

Frank M. O'Connell
State Revenue Commissioner



Chester Cook
Deputy State Revenue Commissioner

Georgia Department of Revenue
1800 Century Boulevard, NE | Atlanta, Georgia 30345

NOTICE IT-2024-3

RE: Proposal to amend 560-7-8-.36 Job Tax Credit, Description and Definitions, 560-7-8-.42 Tax Credit for Qualified Research Expenses, 560-7-8-.45 Film Tax Credit, 560-7-8-.51 Quality Jobs Tax Credit, 560-7-8-.59 Postproduction Film Tax Credit, 560-7-8-.61 Musical Tax Credit, 560-7-8-.66 Personal Protective Equipment Manufacturer Jobs Tax Credit, 560-7-8-.67 Life Sciences Manufacturing Job Tax Credit

TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Rules 560-7-8-.36, 560-7-8-.42, 560-7-8-.45, 560-7-8-.51, 560-7-8-.59, 560-7-8-.61, 560-7-8-.66, and 560-7-8-.67.

Attached to this notice are exact copies and synopses of the proposed Rules. The proposed Rules is being amended under the authority of O.C.G.A. §§ 48-2-12 48-7-40, 48-7-40.1, 36-62-5.1, 48-7-40.12, 48-7-40.26, 48-7-40.17, 48-7-40.26A, 48-7-40.33(reserved), 48-7-40.1A and 48-7-40.1B.

The Department of Revenue will consider the Amendments of the above Rules at a regulation hearing held at 1800 Century Boulevard, NE, Atlanta, GA 30345, Room L300, on September 30, 2024, at 10 a.m. All attendees will be required to sign in upon arrival.

The Department must receive all comments regarding the above-referenced Rule from interested persons and parties no later than 10 a.m. on September 30, 2024. Electronic comments must be sent to regcomments@dor.ga.gov. Please reference "Notice IT-2024-3" on all comments.

Dated: 08/28/2024


Frank M. O'Connell
State Revenue Commissioner

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.36 Job Tax Credit, Description and Definitions

The purpose of proposed Rule 560-7-8-.36 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (9) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (10) provides the carryforward period of the credit.
- Paragraph (13) provides the effective date of the regulation and the application of the rule when boundaries overlap.

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 560-7-8
RETURNS AND COLLECTIONS**

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560-7-8-.36 Job Tax Credit, Description and Definitions

560-7-8-.36 Job Tax Credit, Description and Definitions

(1) **Program Description.** The Job Tax Credit program provides tax credits under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated for certain business enterprises that create and retain new full-time employee jobs in Georgia. The Georgia Department of Community Affairs ("DCA") and the Georgia Department of Revenue have been designated as the responsible agencies within Georgia to administer the program.

(2) **Coordination of Regulations.** Any reference to Community Affairs regulations in this regulation refers to the most recent regulations relating to the Job Tax Credit program which have been adopted by the Georgia Department of Community Affairs.

(3) **Definitions.**

(a) **Terms Defined in Community Affairs Regulation.** The

34 terms "business enterprise," "less developed area," "less developed
35 census tract area," "new job," "average wage," "wages," "transferred
36 job," and "replacement job," as used in this regulation are defined in
37 Community Affairs Regulation 110-9-1-.01.

38
39 (b) **Taxes Imposed Under Article 2 and Article 5.** The term
40 "taxes imposed under Article 2 and Article 5" means the corporate
41 income tax, withholding tax, and the individual income tax de-
42 scribed at Article 2 and Article 5 of Chapter 7 of Title 48 of the
43 Official Code of Georgia Annotated.

44
45 (c) **Project.** The meaning of the term "project" as used in this
46 regulation is identical to the meaning of "project" in Department of
47 Revenue Regulation 560-7-8-.37.

48
49 (d) **Year One.** The term "year one" means the tax year or calen-
50 dar year in which sufficient new jobs are created that, meeting the
51 requirements in O.C.G.A. Sections 48-7-40 or 48-7-40.1 and Com-
52 munity Affairs Regulations 110-9-1-.01, 110-9-1-.02, and 110-9-1-
53 .03 and this regulation, entitle a business enterprise to job tax cred-
54 its.

55
56 (e) **Years Two through Five.** For business enterprises that cre-
57 ate a new year one under DCA regulations for any taxable year be-
58 ginning on or after January 1, 2009, the term "years two through
59 five" means the consecutive four-year period following year one in
60 which job tax credits may be allowed for new jobs created in year
61 one and in which additional new jobs may be created that may also
62 qualify for job tax credits.

63
64 (f) **Years Two through Six.** For business enterprises that ini-
65 tially claimed the credit for any taxable year beginning before Janu-
66 ary 1, 2009, the term "years two through six" means the consecutive

67 five-year period following year one in which job tax credits may be
68 allowed for new jobs created in year one and in which additional
69 new jobs may be created that may also qualify for job tax credits.

70
71 (g) **Competitive Project.** The term "competitive project" as used
72 in this regulation is defined in O.C.G.A. Section 48-7-40.

73
74 (4) **Designation/Redesignation of Less Developed Counties**
75 **and Less Developed Census Tract Areas.** Counties will be desig-
76 nated tier 1, tier 2, tier 3 or tier 4 less developed counties subject to
77 the factors set out in Community Affairs Regulation 110-9-1-.02.
78 Census tracts will be designated less developed census tract areas
79 subject to the factors set out in Community Affairs Regulation 110-
80 9-1-.02. Less developed counties and less developed census tract ar-
81 eas may be redesignated according to the factors set out in Commu-
82 nity Affairs Regulation 110-9-1-.02.

83
84 (5) **Amount of Credit.**

85
86 (a) **Business Enterprises that Create a New Year One Under**
87 **DCA Regulations for Any Taxable Year Beginning On or After**
88 **January 1, 2009.** Business enterprises in counties designated as tier
89 1, tier 2, tier 3 or tier 4 less developed areas, or in a less developed
90 census tract area will receive an annual credit for taxes imposed un-
91 der Article 2 for each new full-time employee job created. Replace-
92 ment jobs and transferred jobs will not generate a credit. The amount
93 of the credit will be \$3,500 for business enterprises located in less
94 developed census tract areas or tier 1 counties, \$2,500 for business
95 enterprises located in tier 2 counties, \$1,250 for business enterprises
96 located in tier 3 counties and \$750 for business enterprises located
97 in tier 4 counties. A business enterprise located within the jurisdic-
98 tion of a joint development authority as described in O.C.G.A. Sec-
99 tion 36-62-5.1(e) will qualify for an additional \$500 credit for each

new full-time job created, subject to the conditions and limitations set forth in these regulations. An existing business enterprise as defined in O.C.G.A. Section 48-7-40(a)(4) will qualify for an additional \$500 credit for each new full-time job for the first year in which the new full-time job is created, subject to the conditions and limitations set forth in O.C.G.A. Section 48-7-40 and this regulation.

(b) Business Enterprises that Initially Claimed the Credit for Any Taxable Year Beginning Before January 1, 2009. Business enterprises in counties designated as tier 1, tier 2, tier 3 or tier 4 less developed areas, or in a less developed census tract area will receive an annual credit for taxes imposed under Article 2 for each new full-time employee job created for five years, beginning with years two through six after the creation of the jobs. Replacement jobs and transferred jobs will not generate a credit. The amount of the credit will be \$3,500 for business enterprises located in less developed census tract areas or tier 1 counties, \$2,500 for business enterprises located in tier 2 counties, \$1,250 for business enterprises located in tier 3 counties and \$750 for business enterprises located in tier 4 counties. A business enterprise located within the jurisdiction of a joint development authority as described in O.C.G.A. Section 36-62-5.1(e) will qualify for an additional \$500 credit for each new full-time job created, subject to the conditions and limitations set forth in these regulations. An existing business enterprise as defined in O.C.G.A. Section 48-7-40(a)(4) will qualify for an additional \$500 credit for each new full-time job for one year after the creation of such job, subject to the conditions and limitations set forth in O.C.G.A. Section 48-7-40 and this regulation.

(6) Maximum Amount of Credit.

(a) Business Enterprises that Create a New Year One Under

DCA Regulations for Any Taxable Year Beginning On or After

January 1, 2009. In tier 3 counties and tier 4 counties the job tax credit may be used, in any taxable year, to offset 50 percent of the taxpayer's Georgia income tax liability derived from operations within this state. Further, where a business enterprise is engaged in a competitive project located in a tier 3 county or a tier 4 county and where the amount of the credit exceeds 50 percent of the business enterprise's income tax liability for the taxable year, such business enterprise may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103. In tier 1 counties, tier 2 counties and in less developed census tract areas the job tax credit may be used to offset 100 percent of the taxpayer's Georgia income tax liability derived from operations within this state. Further, in tier 1 counties and less developed census tract areas, the taxpayer may elect, in cases where the amount of such credit exceeds the business enterprise's liability for income taxes in a taxable year, to take the excess as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103. Where a business enterprise is engaged in a competitive project located in a tier 2 county, such business enterprise may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under O.C.G.A. Section 48-7-103.

(b) Business Enterprises that Initially Claimed the Credit for Any Taxable Year Beginning Before January 1, 2009.

In tier 3 counties and tier 4 counties the job tax credit may be used, in any taxable year, to offset 50 percent of the taxpayer's Georgia income tax liability derived from operations within this state. In tier 1 counties, tier 2 counties, and in less developed census tract areas, the job tax credit may be used to offset 100 percent of the taxpayer's Georgia income tax liability derived from operations within this state.

166 Further, in tier 1 counties and less developed census tract areas, the
167 taxpayer may elect, in cases where the amount of such credit ex-
168 ceeds the business enterprise's liability for income taxes in a taxable
169 year, to take the excess as a credit against such business enterprise's
170 quarterly or monthly withholding payments under O.C.G.A. Section
171 48-7-103.

