



## Georgia's 'Y'allywood' Film Tax Credits Irresistible to Buyers

Matthew V. Wilson and Chris Benner

"Y'allywood" is quickly supplanting "Hotlanta" as the cringe-worthy, yet seemingly ubiquitous term used to describe Atlanta's new starring role. Like it or not, Y'allywood aptly captures the moment and growing trend that features Georgia as a dominant player in the domestic and international film and television industry.

Moviemaker.com describes Atlanta as the "best place to work and live as a filmmaker." According to Governor Nathan Deal, Georgia's movie and TV industries generated \$5.1 billion in economic impact in 2014 and created more than 77,900 jobs, with nearly 23,500 workers being directly employed by the two industries. As of June 2015, Georgia ranked third in the nation for film projects behind only California and New York.

Georgia's film tax incentives have proven to be the proverbial pot of honey that is difficult to resist.

The Georgia Entertainment Industry Investment Act provides that all qualified film production expenditures incurred in Georgia are eligible for tax credits, commonly known as film credits. Importantly for those outside of the film industry, the credits are freely transferrable one time to any Georgia taxpayer and may be sold and transferred by a simple purchase agreement.

### The Availability and Use of Film Credits

Generally, the base level film credit is equal to 20 percent of a production's qualified expenditures in Georgia, and an additional credit equal to 10 percent is available simply for including the state's sanctioned film logo in the credit roll. The film credits are approved for the year in which the film expenditures were made. Upon issuance, the film credits may be used by the production company against income taxes or employer withholding taxes, or sold to a third party for use against the buyer's income tax liability.

The production company usually sells the credits in the private market as a means to provide immediate cash or to partially finance the film. The credits are attractive to buyers mainly for two reasons: they are sold at a discount, typically 85-93 cents per dollar of credit, and they allow Georgia taxpayers to defer paying their Georgia income tax until they actually acquire the credits.

Additionally, film credits will sometimes become available for prior years, which taxpayers can use to settle prior-year tax debts and eliminate often substantial interest and penalties. The credits apply to the taxpayer's current tax liability, but excess film credits can be carried forward five years. For a business or individual with a significant Georgia tax liability, the ability to defer paying their liability and then pay it at a discount is an attractive option.

Buyers looking to acquire film credits often go through their accountants, lawyers, a broker or other film industry insiders who specialize in facilitating such transactions. Typically, the price of the film credits is determined by the transacting parties; but, as indicated earlier, the average price tends to float around 85 to 93 cents per dollar. The range in discount is typically due to the size of the studio backing the film (indie vs. major) and/or the indemnities provided in the purchase agreement. The actual sale is achieved through the negotiation of a sale agreement, which a prudent buyer should ensure includes standard protections and warranties applicable to validity, transfer and use of film credits.

While transacting credits is relatively easy, diligence, planning and detailed accounting are key to maximizing the value available to the seller, minimizing the time commitment and expense necessary to consummate the sale, and enhancing the allure of the credits in the marketplace.

For example, by using a detailed accounting system to identify and track qualifying Georgia expenses, the seller will have less difficulty identifying a willing buyer and will ultimately save time and money when it comes to finalizing the sale. Furthermore, savvy would-be sellers should have the accuracy of their internal credit calculations reviewed by a third party accountant and the validity of such credits certified by the state.<sup>1</sup>

As an enticement, the Department of Revenue offers a host of procedural mechanisms that provide comfort to the buyer. A request can be made for state certification of the production by the Georgia Film Office to confirm the validity of the expenditures and that the production qualifies for credits. The parties can also request a binding audit letter from the Georgia Department of Revenue, the findings of which are binding on the state and not subject to adjustment, but the average review period takes six months. Finally, the purchaser can seek a “comfort letter” from an independent accounting firm opining on the calculation of the credits. In any case, the prudent buyer should request a guaranty and indemnity from the seller pertaining to the validity of the credits.

With a little planning and professional counsel, individuals and businesses will have the ability to reap Y’allywood tax savings for years to come.

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<sup>1</sup> Any production with expenditures in excess of \$500,000 may submit an application to the Georgia Film Office seeking “certification” of the production, which certification will ensure the validity of the tax credits (although not the amount).

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