ Except as otherwise provided in paragraph (3) of this subsection,
 155 the amount of the tax credit under this Code section for a taxable year shall not exceed
 156 the production company's income tax liability. Any unused credit amount shall be
 157 allowed to be carried forward for five years from the close of the taxable year in which
 158 the investment occurred. No such credit shall be allowed the production company against
 159 prior years' tax liability; and

160 (3) ~~Tax~~ Except as otherwise provided in this paragraph, tax credits claimed under this
 161 Code section shall not be refundable, transferable, or saleable. Any tax credit earned and
 162 claimed by a production company pursuant to this Code section on or after July 1, 2020,
 163 that exceeds such production company's income tax liability shall be refunded to the
 164 production company.

165 (h) Any production company claiming the tax credit provided for by this Code section
 166 shall be required to reimburse the department for any department initiated audits relating
 167 to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which
 168 may include a review of the credit provided in this Code section.

169 (i) The Department of Economic Development shall determine through the promulgation
 170 of rules and regulations which projects qualify for the tax credits authorized under this
 171 Code section. Certification shall be submitted to the state revenue commissioner.

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

174 **SECTION 2.**

175 This Act shall become effective upon its approval by the Governor or upon its becoming law
176 without such approval and shall be applicable to taxable years beginning on or after
177 January 1, 2020.

178 **SECTION 3.**

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