172
173 **(7) Certification of Competitive Project.** Prior to making the
174 election to use the withholding benefit, a business enterprise en-
175 gaged in a competitive project located in a tier 2, tier 3 or tier 4
176 county must be certified by the Commissioner of the Department of
177 Economic Development. The certification must state that but for
178 some or all of the tax incentive provided under O.C.G.A. Section
179 48-7-40, the business enterprise would have located or expanded
180 outside of Georgia.

181
182 **(8) Eligibility for Credit.**

183
184 **(a) Net Employment Increase.** Except as otherwise provided in
185 this paragraph, in less developed census tract areas, only those busi-
186 ness enterprises that increase employment by 5 or more new full-
187 time jobs for the taxable year will be eligible for the credit. For a
188 business enterprise that initially claimed the credit for any taxable
189 year beginning before January 1, 2012, in tier 1 counties, the busi-
190 ness enterprise must increase employment by 5 or more new full-
191 time jobs for the taxable year in order to be eligible for the credit.
192 Within areas of pervasive poverty as designated under O.C.G.A.
193 Section 48-7-40.1, business enterprises shall only have to increase
194 employment by two or more jobs in order to be eligible for the
195 credit, subject to the conditions and limitations set forth in O.C.G.A.
196 Section 48-7-40.1. For a business enterprise that creates a new year
197 one under DCA regulations for any taxable year beginning on or
198 after January 1, 2012, in tier 1 counties, the business enterprise must

199 increase employment by two or more new full-time jobs for the tax-
200 able year in order to be eligible for the credit. In tier 2 counties, only
201 those business enterprises that increase employment by 10 or more
202 new full-time jobs for the taxable year will be eligible for the credit.
203 In tier 3 counties, only those business enterprises that increase em-
204 ployment by 15 or more new full-time jobs for the taxable year will
205 be eligible for the credit. In tier 4 counties, only those business en-
206 terprises that increase employment by 25 or more new full-time jobs
207 for the taxable year will be eligible for the credit. A credit is not
208 generated during a year if the net employment increase in that year
209 falls below the number of new full-time jobs required in that tier or
210 census tract area.

211
212 **(b) Business Enterprises that Create a New Year One Under**
213 **DCA Regulations for Any Taxable Year Beginning On or After**
214 **January 1, 2009.**

215
216 **1. Jobs Created in Year One.** A business enterprise located in a
217 less developed county or census tract area will receive job tax credits
218 in year one. Such business enterprise will also receive job tax credits
219 in years two through five for each new full-time job created in year
220 one, so long as the net employment increase required for jobs cre-
221 ated in that particular county tier or census tract area is maintained
222 during years two through five.

223
224 **2. Additional New Jobs Created in Years Two Through**
225 **Five.** For each additional new job created in years two through five,
226 a business enterprise will receive a job tax credit, so long as the ad-
227 ditional new jobs are maintained. Additional new jobs means those
228 new jobs created in years two through five that increase the monthly
229 full-time employment average for that year above the monthly full-
230 time employment average for year one. The average full-time
231 monthly employment for a year will be determined by the procedure

set out in Community Affairs Regulation 110-9-1-.03.

(i) The credits for additional new jobs may only be taken if the business enterprise already qualifies for the job tax credit in year one.

(ii) Job tax credits for additional new jobs will be based on the tier status of the county or less developed census tract area during the year in which the additional new jobs are created.

(c) Business Enterprises that Initially Claimed the Credit for Any Taxable Year Beginning Before January 1, 2009.

1. Jobs Created in Year One. A business enterprise located in a less developed county or census tract area will receive job tax credits in years two through six for each new full-time job created in year one, so long as the net employment increase required for jobs created in that particular county tier or census tract area is maintained during years two through six.

2. Additional New Jobs Created in Years Two Through Six. For each additional new job created in years two through six, a business enterprise will receive a job tax credit for a five-year period, so long as the additional new jobs are maintained. Additional new jobs means those new jobs created in years two through six that increase the monthly full-time employment average for that year above the monthly full-time employment average for year one. The average full-time monthly employment for a year will be determined by the procedure set out in Community Affairs Regulation 110-9-1-.03.

(i) The credits for additional new jobs may only be taken if the business enterprise already qualifies for the job tax credit in year

265 one.

266

267 (ii) Job tax credits for additional new jobs will be based on the
268 tier status of the county or less developed census tract area during
269 the year in which the additional new jobs are created.

270

271 (d) **Sale, Merger, Acquisition, Reorganization, or Bank-**
272 **ruptcy of a Business Enterprise.** The sale, merger, acquisition, or
273 transfer or liquidation or bankruptcy of a business enterprise will not
274 create new eligibility in any succeeding taxpayer, but any unused
275 credits may be transferred and continued by any transferee of the
276 business enterprise. When a business enterprise merely changes its
277 name, recapitalizes, or liquidates unrelated subsidiaries; however,
278 no new eligibility need be established.

279

280 (9) **Claiming the Credit.** For a business enterprise to claim the
281 job tax credit, the business enterprise must submit Form IT-CA with
282 its Georgia income tax return for each year in which the credit is
283 claimed. For any business enterprise that creates a new year one un-
284 der DCA regulations for any taxable year beginning on or after Jan-
285 uary 1, 2009, the job tax credit must be claimed within one year of
286 the earlier of the date the original return was filed or the date such
287 return was due, including extensions.

288

289 (a) **Withholding Tax.** A business enterprise creating new jobs
290 sufficient to qualify for the job tax credit authorized for jobs created
291 in counties designated as tier 1 counties or in less developed census
292 tract areas must notify the Commissioner ~~each year of their~~, in the
293 manner specified in subparagraph (9)(b), below, for any tax year for
294 which they are making an irrevocable election to take all or a part of
295 the credit against the quarterly or monthly withholding tax payment
296 for such business enterprise. A business enterprise, which creates a
297 new year one under DCA regulations for any taxable year beginning

298 on or after January 1, 2009, engaged in a competitive project located
299 in a tier 2 county, must notify the Commissioner ~~each year of their,~~
300 in the manner specified in subparagraph (9)(b), for any tax year for
301 which they are making an irrevocable election to take all or a part of
302 the credit against the quarterly or monthly withholding tax payment
303 for such business enterprise. A business enterprise, which creates a
304 new year one under DCA regulations for any taxable year beginning
305 on or after January 1, 2009, engaged in a competitive project located
306 in a tier 3 county or a tier 4 county whose credit amount exceeds 50
307 percent of the business enterprise's income tax liability for the tax-
308 able year, must notify the Commissioner ~~each year of their, in the~~
309 manner specified in subparagraph (9)(b), for any tax year for which
310 they are making an irrevocable election to take all or a part of the
311 credit against the quarterly or monthly withholding tax payment for
312 such business enterprise. The withholding tax benefit may only be
313 applied against the withholding tax account used by the business en-
314 terprise for payroll purposes. In the event the business enterprise is
315 a single member limited liability company that is disregarded for
316 income tax purposes, the withholding tax benefit may only be ap-
317 plied against the withholding tax liability that is attributable to
318 wages paid by the single member limited liability company. When
319 this election is made, the excess tax credit will not pass through to
320 the shareholders, partners, or members of the business enterprise if
321 the business enterprise is a pass-through entity. The amount per job
322 that is eligible to be taken against the quarterly or monthly withhold-
323 ing tax payment for such business enterprise shall not exceed the
324 following amounts:

- 325
- 326 1. \$3,500 for a business enterprise located in a tier 1 county or in
327 a less developed census tract area;
 - 328
 - 329 2. \$2,500 for a business enterprise engaged in competitive pro-
330 ject located in a tier 2 county;

331
332 3. \$1,250 for a business enterprise engaged in a competitive pro-
333 ject located in a tier 3 county; or

334
335 4. \$750 for a business enterprise engaged in competitive project
336 located in a tier 4 county.

337
338 (b) **Notice of Intent.** To claim any excess tax credit not used on
339 the income tax return against the business enterprise's withholding
340 tax liability, the business enterprise must file Revenue Form IT-
341 WH *Notice of Intent* through the Georgia Tax Center within the
342 three-year statute of limitations period ~~thirty (30) days~~ after the due
343 date of the Georgia income tax return (including extensions) ~~or~~
344 ~~within thirty (30) days after the filing of a timely filed Georgia in-~~
345 ~~come tax return, whichever occurs first.~~ A business enterprise en-
346 gaged in a competitive project in a tier 2, tier 3 or tier 4 county must
347 attach certification from the Department of Economic Development
348 to Revenue Form IT-WH. Failure to file this form and certification
349 from the Department of Economic Development (if engaged in a
350 competitive project) as provided in this subparagraph will result in
351 disallowance of the withholding tax benefit. Such irrevocable elec-
352 tion may only be made one time with respect to each tax year for
353 which the credit is claimed, for all or part of the excess tax credit
354 remaining at the time of the election. However, in the case of a credit
355 which is earned in more than one taxable year, the election to claim
356 the withholding credit will be available for the credit earned in such
357 subsequent year.

358
359 (c) **Review Period.** The Department of Revenue has one hundred
360 twenty (120) days from the date the applicable Form IT-WH under
361 subparagraph (9)(b) of this regulation is received to review the credit
362 and make a determination of the amount eligible to be used against
363 withholding tax.

(d) **Letter of Eligibility.** Once the review is completed, a letter will be sent to the business enterprise stating the tax credit amount which may be applied against withholding and when the taxpayer may begin to claim the tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.

