

2017 GA H 199, Enacted - Final

Georgia

SUMMARY: Relates to imposition, rate, computation, and exemptions from state income taxes; changes certain provisions regarding the income tax credit for interactive entertainment companies; removes the sunset on such exemptions; adds an exemption for certain prereleased products; provides for a new state income tax credit for qualified postproduction expenditures of postproduction companies; provides for procedures, conditions, and limitations.~SAME AS:

Legislative History and Analysis

Changes in Bill text reflected as:

~~Text Deleted~~

Text Added

~~Text Vetoed~~

Current Legislative Status

01/31/2017 INTRODUCED.

02/01/2017 To HOUSE Committee on WAYS AND MEANS.

02/02/2017 In HOUSE: Read 2nd time.

02/21/2017 From HOUSE Committee on WAYS AND MEANS: Favorably reported as substituted.

02/24/2017 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.

02/27/2017 To SENATE Committee on FINANCE.

03/16/2017 From SENATE Committee on FINANCE: Favorably reported as substituted.

03/22/2017 In SENATE. Read third time. Passed SENATE. *****To HOUSE for concurrence.

03/24/2017 In HOUSE. HOUSE concurred in SENATE Substitute.

03/30/2017 In SENATE. SENATE concurred in HOUSE amendments.

03/30/2017 Eligible for GOVERNOR'S desk.

04/07/2017 *****To GOVERNOR.

04/25/2017 Signed by GOVERNOR.

04/25/2017 Act No. 26

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session: Georgia 154th General Assembly - 2017-18 Regular Session

cite: 2017 GA H 199

Enacted - Final

April 25, 2017

Rhodes

Act No. 26

House Bill 199 (AS PASSED HOUSE AND SENATE)

By: Representatives Rhodes of the 120th, Efstration of the 104th, Rogers of the 10th, and Powell of the 171st

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from state income taxes, so as to change certain provisions regarding the income tax credit for interactive entertainment companies; to remove the

sunset on such exemptions; to add an exemption for certain prereleased products; to provide for a new state income tax credit for qualified postproduction expenditures of postproduction companies; to provide for procedures, conditions, and limitations; to provide for definitions; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTIONS NOT PERTAINING TO THE FILM INCENTIVE HAVE BEEN OMITTED.

SECTION 2.

Said article is further amended by adding a new Code section to read as follows:

” **48-7-40.26A.**

(a) This Code section shall be known and may be cited as the 'Georgia Entertainment Industry Postproduction Investment Act.'

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

(1) 'Affiliates' means those entities that are included in the postproduction company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) 'Multimarket commercial distribution' means paid commercial distribution which extends to markets outside the State of Georgia.

(3) 'Postproduction company' means a company that:

(A) Maintains a business location physically located in this state;

(B) In the calendar year directly preceding the start of the taxable year of the postproduction company, had a total aggregate payroll of \$500,000.00 or more for employees working within this state;

(C) Is engaged in qualified postproduction activities; and

(D) Has been approved by the Department of Revenue.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state. In the instance of a 'work for hire' in which one postproduction company hires another postproduction company to engage in qualified postproduction activities for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the postproduction tax credit.

(4) 'Qualified postproduction activities' means the activities performed on a qualified production employing traditional, emerging, and new workflow techniques used in postproduction for picture, sound, and music editing, rerecording and mixing, visual effects, graphic design, original scoring, animation, musical composition, and other activities performed after initial production and including activities performed on previously produced and edited content.

(5) 'Qualified postproduction expenditures' means expenditures incurred in this state directly in qualified postproduction activities, including without limitation the following:

(A) Costs associated with photography and sound synchronization;

(B) Expenditures, excluding license fees, incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials;

(C) Editing and related services;

- (D) Rental of facilities and equipment;*
- (E) Leasing of vehicles;*
- (F) Costs of food and lodging;*
- (G) Digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services;*
- (H) Total aggregate payroll;*
- (I) Airfare, if purchased through a Georgia travel agency or travel company;*
- (J) Insurance costs and bonding, if purchased through a Georgia insurance agency; and*
- (K) Other direct postproduction costs for the project in accordance with generally accepted entertainment industry practices.*

This term includes expenditures incurred in this state for footage shot inside or outside this state.

(6) 'Qualified production' means a film, video, or digital project, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment, or sound recording projects used in feature films, series, pilots, or movies for television. This term shall include projects shot, recorded, or originally created in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, and corporate videos.

(7) 'Total aggregate payroll' means the total sum expended by a postproduction company on salaries paid to employees working within this state on qualified postproduction activities.

