



# Client Alert



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## Georgia's 2008 Entertainment Industry Investment Act

Georgia's recently adopted 2008 Entertainment Industry Investment Act (the "2008 Act")<sup>1</sup>, simplifies and improves Georgia's incentives for entertainment productions and should result in the production of even more entertainment projects in Georgia. Notably, the 2008 Act provides incentives for video game productions. The 2008 Act is effective as of January 1, 2008.

### The 2005 Act

The 2008 Act replaces the 2005 Georgia Entertainment Industry Investment Act (the "2005 Act"). Under the 2005 Act, approved entertainment productions were eligible for a tax credit of up to 15% based on the use of Georgia residents, expenditures in Tier 1 and 2 counties, and for multiple television projects by a single production company.

### How does the 2008 Act improve the 2005 Act?

The 2008 Act simplifies the 2005 Act and provides greater incentives. The 2008 Act provides a 20% tax credit that applies to both Georgia residents and out-of-town hires, and the 2008 Act does not distinguish between counties. An entertainment production company is eligible for an additional 10% tax credit if the production company promotes the State of Georgia in the finished feature film, TV series, music video or video game project.

### How to Qualify for Tax Credits

In order to qualify for the 20% tax credit, the production must be a new film, video or digital project produced in Georgia and approved by the Department of Economic Development. To be eligible, production expenditures must exceed \$500,000. The Department of Economic Development should be contacted prior to commencing the project and an application should be filed to determine eligibility and to obtain certification from the Department. The production company does not need to be a Georgia entity but if formed outside the State of Georgia must qualify as a "foreign corporation" conducting business in Georgia. The production of television coverage of news and athletic events is not eligible for tax credits.

The production can obtain an additional tax credit of 10% if the production includes a "qualified Georgia promotion" in the finished product. A "qualified Georgia promotion" is a promotion of the State of Georgia approved by the Department of Economic Development consisting of the following:

<sup>1</sup> Section 48-7-40 of the Georgia Code

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- In a movie production - an approximately five-second long animated logo that promotes Georgia within its presentation and all promotional trailers worldwide for the life of the project;
- In a television production - an imbedded five-second long Georgia promotion during each broadcast half hour worldwide for the life of the project;
- In a music video - the Georgia logo at the end of each video and within online promotions; or
- In interactive games - a 15-second long Georgia advertisement in units sold and imbedded in online promotions.

The Georgia Department of Economic Development will provide the Georgia advertisement or logo, which may vary depending upon the medium.

### **What are “qualified expenditures” eligible for the tax credits?**

Qualified production expenditures eligible for the tax credits are preproduction, production, and postproduction expenditures incurred in Georgia that are directly used in a qualified production activity, including without limitation the following:

- Set construction and operation;
- Wardrobes, make-up, accessories, and related services;
- Costs associated with photography and sound synchronization, lighting, and related services and materials;
- Editing and related services;
- Rental of facilities and equipment;
- Leasing of vehicles;
- Costs of food and lodging;
- 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;
- Total aggregate payroll;
- Airfare, if purchased through a Georgia-based travel agency or travel company;
- Insurance costs and bonding, if purchased through a Georgia-based insurance agency; and
- Other direct costs of producing the project in accordance with generally accepted entertainment industry practices. The production company’s legal or accounting advisors or the Department of Economic Development should be contacted if there are questions about the applicability of specific expenditures.

The 2008 Act explicitly provides that postproduction expenditures for marketing and distribution are not eligible for the tax credits. Salaries included in the tabulation of tax credits are limited to \$500,000 per individual.

If a production company does not follow all of the parameters provided by the 2008 Act or the Department of Economic Development, any tax credits provided to the production company are subject to recapture.

## **What if the tax credits exceed the production company's liability for Georgia taxes in a taxable year?**

If the tax credits exceed the production company's liability for Georgia taxes in a taxable year, then the excess may be carried forward for five years. Alternatively, the tax credits may be taken as a credit against the production company's quarterly or monthly payment of employee withholding taxes in Georgia.

## **Can tax credits be transferred?**

What if the production company has limited or no Georgia tax liability? Tax credits earned and previously claimed but not used may be transferred in whole or in part to another Georgia taxpayer to use against their tax liabilities. The production company may only make a single transfer of tax credits earned in a taxable year, although the transferee(s) may be one or more Georgia taxpayers. The five year carry-forward period for the transferred tax credits, which is available to the transferee, begins on the date the credits were earned, not the date of transfer.

The transferee must acquire the tax credits for not less than sixty percent of the amount of the tax credits transferred. Further, the transferee accepts the tax credits subject to the limitations imposed upon the transferor, i.e., the tax credits are subject to recapture, so the transferee may require that the production company indemnify the transferee in the event of recapture.

The production company must submit to the Department of Economic Development and to the Georgia Department of Revenue a notification of any transfer of the tax credits within 30 days after the transfer of the tax credits.

## **What is the process for claiming the tax credit?**

To claim the tax credit, the production company must attach a schedule to the production company's Georgia income tax return which includes, at a minimum, the following information:

- A description of the qualified activities, along with the Department of Economic Development certification;
- A listing of employee names, social security numbers, and Georgia wages if salaries are included in the eligible production expenditures;
- The amount of tax credit claimed for the taxable year;
- Any tax credit previously taken by the production company against Georgia income tax liabilities or the production company's quarterly or monthly payments under Code Section 48-7-103 (i.e., quarterly, monthly, and jeopardy returns);
- The amount of tax credit carried over from prior years, if any;

- The amount of tax credit utilized by the production company in the current taxable year; and
- The amount of tax credit to be carried over to subsequent tax years.

In the initial year in which the production company claims the credit, the company must include information which demonstrates the production expenditures equal or exceed \$500,000 during such year.

Prior to submitting a report, the production company should confirm if the Department of Economic Development is requiring additional information.

## **Conclusion**

Combined with other Georgia tax incentives, such as Georgia's Sales and Use Tax Exemption (which is a point-of-purchase sales tax exemption that saves production companies up to eight percent on most purchases and rentals in Georgia), the 2008 Act makes Georgia a significant player in the competition for entertainment industry business.

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