(10) **Carry forward.** Any job tax credit which is claimed but not used in a taxable year may be carried forward for ~~10~~the number of years provided in O.C.G.A. §§ 48-7-40 and 48-7-40.1 from the close of the taxable year in which the qualifying new jobs were created. ~~For example, job tax credits created by an employment increase in year one, but not used in year one, may be carried forward to years two through eleven.~~

(11) **Coordination with Investment Tax Credit, Optional Investment Tax Credit, the Headquarters Jobs Tax Credit, and the Quality Jobs Tax Credit.**

(a) Taxpayers may not claim or carry forward the job tax credit for any given project for which either an investment tax credit is claimed under O.C.G.A. Sections 48-7-40.2, 48-7-40.3, or 48-7-40.4, or an optional investment tax credit is claimed under O.C.G.A. Sections 48-7-40.7, 48-7-40.8, or 48-7-40.9. Neither may taxpayers alternately elect to claim the investment tax credit or optional investment tax credit in one year and the job tax credit in the next year for a given project. These credits are not interchangeable. Taxpayers may elect to take only one of the investment, optional investment, or quality jobs tax credit for a given project.

(b) Taxpayers may not claim or carry forward the job tax credit

for any jobs for which the headquarters job tax credit or the quality jobs tax credit is claimed under O.C.G.A. Section 48-7-40.17. Neither may taxpayers alternatively claim the jobs credit provided by O.C.G.A. Sections 48-7-40 and 48-7-40.1 and the headquarters job tax credit or the quality jobs tax credit with respect to such jobs. These credits are not interchangeable.

(12) **Pass-Through Entities.** When the business enterprise is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage and the limitations of this regulation. The credit forms will initially be filed with the tax return of the business enterprise to establish the amount of the credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess tax credits against their withholding tax liabilities. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2018. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2018 tax year.

(13) **Special Provisions.**

(a) **Effective Date.** The provisions set forth in this regulation will apply to taxable years beginning on or after January 1, ~~2017~~2025. Taxable years beginning before January 1, ~~2017~~2025 will be governed by the regulations of Chapter 560-7 as they exist before January 1, ~~2017~~2025 in the same manner as if the amendments set forth in this regulation had not been promulgated.

Chapter 560-7-8

Returns and Collections

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(b) Overlap. Where the boundaries of a less developed census tract area and a less developed county overlap, Community Affairs Regulations 110-9-1-.02 and 110-9-1-.03 shall apply.

Authority: O.C.G.A. §§ 48-2-12, 48-7-40, 48-7-40.1 and 36-62-5.1.

PROPOSED

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.42 Tax Credit for Qualified Research Expenses

The purpose of proposed Rule 560-7-8-.42 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (5) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (6) provides the carryforward period of the credit.
- Paragraph (8) provides the effective date of the regulation.

**RULES
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**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 560-7-8
RETURNS AND COLLECTIONS**

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560-7-8-.42 Tax Credit for Qualified Research Expenses

560-7-8-.42 Tax Credit for Qualified Research Expenses

(1) **Purpose.** This rule provides guidance concerning the implementation and administration of the income tax credit under O.C.G.A. § 48-7-40.12.

(2) **Definitions.** As used in this regulation:

(a) **Base Amount.** The term "base amount" means the product of a business enterprise's Georgia gross receipts in the current taxable year and the average of the ratios of its aggregate qualified research expenses to Georgia gross receipts for the preceding three taxable years or 0.300, whichever is less; provided, however, that a business enterprise need not have had a positive taxable net income for the preceding three taxable years in order to claim the credit. "Georgia gross receipts" shall be the numerator of the gross receipts factor provided in subsection (d) of O.C.G.A. § 48-7-31. If a business enterprise had no Georgia gross receipts during any one or more of the

three preceding tax years, the base amount shall be the product of the current year Georgia gross receipts and 0.300.

(b) **Business enterprise.** The term "business enterprise" shall have the same meaning as in Revenue Regulation 560-7-8-.46.

(c) **Qualified Research Expenses.** The term "qualified research expenses" means qualified research expenses for any business enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as amended, except that all wages paid and all purchases of services and supplies must be for research conducted within the State of Georgia.

(3) **Establishing Eligibility for the Credit.** A business enterprise that has qualified research expenses in Georgia in a taxable year exceeding a base amount, and for the same taxable year claims and is allowed a research credit under Section 41 of the Internal Revenue Code of 1986, as amended shall be eligible for the credit.

(4) **Credit Amount.** A business enterprise that has established eligibility for the research tax credit shall be allowed a tax credit equal to 10 percent of the excess of the qualified research expenses over the base amount. The credit taken in any one taxable year shall not exceed 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied.

(5) **Claiming the Credit.** For a business enterprise to claim the research tax credit, the business enterprise must submit Form IT-RD and Federal Form 6765, from the entity generating the credit, with its Georgia income tax return for each tax year in which the qualified research expenses were incurred.

(a) **Withholding tax.** A business enterprise whose credit amount

exceeds 50 percent of the business enterprise's remaining Georgia net income tax liability after all other credits have been applied may elect to take the excess credit as a credit against such business enterprise's quarterly or monthly withholding payments under Code Section 48-7-103. The withholding tax benefit may only be applied against the withholding tax account used by the business enterprise for payroll. In the event the business enterprise is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company. A business enterprise must notify the commissioner ~~each year of their, in the manner specified~~ in subparagraph (5)(a)1., below, for any tax year for which they are making an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such business enterprise. When this election is made, the excess research tax credit will not pass through to the shareholders, partners, or members of the business enterprise if the business enterprise is a pass-through entity.

1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the business enterprise's withholding tax liability, the business enterprise must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period ~~thirty (30) days~~ after the due date of the Georgia income tax return (including extensions) ~~or within thirty (30) days after the filing of a timely filed Georgia income tax return, whichever occurs first~~. Failure to file this form as provided in this subparagraph will result in disallowance of the withholding tax benefit. Such irrevocable election may only be made one time with respect to each tax year for which the credit is claimed, for all or part of the excess tax credit remaining at the time of the election. However, in the case of a credit which is earned in more

100 than one taxable year, the election to claim the withholding credit
101 will be available for the credit earned in such subsequent year.
102

103 2. Review Period. The Department of Revenue has one hundred
104 and twenty (120) days from the date the applicable Form IT-WH
105 under subparagraph (5)(a)1. of this regulation is received to review
106 the credit and make a determination of the amount eligible to be used
107 against withholding tax.
108

109 3. Letter of Eligibility. Once the review is completed, a letter will
110 be sent to the business enterprise stating the tax credit amount which
111 may be applied against withholding and when the business enter-
112 prise may begin to claim the tax credit against withholding tax. The
113 Department of Revenue shall treat this amount as a credit against
114 future withholding tax payments and will not refund any previous
115 withholding payments.
116

117 (6) **Carry Forward.** Any credit which is claimed but not used in
118 a taxable year shall be allowed to be carried forward for ~~ten~~ the num-
119 ber of years provided in O.C.G.A. § 48-7-40.12 from the close of
120 the taxable year in which the qualified research expenses were
121 made.
122

123 (7) **Pass-through Entities.** When the business enterprise is a
124 pass-through entity, and has no income tax liability of its own, the
125 tax credits will pass to its members, shareholders, or partners based
126 on the year ending profit/loss percentage and the limitations of this
127 regulation. The credit forms will initially be filed with the tax return
128 of the business enterprise to establish the amount of the credit avail-
129 able for pass through. The credit will then pass through to its share-
130 holders, members, or partners to be applied against the tax liability
131 on their income tax returns. The shareholders, members, or partners
132 may not claim any excess research tax credit against their

133 withholding tax liabilities. The credits are available for use as a
134 credit by the shareholders, members, or partners for their tax year in
135 which the income tax year of the pass-through entity ends. For ex-
136 ample: A partnership earns the credit for its tax year ending January
137 31, 2018. The partnership passes the credit to a calendar year part-
138 ner. The credit is available for use by the partner beginning with the
139 calendar 2018 tax year.

140
141 (8) **Effective Date.** This regulation as amended shall be applica-
142 ble to taxable years beginning on or after January 1, ~~2017~~2025. Tax-
143 able years beginning before January 1, ~~2017~~2025 will be governed
144 by the regulations of Chapter 560-7 as they exist before January 1,
145 ~~2017~~2025 in the same manner as if the amendments set forth in this
146 regulation had not been promulgated.

147
148 Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.12.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.45 Film Tax Credit

The purpose of proposed Rule 560-7-8-.45 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (5) explains the certification process of the credit.
- Paragraph (10) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (11) provides conditions and limitations of the credit.
- Paragraph (13) provides the rules for selling or transferring the credit.
- Paragraph (14) provides the procedures for selling or transferring the credit.
- Paragraph (22) provides the carryforward period of the credit for projects that received a final certification.
- Paragraph (26) provides the effective date of the regulation.

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 560-7-8
RETURNS AND COLLECTIONS**

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560-7-8-.45 Film Tax Credit

560-7-8-.45 Film Tax Credit

(1) **Purpose.** This rule provides guidance concerning the implementation and administration of the income tax credits contained within the Georgia Entertainment Industry Investment Act (hereinafter "Act") under O.C.G.A. § 48-7-40.26.

(2) **Coordination of Agencies.** The Department of Economic Development is the state agency responsible for determining which projects qualify for the tax credits authorized under the Act and specifying which projects were approved as interactive entertainment projects.