(c)(1) A postproduction company that has incurred qualified postproduction expenditures of at least \$500,000.00 in a taxable year shall be allowed a tax credit against the tax imposed by this article, subject to the conditions and limitations set forth in this Code section.

(2) The tax credit allowed shall be equal to 20 percent of the qualified postproduction expenditures actually invested and expended by the postproduction company in a taxable year.

(3) The amount of tax credits allowed to a postproduction company under this Code section for any single taxable year shall not exceed the postproduction company's total aggregate payroll expended to employees working within this state for the calendar year directly preceding the start of the taxable year the postproduction company claims the tax credits.

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

(1) For taxable years beginning on or after January 1, 2017, and before January 1, 2018, the aggregate amount of tax credits allowed under this Code section shall not exceed \$5 million;

(2) For taxable years beginning on or after January 1, 2018, and before January 1, 2019, the aggregate amount of tax credits allowed under this Code section shall not exceed \$10 million;

(3) For taxable years beginning on or after January 1, 2019, and before January 1, 2023, the aggregate amount of tax credits allowed under this Code section shall not exceed \$15

million per year;

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

(5) If the aggregate amount of tax credits claimed by taxpayers under this Code section during a year is less than the aggregate annual cap applicable to such year, the unclaimed portion of the aggregate annual cap shall be added to the aggregate annual cap applicable to the next succeeding year or years until it is fully claimed.

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

(2) Postproduction companies seeking to claim a tax credit under this Code section shall submit an application to the Department of Revenue for preapproval of such tax credit. The Department of Revenue shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the Department of Revenue shall prorate the available funds between or among the applicants.

(f) For taxable years beginning on or after January 1, 2017, and before January 1, 2020, the postproduction company shall report to the Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year. For purposes of this subsection, the term 'full-time employee' shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall annually report to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each postproduction company. The first report shall be submitted by June 30, 2018, and each year thereafter by June 30.

(g)(1) Any qualified postproduction expenditures for which a postproduction company claims a tax credit under this Code section shall not be eligible production expenditures for purposes of the credit authorized under Code Section 48-7-40.26.

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

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

(1) The credit may be taken beginning with the taxable year in which the postproduction company has incurred the qualified postproduction expenditures. For each year in which such postproduction company either claims or transfers the credit, the postproduction company shall attach a schedule to the postproduction company's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified postproduction activities, along with the certification from the Department of Economic Development;

(B) A certification that the postproduction company maintains a business location

physically located in this state;

(C) A certification that the postproduction company expended a total aggregate payroll of \$500,000.00 or more for employees working within this state during the calendar year directly preceding the start of the taxable year of the postproduction company;

(D) In the initial year in which the postproduction company claims the credit granted in this Code section only, information demonstrating that the qualified postproduction expenditures equal or exceed \$500,000.00 during such year;

(E) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the qualified postproduction expenditures;

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

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

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

(I) The amount of tax credit utilized by the postproduction company in the current taxable year; and

(J) The amount of tax credit to be carried over to subsequent tax years. The postproduction company shall file a copy of the schedule with the Department of Economic Development within 30 days after the schedule is filed with its income tax return;

(2) Where the amount of tax credits under this Code section exceeds the postproduction company's income tax liability in a taxable year, any unused credit amount:

(A) May be carried forward for five years from the close of the taxable year in which the investment occurred; or

(B) May be taken as a credit against such postproduction company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such postproduction company's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subparagraph. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subparagraph shall not constitute income to the postproduction company.

No such credit shall be allowed the postproduction company against prior years' tax liability; and

(3) Any tax credits earned by a postproduction company under this Code section and previously claimed but not used by such postproduction company against its income tax or its monthly payment under Code Section 48-7-103 may be transferred or sold in whole or in part by such postproduction company to another Georgia taxpayer, subject to the following conditions:

(A) Such postproduction company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(B) Such postproduction company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such postproduction company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the

Department of Revenue;

(C) Failure to comply with this paragraph shall result in the disallowance of the tax credit until the postproduction company is in full compliance;

(D) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for a tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(E) A transferee shall have only such rights to claim and use the tax credit that were available to such postproduction company at the time of the transfer, except for the use of the credit in subparagraph (B) of paragraph (2) of this subsection. To the extent that such postproduction company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such postproduction company; and

(F) Any postproduction company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subparagraph shall not apply to routine tax audits of a taxpayer that may include the review of the credit provided in this Code section.

(i) The Department of Revenue and the Department of Economic Development shall promulgate such rules and regulations as are necessary to implement and administer this Code section. “

SECTION 3.

This Act shall become effective on July 1, 2017, and shall be applicable to tax years beginning on or after January 1, 2017.

SECTION 4.

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