(3) **Definitions.**

(a) "Completion of the Base Investment or Excess Base Investment in this State" means the date the production company has finished qualified production activities and incurs no additional

34 qualified production expenditures.
35

36 (b) "Film Tax Credit" means the credit allowed pursuant to the
37 Georgia Entertainment Industry Investment Act, O.C.G.A. § 48-7-
38 40.26.
39

40 (c) As used in this regulation, the terms "affiliates", "base invest-
41 ment", "game platform", "game sequel", "multimarket commercial
42 distribution", "prereleased interactive game", "production com-
43 pany", "qualified Georgia promotion", "qualified production activi-
44 ties", "state certified production", and "total aggregate payroll" have
45 the same meaning as in O.C.G.A. § 48-7-40.26.
46

47 (d) "Loan-out Company" means any personal service company
48 contracted with and retained by the production company or qualified
49 interactive entertainment production company to provide individual
50 personnel (which are not employees of the production company or
51 qualified interactive entertainment production company), such as
52 artists, actors, directors, producers, writers, production designers,
53 production managers, costume designers, directors of photography,
54 editors, casting directors, first assistant directors, second unit direc-
55 tors, stunt coordinators, or similar personnel for the performance of
56 services used directly in a qualified production activity, but not in-
57 cluding persons retained by the production company or qualified in-
58 teractive entertainment production company to provide tangible
59 property or outside independent contractor service, such as catering,
60 construction, trailers, equipment and transportation.
61

62 (e) "Personal Service Company" means any personal service cor-
63 poration as defined in Internal Revenue Code Section 269A(b) or
64 any other entity, which also includes a sole proprietorship or an in-
65 dividual being paid as an independent contractor, meeting the prin-
66 cipal activity and the ownership requirements of Internal Revenue

67 Code Section 269A(b).

68

69 (f) "Qualified Interactive Entertainment Production Company"
70 means a company that:

71

72 1. Maintains a business location physically located in Georgia;

73

74 2. In the calendar year directly preceding the start of the taxable
75 year of the qualified interactive entertainment production company,
76 had a total aggregate payroll of \$500,000 or more for employees
77 working within the state; or in a taxable year beginning on or after
78 January 1, 2018, had a total aggregate payroll of \$250,000 or more
79 for employees working within the state in the taxable year the qual-
80 ified interactive entertainment production company claims the film
81 tax credit;

82

83 3. Has gross income less than \$100 million for the taxable year;
84 and

85

86 4. Is primarily engaged in qualified production activities related
87 to interactive entertainment which have been approved by the De-
88 partment of Economic Development.

89

90 Any company that has gross income less than \$100 million for
91 the taxable year and is primarily engaged in qualified production
92 activities related to interactive entertainment must meet the require-
93 ments in subparagraphs (3)(f)1. and (3)(f)2. of this regulation and
94 be certified as meeting such as provided in subparagraph (5)(c) of
95 this regulation in order to be eligible for the film tax credit.

96

97 This term shall not mean or include any form of business owned,
98 affiliated, or controlled, in whole or in part, by any company or per-
99 son 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. For this definition, "primarily engaged" means a company whose gross income from qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development exceeds 50% of their total gross income for their taxable year or whose expenses from qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development exceeds 50% of their total expenses for their taxable year.

(4) Affiliates.

(a) Threshold Determination. O.C.G.A. § 48-7-40.26(c) and (d) discuss the investment of a production company or qualified interactive entertainment production company and its affiliates. The affiliates are included solely to determine whether or not the \$30 million expenditure threshold has been exceeded for the purpose of determining under which of these subsections the film tax credit will be calculated. Once that determination is made, the \$500,000 base investment threshold or excess base investment threshold is calculated for each separate production company or qualified interactive entertainment production company and the film tax credit is earned solely by the production company or qualified interactive entertainment production company which has qualified investment expenditures in a state certified production. If more than one affiliated production company or qualified interactive entertainment production company has qualifying productions in Georgia, then each production company or qualified interactive entertainment production company will calculate its film tax credit independently of its affiliates.

(b) Assignment of Credit to Affiliates. Once the production company or qualified interactive entertainment production company

133 establishes the amount of the film tax credit by filing the tax return
134 for the taxable year in which the credit was earned, the credit may
135 then be assigned to the production company's or qualified interactive
136 entertainment production company's affiliates under the provisions
137 of O.C.G.A. § 48-7-42. When a film tax credit is assigned to an af-
138 filiated entity, the affiliated entity may apply the credit solely
139 against its own income tax liability. The affiliated entity may not
140 sell or transfer the credit pursuant to paragraph (13) of this regula-
141 tion and may not claim any excess film tax credit against its with-
142 holding tax. Any unused credit may be carried forward by such af-
143 filiated entity until the credit is used or it expires, whichever occurs
144 first.

145
146 **(5) Certification of Qualified Production Activities.** Prior to
147 claiming the film tax credit (which includes the additional tax credit
148 for including the qualified Georgia promotion), each new film,
149 video, or digital project must be certified by the Department of Eco-
150 nomic Development. Production companies that are required to re-
151 duce their investment basis by the amount of expenditures in prior
152 years, must receive certification from the Department of Economic
153 Development for current year projects prior to claiming the film tax
154 credit. The Department of Economic Development will provide a
155 Credit Certificate Number to the production company or qualified
156 interactive entertainment production company for each qualifying
157 project which is approved. The credit certificate number(s) will be
158 used to report any transfer or sale of film tax credit by the production
159 company or qualified interactive entertainment production company
160 for the qualifying project(s).

161
162 (a) The Department of Economic Development shall electroni-
163 cally certify to the Department when the requirements for the addi-
164 tional tax credit for a qualified Georgia promotion have been met.

(b) The additional 10% tax credit for including a qualified Georgia promotion shall not be issued final certification by the Department under paragraph (19) of this regulation unless and until the state certificated production has been commercially distributed in multiple markets within five years of the date that the project was first certified by the Department of Economic Development. As such the additional 10% tax credit for including a qualified Georgia promotion will likely be issued final certification separately and later than the 20% base credit and therefore may be earned later and have a different ~~three-year~~ carryover period.

(c) Certification for a Qualified Interactive Entertainment Production Company. Before the Department of Economic Development issues its certification under paragraph (5) of this regulation to a qualified interactive entertainment production company, the qualified interactive entertainment production company must electronically certify to the Department of Revenue through the Georgia Tax Center on Form IT-QIEPC that:

1. The qualified interactive entertainment production company maintains a business location physically located in this state; and

2. For taxable years beginning before January 1, 2018, the qualified interactive entertainment production company had expended a total aggregate payroll of \$500,000 or more for employees working within this state during the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company. For taxable years beginning on or after January 1, 2018, the qualified interactive entertainment production company had expended or intends to expend a total aggregate payroll of \$250,000 or more for employees working within this state during the taxable year the qualified interactive entertainment production company claims the tax credit.

(d) The qualified interactive entertainment production company must attach the approved Form IT-QIEPC to their Department of Economic Development certification application. The Department of Economic Development shall not issue its certification until it receives an approved Form IT-QIEPC from the qualified interactive entertainment production company. The Department of Revenue shall not issue any Form IT-QIEPCs before July 1, 2014.

(e) If the qualified interactive entertainment project spans more than 1 year, then the qualified interactive entertainment production company must submit a separate Form IT-QIEPC for each year. Also, any qualified expenditures, including reshoots after the principal photography or additional photography, any of which occur outside of the taxable year on the Department of Economic Development's certificate for the project, require a separate certification from the Department of Economic Development.

(f) If the qualified interactive entertainment production company is a disregarded entity then Form IT-QIEPC should be submitted in the name of the owner of the disregarded entity.

(6) Production Expenditures.

(a) Base Investment. For taxable years beginning before January 1, 2018, a production company or qualified interactive entertainment production company can aggregate projects over a single tax year to meet the \$500,000 investment threshold or excess base investment threshold. For taxable years beginning on or after January 1, 2018, a production company can aggregate projects over a single tax year to meet the \$500,000 investment threshold or excess base investment threshold and a qualified interactive entertainment production company can aggregate projects over a single tax year to

meet the \$250,000 investment or excess base investment threshold. A television series (which can occur over two or more years), series pilot, or television movie shall each be considered a single television project. In the case of an episodic television series, an entire season of episodes is one project.

1. Example 1: A production company produces 20 commercials in one calendar year, and each commercial has \$25,000 in production expenditures. The production company can aggregate their production expenditures for multiple commercials in one calendar year ($20 \times \$25,000 = \$500,000$) to meet the \$500,000 base investment threshold.

2. Example 2: A production company has \$900,000 in production expenditures during two years (they spend \$300,000 in year 1 and \$600,000 in year 2) producing one television movie. The production company may aggregate their production expenditures over the two years for this single project (one television movie) to achieve the \$500,000 base investment threshold. The production company can claim the credit in the year the \$500,000 base investment has been achieved.

3. Example 3: For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company completes two certified projects in one tax year, and each has \$125,000 in production expenditures. The qualified interactive entertainment production company can aggregate their production expenditures for multiple projects completed in one tax year to meet the \$250,000 base investment threshold for a qualified interactive entertainment production company.

4. Example 4: In a taxable year beginning on or after January 1, 2018, a qualified interactive entertainment production company has

265 \$400,000 in production expenditures during two years (they spend
266 \$100,000 in year 1 and \$300,000 in year 2) completing one certified
267 project. The qualified interactive entertainment production company
268 may aggregate their production expenditures over the two years for
269 this single project to achieve the \$250,000 base investment thresh-
270 old. The qualified interactive entertainment production company
271 can claim the credit in the year the \$250,000 base investment has
272 been achieved.

273

274 (b) Direct use. A production company or qualified interactive en-
275 tertainment production company may only claim production ex-
276 penditures that are directly used in a qualified production activity.
277 In determining whether an expenditure is directly used in a qualified
278 production activity, the Department of Revenue will consider the
279 proximity of the expenditure to the activity as well as the causal re-
280 lationship between the expenditure and the activity.

281

282 (c) Production expenditures include preproduction, production,
283 and postproduction expenditures incurred in this state that are di-
284 rectly used in a qualified production activity, including, but not lim-
285 ited to, the following: set construction and operation; wardrobes,
286 make-up, accessories, and related services; costs associated with
287 photography and sound synchronization; expenditures (excluding li-
288 cense fees) incurred with Georgia companies for sound recordings
289 and musical compositions; sound recording projects used in feature
290 films, series, pilots, or movies; lighting and related services and ma-
291 terials; editing and related services; rental of facilities and equip-
292 ment; leasing of vehicles; costs of food and lodging; digital or tape
293 editing; film processing; transfers of film to tape or digital format;
294 sound mixing; computer graphics services; special effects services;
295 animation services; total aggregate payroll; airfare, if purchased
296 through a Georgia travel agency or travel company, airfare is gener-
297 ally limited to one roundtrip per production cycle and for this

purpose a production cycle is defined as a single episode for television and as a run of show for all other productions; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term also includes payments to a loan-out company by a production company or its payroll service provider or by a qualified interactive entertainment production company or its payroll service provider that has met its withholding tax obligations in subparagraph (6)(d) of this regulation. The production company's tax basis (accrual or cash) shall be used to determine when the payment is made; provided however, prepayments for goods and services qualify in the tax year the payment applies to (the year the goods are delivered or the year the services are rendered), not the year it is prepaid. Also, any qualified expenditures, including reshoots after the principal photography or additional photography, any of which occur outside of the taxable year on the Department of Economic Development's certificate for the project, require a separate certification from the Department of Economic Development. With the exception of assets subject to depreciation under paragraph (6)(e) of this regulation, receipts for asset sales, rebates, insurance proceeds, federal government reimbursements or credits, or any other reimbursements, reduce the amount of qualified expenditures and are required to be reflected in the production cost journal.

1. This term shall not include:

(i) Postproduction expenditures for footage shot outside of Georgia, marketing, publicity, story rights, or distribution;

(ii) Any expenditure for work or services not conducted or rendered in Georgia. Expenditures for services not performed at the filming site shall only qualify if the vendor is a Georgia vendor.

Returns and Collections

Chapter 560-7-8

331 Expenditures for services conducted or rendered both in Georgia
332 and outside Georgia shall only qualify to the extent the service is
333 conducted or rendered in Georgia;

334

335 (iii) Expenditures for goods that were not purchased or rented or
336 leased in this state from a Georgia vendor. Goods are not considered
337 purchased or rented in Georgia if the goods are shipped or delivered
338 from the Georgia vendor's location outside of Georgia unless more
339 than a de minimis amount of the type of goods held and shipped or
340 delivered from outside Georgia are normally held in inventory in the
341 ordinary course of business in Georgia by the Georgia vendor. Ex-
342 penditures for goods shall only qualify to the extent such goods are
343 used in Georgia. A vendor that acts as a conduit to enable purchases
344 or rentals to qualify that would not otherwise qualify shall not be
345 considered a Georgia vendor with respect to such purchases, rentals,
346 or leases;

347

348 (iv) Freight or shipping charges incurred relating to a non Geor-
349 gia vendor; or

350

351 (v) Any transaction subject to taxation under Chapter 8 or Chap-
352 ter 13 of Title 48 of the Official Code of Georgia for which taxes
353 have not been demonstrably paid. For purposes of Chapter 8, use tax
354 paid by the production company itself will be considered to have
355 been demonstrably paid for purposes of this subparagraph provided
356 the other requirements of O.G.C.A § 48-7-40.26 and this regulation
357 are met.

358

359 (d) The production company or its payroll service provider or
360 qualified interactive entertainment production company or its pay-
361 roll service provider shall withhold Georgia income tax at the rate
362 imposed by subsection (a) of O.G.C.A § 48-7-21 on all payments to
363 loan-out companies for services performed in Georgia. Any

amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of Title 48 notwithstanding the exclusion in Code Section 48-7-100(10)(K). The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the loan-out company's employees for services performed in Georgia. For purposes of Chapter 7 of Title 48, the loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in Chapter 7 of Title 48.

1. Registration. A production company or its payroll service provider or a qualified interactive entertainment production company or its payroll service provider that makes payments to a loan-out company must electronically register with the Department using the Georgia Tax Center to obtain a film withholding account for the production company or qualified interactive entertainment production company. The loan-out company must register for a payroll withholding account using the Georgia Tax Center if they are not already registered. The loan-out company must provide the production company or its payroll service provider or the qualified interactive entertainment production company or its payroll service provider the loan-out company's federal identification number and Georgia withholding identification number.

2. Withholding Remittance and Filing. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll service provider on behalf of the qualified interactive entertainment production company shall for each calendar quarter use the

Georgia Tax Center to: electronically file the Form G-7 Film; provide information regarding the loan-out company (name, identification numbers, and amount of withholding); and provide any other information required by the Commissioner. Additionally, the withholding payment required by this subparagraph (6)(d) must be electronically remitted using ACH debit or ACH credit in the same manner provided in Rule 560-3-2-.26. The due date for such filing and remittance shall be the last day of the month following the calendar quarter in which the withholding payments were required to be made.

3. Reporting Requirements. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll service provider on behalf of the qualified interactive entertainment production company shall complete Form G2-FP, which requires: the production company's or qualified interactive entertainment production company's name, address, and tax identification numbers; the loan-out company's name, address and tax identification numbers; the amount of tax paid and withheld by the production company or its payroll service provider or by the qualified interactive entertainment production company or its payroll service provider; the total amount paid by the production company or its payroll service provider or by the qualified interactive entertainment production company or its payroll service provider to the loan-out company for services performed in Georgia (before considering the withholding); and any other information required by the Commissioner. Listing the date(s) of the withholding payments remitted to the Department on the Form G2-FP shall be optional. The production company or its payroll service provider on behalf of the production company or the qualified interactive entertainment production company or its payroll service provider on behalf of the qualified interactive entertainment production company must provide Form

430 G2-FP to the loan-out company by January 31st of the year follow-
431 ing the calendar year in which the withholding payments were made.
432 Such G2-FP shall not be submitted to the Commissioner, except
433 upon request.
434

435 (i) The loan-out company shall complete Form G2-FL, which re-
436 quires: the loan out company's name, address, and identification
437 numbers; the allocated amount withheld (see subparagraph
438 (6)(d)5.); the employee's name, address, and tax identification num-
439 ber; the name and identification numbers of the production company
440 or qualified interactive entertainment production company that paid
441 the withholding; and any other information required by the Com-
442 missioner. The loan-out company must provide Form G2-FL to the
443 employee allocated the withholding amount by February 28th of the
444 year following the calendar year in which the withholding payments
445 were made. The loan-out company must also electronically file a
446 copy of Form G-1003 and Form G2-FL by February 28th of the year
447 following the calendar year in which the withholding payments were
448 made.
449

450 4. Loan-out Filing Requirements. Upon completion of its tax
451 year during which the loan-out company's employees performed
452 services in Georgia, the loan-out company must file a Georgia in-
453 come tax return (and net worth tax return if applicable) and report
454 its income. The loan-out company must also pay its tax liability as
455 would normally be required.
456

457 5. Allocation of Personal Income Credit Against Taxes. The
458 amount deducted and withheld as tax under this subparagraph (6)(d)
459 shall be allowed as a credit to the employee whose services were
460 provided in the certified project against the employee's income tax.
461 If the services of multiple employees are provided by the loan-out
462 company, the amount deducted and withheld under this

subparagraph (6)(d) shall be allocated to each employee based on the payments made to the loan-out company's employees performing services in Georgia.

(i) Employee Filing Responsibility. The employee providing services must file a Georgia income tax return attaching Form G2-FL provided by the loan-out company, and apply the credit for the withholding tax allocated to the employee against the calculated individual income tax liability for that employee.

6. Penalties and interest shall be imposed in the same manner as provided by Rule 560-7-8-.33. If the production company does not timely remit the loan out withholding for the calendar withholding quarters included in the taxable year specified on the Department of Economic Development certification, then the expenditure(s) does not qualify for the film tax credit, unless the Department determines there was reasonable cause for such delay; provided, however, the mere failure to withhold and remit the required loan out withholding would not by itself be considered reasonable cause. For example, the production period is October and November of 2020. The calendar withholding quarter runs from October through December of 2020. All amounts must be remitted no later than the January 31, 2021 due date for such quarter in order for the payment(s) to the loan out to qualify.

7. Amounts paid to a loan-out company where the loan-out company is not providing services used in a qualified production activity are not subject to the withholding required by O.C.G.A. § 48-7-40.26.

8. The failure of the loan-out company or the loan-out company's employees to comply with any registration, filing, and reporting obligations imposed by Georgia law, including those imposed

496 by O.C.G.A. § 48-7-40.26 and this rule, shall not affect the film tax
497 credit claimed by the production company or qualified interactive
498 entertainment production company.
499

500 (e) Depreciation, amortization, or other expense on production
501 expenditures with a useful life of more than one year. The costs of
502 production expenditures with a useful life of more than one year are
503 considered "other direct costs of producing the project in accordance
504 with generally accepted entertainment industry practices." Such
505 costs shall be included in the computation of the film tax credit for
506 the taxable year based upon the depreciation, amortization, or other
507 expense included in the computation of Georgia taxable income of
508 the production company or qualified interactive entertainment pro-
509 duction company for the applicable taxable year. Such depreciation,
510 amortization, or other expense shall be prorated based upon the time
511 the asset is used in qualified production activities in this state. De-
512 preciation, amortization, or other expense on expenditures incurred
513 before the pre-production period shall not be included in the com-
514 putation of the Film Tax Credit in this state. In order to claim depre-
515 ciation, amortization, or other expense, the expenditure for the asset
516 that generated the depreciation, amortization, or other expense, must
517 have been incurred in this State as provided in subparagraph (6)(f)
518 of this regulation.
519

520 (f) Production expenditures incurred in this state. In order to be
521 considered to have been incurred in this state, the following rules
522 shall apply:
523

524 1. Production expenditures, which are attributable to the perfor-
525 mance of services by individuals and companies directly at the film-
526 ing site in Georgia who were not employees of the production com-
527 pany or qualified interactive entertainment production company,
528 shall be attributed to Georgia in the same manner as salaries as

529 provided in subparagraph (6)(g) of this regulation.
530

531 2. Except as otherwise provided in this regulation, expenditures
532 for services which are not performed at the filming site (such as in-
533 surance, service fees paid to a payroll company including workers
534 compensation if the service fees include such, editing and related
535 services, digital or tape editing, film processing, transfers of film to
536 tape or digital format, sound mixing, computer graphics services,
537 special effects services, animation services, etc.) will be allowed if
538 the vendor is a Georgia vendor and will be attributed to Georgia if
539 and only to the extent the service is rendered in Georgia. If the pro-
540 duction company or qualified interactive entertainment production
541 company is unable to track the cost of the services rendered in Geor-
542 gia, then some other reasonable method which approximates the cost
543 of the services rendered in Georgia may be used to determine the
544 amount attributable to Georgia but such approximation will be sub-
545 ject to adjustment by the Department. In the event the services are
546 subcontracted to a company that would not otherwise qualify and/or
547 such subcontracted company renders the services outside Georgia,
548 the expenditure for such services shall not be considered to have
549 been incurred in this state.

550
551 3. Purchases and rentals of property. In order to include produc-
552 tion expenditures for purchases and rentals of property, the property
553 must have been used in Georgia and purchased or rented from a
554 Georgia vendor. Goods are not considered purchased or rented in
555 Georgia if the goods are shipped or delivered from the Georgia ven-
556 dor's location outside of Georgia unless more than a de minimis
557 amount of the type of goods held and shipped or delivered from out-
558 side of Georgia are normally held in inventory in the ordinary course
559 of business in Georgia by the Georgia vendor. Purchase receipts,
560 invoices, contracts, packing slips, or other documentation shall be
561 used to determine this.

562

563 4. Georgia Vendor. For purposes of this rule, a Georgia vendor is
564 a vendor that:

565 (i) Sells or rents a type of property of which more than a de minimis
566 amount is regularly held in their inventory in the ordinary
567 course of business in Georgia, or provides a service not performed
568 at the filming site, which is the subject of the production expenditure,
569 in their ordinary course of business;

570

571 (ii) Has a physical location in Georgia with at least one individual
572 working at such location on a regular basis, including home-based
573 businesses that otherwise meet the requirements of a Georgia vendor.
574 Registering with the Georgia Secretary of State or appointing a
575 registered agent in Georgia does not establish a physical location in
576 Georgia.

577

578 However, a vendor that acts as a conduit to enable purchases and
579 rentals to qualify that would not otherwise qualify shall not be considered
580 a Georgia vendor with respect to such purchases and rentals;

581

582 (iii) Is registered with the Department for collection of sales and
583 use tax when required by Chapter 8 of Title 48;

584

585 (iv) Has a local Georgia business license. The production company
586 is required to obtain a copy of the license from any Georgia vendor
587 where the total amount of purchases exceed \$10,000 for such vendor
588 during the taxable year on the Department of Economic Development's
589 certificate for the project; and

590

591 (v) For services rendered on set, such persons or vendors providing
592 such services, are identified on the daily production reports or other
593 reasonable evidence that such services were rendered on set is
594 provided;

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Failure to provide documentation in this subparagraph when requested will result in the purchases from the vendor being disqualified.

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(g) Salaries. Total aggregate payroll, as such term is used in the Act, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employee's Form W-2 "Wage and Tax Statement". Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement". For purposes of this rule, the term "employee" means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee. Only amounts included in total aggregate payroll shall be subject to the \$500,000 limit provided in O.C.G.A. § 48-7-40.26(b)(14). Guaranteed payments to partners do not qualify for the film tax credit and are not included in total aggregate payroll. Except as otherwise provided in this paragraph, if the production company or qualified interactive entertainment production company is unable to track the actual time spent by an employee in Georgia, the production company or qualified interactive entertainment production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia but such approximation will be subject to adjustment by the Department. For all individuals who are paid a separate amount for preproduction, for actual production, and for post production excluding publicity, the amount that is incurred in Georgia shall be based on the amount paid for each such period and prorated based on the actual time spent in Georgia by the employee in each such period. For purposes of determining the time spent in Georgia for this subparagraph the

628 following shall apply. Travel days are considered a half day. Hold
629 days and other service days that do not begin and end in Georgia are
630 not included in the numerator for purposes of the calculation but are
631 included in the denominator. Prescreening, wardrobe, and free days
632 are included in the numerator if performed in Georgia but in all cases
633 are included in the denominator. Publicity and promotion days do
634 not qualify and must be included in the denominator to the extent
635 the services are contractually specified in the employment agree-
636 ment. If the production company or qualified interactive entertain-
637 ment production company is unable to track the actual time spent by
638 the individual in Georgia, the production company or qualified in-
639 teractive entertainment production company may calculate the total
640 aggregate payroll in Georgia by some other reasonable method
641 which approximates the actual time spent in Georgia for each such
642 period but such approximation will be subject to adjustment by the
643 Department.

644
645 (h) Fringe Benefits. The following benefits are attributed to
646 Georgia in the same manner as salaries as provided in subparagraph
647 (6)(g) of this regulation:

- 648
649 1. SUI (state unemployment insurance);
- 650
651 2. FUI (federal unemployment insurance);
- 652
653 3. FICA (employer portion);
- 654
655 4. Pension and welfare if the amounts are paid as part of pension,
656 health, and welfare plans (these would not be required to be paid to
657 a Georgia vendor);
- 658
659 5. Health insurance premiums if these amounts are paid as part
660 of pension, health, and welfare plans (these would not be required

661 to be paid to a Georgia vendor);

662

663 (i) Other Fringe Benefits. The following fringe benefits are at-
664 tributed to Georgia as follows:

665

666 1. Meal and incidental allowance per diems, including those not
667 taken on set, as set forth by United States General Services Admin-
668 istration, if incurred in Georgia;

669

670 2. Hotel and other overnight living accommodations per diems,
671 as set forth by United States General Services Administration, if in-
672 curred in Georgia;

673

674 3. Any amounts that exceed the limits in subparagraph (6)(i) only
675 qualify if either included in taxable compensation and if subject to
676 the withholding imposed by subparagraph (6)(d) of this regulation,
677 remitted as required by this regulation or if subject to wage with-
678 holding, remitted as required by Title 48.

679

680 (j) For services rendered on set, such persons or vendors provid-
681 ing such services, must be identified on the daily production reports
682 or the production company must provide other reasonable evidence
683 that such services were rendered on set.

684

685 (k) Production expenditures by a production company shall be
686 subject to any limitations or reductions under paragraphs (17)
687 through (24) of this regulation.

688

689 **(7) Credit Amount.**

690

691 (a) Except as provided in paragraph (7)(a)1 of this regulation, a
692 production company or qualified interactive entertainment produc-
693 tion company, that meets or exceeds the \$500,000 base investment

threshold provided in O.C.G.A. § 48-7-40.26(c) and this regulation, shall be allowed a tax credit of 20 percent of the base investment in this state; and an additional tax credit of 10 percent of the base investment shall be allowed if the qualified production activity includes a qualified Georgia promotion approved by the Georgia Department of Economic Development or an alternative marketing opportunity approved by the Georgia Department of Economic Development.

1. For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company, that meets or exceeds the \$250,000 base investment threshold provided in O.C.G.A. § 48-7-40.26(c) and this regulation, shall be allowed a tax credit of 20 percent of the base investment in this state; and an additional tax credit of 10 percent of the base investment shall be allowed if the qualified production activity includes a qualified Georgia promotion approved by the Georgia Department of Economic Development or an alternative marketing opportunity approved by the Georgia Department of Economic Development.

(b) Except as provided in paragraph (7)(b)1 of this regulation, a production company or qualified interactive entertainment production company, that meets or exceeds the \$500,000 excess base investment threshold provided in O.C.G.A. § 48-7-40.26(d) and this regulation, shall be allowed a tax credit of 20 percent of the excess base investment; and an additional tax credit of 10 percent of the excess base investment shall be allowed if the qualified production activities includes a qualified Georgia promotion approved by the Georgia Department of Economic Development or an alternative marketing opportunity approved by the Georgia Department of Economic Development.

1. For taxable years beginning on or after January 1, 2018, a

727 qualified interactive entertainment production company, that meets
728 or exceeds the \$250,000 excess base investment threshold provided
729 in O.C.G.A. § 48-7-40.26(d) and this regulation, shall be allowed a
730 tax credit of 20 percent of the excess base investment in this state;
731 and an additional tax credit of 10 percent of the excess base invest-
732 ment shall be allowed if the qualified production activity includes a
733 qualified Georgia promotion approved by the Georgia Department
734 of Economic Development or an alternative marketing opportunity
735 approved by the Georgia Department of Economic Development.

736
737 (c) The base investment and the credit amount allowed under par-
738 agraph (7)(a) of this regulation for a production company and the
739 excess base investment and the credit amount allowed under para-
740 graph (7)(b) of this regulation for a production company shall be
741 subject to the limitations of and reductions required by paragraphs
742 (17) through (24) of this regulation.

743
744 **(8) Credit Amount Limitation for a Qualified Interactive En-**
745 **tertainment Production Company.** Except as provided in para-
746 graph (8)(a) of this regulation, a qualified interactive entertainment
747 production company's credit amount shall not exceed the amounts
748 in paragraph (9) of this regulation and for any single tax year shall
749 not exceed the qualified interactive entertainment production com-
750 pany's total aggregate payroll expended to employees working
751 within this state for the calendar year directly preceding the start of
752 the taxable year the qualified interactive entertainment production
753 company claims the film tax credit. Any amount in excess of this
754 credit limit shall not be eligible for carry forward to succeeding
755 years' tax liability, nor shall such excess amount be eligible for use
756 against the qualified interactive entertainment production compa-
757 ny's quarterly or monthly payment under O.C.G.A. § 48-7-103, nor
758 shall such excess amount be assigned, sold, or transferred to any
759 other taxpayer.

(a) For taxable years beginning on or after January 1, 2018, a qualified interactive entertainment production company's credit amount shall not exceed the amounts in paragraph (9) of this regulation and for any single tax year shall not exceed the qualified interactive entertainment production company's total aggregate payroll expended to employees working within this state for the taxable year in which the qualified interactive entertainment production company claims the tax credits. Any amount in excess of this credit limit shall not be eligible for carry forward to succeeding years' tax liability, nor shall such excess amount be eligible for use against the qualified interactive entertainment production company's quarterly or monthly payment under O.C.G.A. § 48-7-103, nor shall such excess amount be assigned, sold, or transferred to any other taxpayer.

(b) For taxable years beginning on or after January 1, 2018, qualified interactive entertainment production companies are eligible for film tax credits for prereleased interactive game production; provided such credits shall not be available for a period that exceeds three years for each such qualified interactive entertainment production company.

(9) Credit Cap for Film Tax Credit for Qualified Interactive Entertainment Production Companies and Affiliates. In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified interactive entertainment production companies exceed the following amounts:

(a) For taxable years beginning on or after January 1, 2013, and before January 1, 2014, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment production companies and their affiliates which are qualified

793 interactive entertainment production companies shall not exceed
794 \$25 million. The maximum credit amount allowed for any qualified
795 interactive entertainment production company and its affiliates
796 which are qualified interactive entertainment production companies
797 shall not exceed \$5 million for taxable years beginning on or after
798 January 1, 2013 and before January 1, 2014;

799
800 (b) For taxable years beginning on or after January 1, 2014, and
801 before January 1, 2015, the aggregate amount of tax credits allowed
802 under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment
803 production companies and their affiliates which are qualified inter-
804 active entertainment production companies shall not exceed \$12.5
805 million. The maximum credit amount allowed for any qualified in-
806 teractive entertainment production company and its affiliates which
807 are qualified interactive entertainment production companies shall
808 not exceed \$1.5 million for taxable years beginning on or after Jan-
809 uary 1, 2014 and before January 1, 2015;

810
811 (c) For taxable years beginning on or after January 1, 2015, and
812 before January 1, 2016, the aggregate amount of tax credits allowed
813 under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment
814 production companies and their affiliates which are qualified inter-
815 active entertainment production companies shall not exceed \$12.5
816 million. The maximum credit amount allowed for any qualified in-
817 teractive entertainment production company and its affiliates which
818 are qualified interactive entertainment production companies shall
819 not exceed \$1.5 million for taxable years beginning on or after Jan-
820 uary 1, 2015 and before January 1, 2016;

821
822 (d) For taxable years beginning on or after January 1, 2016, and
823 before January 1, 2018, the aggregate amount of tax credits allowed
824 under O.C.G.A. § 48-7-40.26 for qualified interactive entertainment
825 production companies and their affiliates which are qualified

826 interactive entertainment production companies shall not exceed
827 \$12.5 million for each taxable year. The maximum credit amount
828 allowed for any qualified interactive entertainment production com-
829 pany and its affiliates which are qualified interactive entertainment
830 production companies shall not exceed \$1.5 million for each taxable
831 year beginning on or after January 1, 2016 and before January 1,
832 2018; and

833
834 (e) For taxable years beginning on or after January 1, 2018, the
835 aggregate amount of tax credits allowed under O.C.G.A. § 48-7-
836 40.26 for qualified interactive entertainment production companies
837 shall not exceed \$12.5 million for each taxable year. The maximum
838 credit amount allowed for any qualified interactive entertainment
839 production company and its affiliates which are qualified interactive
840 entertainment production companies shall not exceed \$1.5 million
841 for each taxable year beginning on or after January 1, 2018.

842
843 (f) Allocation of Film Tax Credit for Qualified Interactive Enter-
844 tainment Production Company and Affiliates. For taxable years be-
845 ginning on or after January 1, 2013 and before January 1, 2016, the
846 Commissioner shall allow the film tax credit for any qualified inter-
847 active entertainment production company and affiliates on a first-
848 come, first served basis. The paper filing date or electronic filing
849 date of the qualified interactive entertainment production company's
850 income tax return that claims the film tax credit as provided in par-
851 agraph (10) of this regulation shall be used to determine such first-
852 come, first-served basis. At the time the credit is claimed, all quali-
853 fied interactive entertainment production companies must also send
854 a paper copy of the Form IT-FC "Film Tax Credit" to the address
855 listed on such form. Failure to send such paper copy may cause the
856 qualified interactive entertainment production company to not be al-
857 lowed the film tax credit.

858

(g) Income Tax Returns Claiming the Credit on the Day the Aggregate Credit Amount is Reached. For taxable years beginning on or after January 1, 2013 and before January 1, 2016, on the day credit amounts on qualified interactive entertainment production companies' income tax returns, which claim the film tax credit as provided in paragraph (10) of this regulation, are received that exceed the aggregate limits in paragraph (9) of this regulation, then the tax credits shall be allocated among such qualified interactive entertainment production companies on a pro rata basis based upon amounts otherwise allowed by O.C.G.A. § 48-7-40.26 and this regulation. Only credit amounts on income tax returns filed on the day the aggregate limits were exceeded will be allocated on a pro rata basis.

(h) Preapproval for Taxable Years Beginning on or after January 1, 2016. For taxable years beginning on or after January 1, 2016, all qualified interactive entertainment production companies must be preapproved to claim the film tax credit and must submit the appropriate forms to the Department through the Georgia Tax Center as provided in this subparagraph.

1. Application. A qualified interactive entertainment production company seeking preapproval to claim the film tax credit must electronically submit Form IT-QIEPC-AP through the Georgia Tax Center. A qualified interactive entertainment production company that has submitted its Form IT-QIEPC for certification by the Department or that submits Form IT-QIEPC on the same day as Form IT-QIEPC-AP is submitted may request preapproval from the Department before meeting the requirements of the film tax credit. Such qualified interactive entertainment production company must estimate their credit amounts on Form IT-QIEPC-AP. The amount of tax credit claimed by the qualified interactive entertainment production company on the qualified interactive entertainment

892 production company's applicable Georgia income tax return must be
893 based on the actual film tax credit earned pursuant O.C.G.A. § 48-
894 7-40.26 and this regulation and cannot exceed the amount preap-
895 proved. If the qualified interactive entertainment production com-
896 pany is preapproved for an amount that exceeds the amount that is
897 calculated using the actual numbers when the return is filed, the ex-
898 cess preapproved amount cannot be claimed by the qualified inter-
899 active entertainment production company nor shall such excess pre-
900 approved amount be assigned, sold, or transferred to any other tax-
901 payer.

902

903 2. Notification. The Department will notify each qualified inter-
904 active entertainment production company of the tax credits preap-
905 proved or denied to such qualified interactive entertainment produc-
906 tion company.

907

908 3. Allocation of Tax Credit. The Commissioner shall allow the
909 film tax credits for qualified interactive entertainment production
910 companies on a first-come, first-served basis. The date the Form IT-
911 QIEPC-AP is electronically submitted shall be used to determine
912 such first-come, first-served basis.

913

914 4. Applications received on the day the maximum credit amount
915 is reached. In the event that the credit amounts on applications re-
916 ceived by the Commissioner exceed the maximum aggregate limit
917 in subparagraph (9)(d) of this regulation, then the tax credits shall
918 be allocated among the qualified interactive entertainment produc-
919 tion companies who submitted Form IT-QIEPC-AP on the day the
920 maximum aggregate limit was exceeded on a pro rata basis based
921 upon amounts otherwise allowed under O.C.G.A. § 48-7-40.26, and
922 this regulation. Only credit amounts on applications received on the
923 day the maximum aggregate limit was exceeded will be allocated on
924 a pro rata basis.

925
926 5. Once the credit cap is reached for a calendar year, qualified
927 interactive entertainment production companies who meet the re-
928 quirements of the film tax credit during such calendar year shall no
929 longer be eligible for a credit under O.C.G.A. § 48-7-40.26. If any
930 Form IT-QIEPC-AP is received after the calendar year preapproval
931 limit has been reached, then it shall be denied and not be reconsid-
932 ered for preapproval at any later date.

933
934 6. In the event it is determined that the qualified interactive en-
935 tertainment production company has not met all the requirements
936 of O.C.G.A. § 48-7-40.26 and this regulation, then the amount of
937 credits shall not be preapproved or the preapproved credits shall be
938 retroactively denied. With respect to such denied credits, tax, inter-
939 est, and penalties shall be due if the credits have already been
940 claimed.

941
942 **(10) Production Company or Qualified Interactive Enter-**
943 **tainment Production Company Claiming Credit.**

944
945 (a) Income Tax. Except as provided in paragraphs (17) through
946 (24) of this regulation, for a production company or qualified inter-
947 active entertainment production company to claim the film tax
948 credit, it must attach Form IT-FC "Film Tax Credit", the Department
949 of Economic Development credit certification(s), and an approved
950 Form IT-QIEPC-AP, if applicable to its Georgia income tax return
951 for each tax year in which the qualified expenditures were incurred.

952
953 (b) Withholding Tax. The production company or qualified inter-
954 active entertainment production company may claim any excess
955 film tax credit, which has been claimed as provided in subparagraph
956 (10)(a) or paragraph (21), against its withholding tax liability or the
957 withholding tax liability of its payroll service providers provided

958 such withholding tax liability is with respect to the employees of the
959 production company and is attributable to withholding for such em-
960 ployees for withholding periods approved in subparagraph (10)(b)3.
961 The withholding tax benefit may only be applied against the with-
962 holding tax account used by the production company or its payroll
963 service provider or qualified interactive entertainment production
964 company or its payroll service provider for payroll purposes. In the
965 event the production company or qualified interactive entertainment
966 production company is a single member limited liability company
967 that is disregarded for income tax purposes, the withholding tax ben-
968 efit may only be applied against the withholding tax liability that is
969 attributable to wages paid by the single member limited liability
970 company or against the withholding tax liability of its payroll ser-
971 vice providers provided such withholding tax liability is attributable
972 to wages paid by its payroll service provider with respect to the in-
973 dividuals providing services to the single member limited liability
974 company and is attributable to withholding for such employees for
975 withholding periods approved in subparagraph (10)(b)3. Any pro-
976 duction company or qualified interactive entertainment production
977 company that qualifies to take all or a part of the film tax credit
978 against withholding tax otherwise due the Department of Revenue,
979 must notify the Commissioner, in the manner specified in subpara-
980 graph (10)(b)1., below, for any tax year for which they are making
981 make an irrevocable election to take all or a part of the credit against
982 the quarterly or monthly withholding tax payment for such compa-
983 ny do so as a part of its notification to the Commissioner required
984 under this subparagraph. When this election is made, the excess film
985 tax credit will not pass through to the shareholders, partners, or
986 members of the production company or qualified interactive enter-
987 tainment production company if the production company or quali-
988 fied interactive entertainment production company is a pass-through
989 entity.
990

991 1. Notice of Intent. To claim any excess film tax credit not used
992 on the income tax return against the production company's or quali-
993 fied interactive entertainment production company's withholding
994 tax liability, the production company or qualified interactive enter-
995 tainment production company must file Revenue Form IT-
996 WH *Notice of Intent* through the Georgia Tax Center within the
997 three-year statute of limitations period ~~thirty (30) days~~ after the due
998 date of the Georgia income tax return (including extensions) ~~or~~
999 ~~within (30) days after the filing of a timely filed Georgia income tax~~
1000 ~~return, whichever occurs first~~. Failure to file this form as provided
1001 in this subparagraph will result in disallowance of the withholding
1002 tax benefit. Such irrevocable election may only be made one time
1003 with respect to each tax year for which the credit is claimed, for all
1004 or part of the excess tax credit remaining at the time of the election.
1005 However, in the case of a credit which is earned in more than one
1006 taxable year, the election to claim the withholding credit will be
1007 available for the credit earned in such subsequent year.

1008
1009 2. Review Period. The Department of Revenue has one hundred
1010 twenty (120) days from the date the applicable Form IT-WH under
1011 paragraph (10)(b)1. of this regulation is received to review the credit
1012 and make a determination of the amount eligible to be used against
1013 withholding tax.

1014
1015 3. Letter of Eligibility. Once the review is completed, a letter will
1016 be sent to the production company or qualified interactive entertain-
1017 ment production company stating the film tax credit amount which
1018 may be applied against withholding and when the production com-
1019 pany or its payroll service provider or qualified interactive entertain-
1020 ment production company or its payroll service provider may begin
1021 to claim the film tax credit against withholding tax. The Department
1022 of Revenue shall treat this amount as a credit against future with-
1023 holding tax payments and will not refund any previous withholding

1024 payments made by the production company or its payroll service
1025 provider or the qualified interactive entertainment production com-
1026 pany or its payroll service provider.

1027

1028 (c) Use of Other Tax Credits. Production companies or qualified
1029 interactive entertainment production companies claiming the film
1030 tax credit may not claim the job tax credit, headquarters tax credit,
1031 or quality jobs tax credit for employees whose wages are used to
1032 calculate the film tax credit.

1033

1034 (11) **Conditions and Limitations.**

1035

1036 (a) A production company or qualified interactive entertainment
1037 production company must provide the Department of Revenue with
1038 sufficient detail of all qualifying expenditures used to meet the base
1039 investment and calculate the film tax credit.

1040

1041 (b) Except as otherwise provided, a taxpayer may utilize the film
1042 tax credit only to the extent of the taxpayer's income tax liability in
1043 a given tax year.

1044

1045 (c) Except as provided in paragraph (22) of this regulation, ~~there~~
1046 ~~is a five year carry forward period from the end of the tax year in~~
1047 ~~which the qualifying expenditures were made and the production~~
1048 ~~company or qualified interactive entertainment production company~~
1049 ~~established the amount of the film tax credit for such tax year. Any~~
1050 ~~film tax credits that cannot be used against a taxpayer's income tax~~
1051 ~~liability in the year established will be carried forward~~ for the num-
1052 bers of years provided in § 48-7-40.26. For example, the amount of
1053 a film tax credit established in the calendar 2014 tax year may be
1054 carried forward until it expires on December 31, 2019.

1055

1056 (d) Film tax credits may not be carried back and applied against

1057 a prior year's income tax liability.

1058

1059 (e) Except as provided in paragraphs (17) through (24) of this
1060 regulation, any Department of Revenue audit triggered by a produc-
1061 tion company's or qualified interactive entertainment production
1062 company's use or transfer of a film tax credit will require the pro-
1063 duction company or qualified interactive entertainment production
1064 company to reimburse the Department of Revenue for all costs as-
1065 sociated with the audit. The Department of Revenue will inform the
1066 production company or qualified interactive entertainment produc-
1067 tion company that the audit is a film tax credit audit and thus subject
1068 to this clause prior to the commencement of the audit. Routine audits
1069 of the taxpayer's activity in Georgia are not subject to this provision.

1070

1071 (12) **Pass-Through Entities.** When a production company or
1072 qualified interactive entertainment production company generating
1073 a film tax credit is a pass-through entity, and has no income tax lia-
1074 bility of its own, the film tax credit will pass to its members, share-
1075 holders, or partners based on the year ending profit/loss percentage.
1076 The credit forms will initially be filed with the tax return of the pro-
1077 duction company or qualified interactive entertainment production
1078 company that incurred the qualifying expenditures to establish the
1079 amount of the film tax credit available for pass through. The credit
1080 will then pass through to its shareholders, members, or partners to
1081 be applied against the tax liability on their income tax returns. The
1082 shareholders, members, or partners may not claim any excess film
1083 tax credit against their withholding tax liabilities or against the with-
1084 holding tax liabilities of their payroll service providers. The credits
1085 are available for use as a credit by the shareholders, members, or
1086 partners for their tax year in which the income tax year of the pass-
1087 through entity ends. For example: A partnership earns the credit for
1088 its tax year ending January 31, 2014. The partnership passes the
1089 credit to a calendar year partner. The credit is available for use by

1090 the partner beginning with the calendar 2014 tax year.

1091

1092 **(13) Selling or Transferring the Film Tax Credit.** The produc-
1093 tion company or qualified interactive entertainment production
1094 company may sell or transfer in whole or in part any film tax credit,
1095 previously claimed but not used by such production company or
1096 qualified interactive entertainment production company against its
1097 income tax, to another Georgia taxpayer subject to the following
1098 conditions:

1099

1100 (a) Each sale or transfer must be for a minimum of 60 percent of
1101 the credit amount being sold in each respective sale (i.e., the mini-
1102 mum price for each dollar of credit included in an installment must
1103 be at least 60 cents).

1104

1105 (b) The taxpayer may only make a one-time sale or transfer of
1106 film tax credits earned in each taxable year. However, the sale or
1107 transfer may involve more than one transferee and more than one
1108 sale date. The sale may occur in a year or years after the film tax
1109 credit is earned but must occur before the expiration of the carry
1110 forward period of such credit. For example, a production company
1111 or qualified interactive entertainment production company earns a
1112 \$500,000 credit in year 1. In year 2 the production company or qual-
1113 ified interactive entertainment production company sells \$200,000
1114 of the credit to taxpayer 2 and \$50,000 to taxpayer 3. In year 3 the
1115 production company or qualified interactive entertainment produc-
1116 tion company sells the remaining \$250,000 of the credit to taxpayer
1117 4. However, taxpayer 2, taxpayer 3, and taxpayer 4 are not allowed
1118 to resell the credit since the credit can only be sold one-time.

1119

1120 (c) Except as provided in paragraphs (17) through (24) of this
1121 regulation, the film tax credit may be transferred before the tax re-
1122 turn is filed by the production company or qualified interactive

entertainment production company provided the film tax credit has been earned. Preapproval for a qualified interactive entertainment production company by itself does not qualify as earning the credit. For credits subject to paragraphs (17) through (24) of this regulation, the film tax credit may be transferred before the tax return is filed by the production company provided the film tax credit has been finally certified. However, the amount transferred cannot exceed the amount of the credit which will be claimed and not used on the income tax return of the transferor.

(d) The production company or qualified interactive entertainment production company must file Form IT-TRANS "Notice of Tax Credit Transfer" with both the Department of Economic Development and Department of Revenue within 30 days of each transfer or sale of the film tax credit. Form IT-TRANS must be submitted electronically to the Department of Revenue through the Georgia Tax Center or alternatively as provided in subparagraph (13)(d)1. With respect to such production companies and qualified interactive entertainment production companies, the Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. Before submitting Form IT-TRANS, the production company that earned the film tax credit must have reported to the Department of Revenue the information required by paragraph (16) of this regulation or for credits subject to paragraphs (17) through (24) of this regulation, the film tax credit must have been finally certified or the qualified interactive entertainment production company that earned the film tax credit must have received preapproval from the Department of Revenue if required by subparagraph (9)(h) of this regulation. If the production company or qualified interactive entertainment production company is a disregarded entity then Form IT-TRANS should be filed in the name of the owner of the disregarded entity but the certification from the Department of Economic Development and Form IT-FC should be in the name of the disregarded

1156 entity. With respect to production companies, the requirements of
1157 this subparagraph and subparagraph (13)(d)1. are also applicable to
1158 taxable years beginning before January 1, 2016 if the credit is or will
1159 be claimed on or after June 1, 2016.

1160

1161 1. The web-based portal on the Georgia Tax Center. The produc-
1162 tion company or qualified interactive entertainment production
1163 company may provide selective information to a representative for
1164 the purpose of allowing the representative to submit Form IT-
1165 TRANS on their behalf on the Georgia Tax Center outside of a login.
1166 The provision of such information shall authorize the representative
1167 to submit such Form IT-TRANS. The representative must provide
1168 all information required by the web-based portal on the Georgia Tax
1169 Center to submit Form IT-TRANS.

1170

1171 (e) The production company or qualified interactive entertain-
1172 ment production company must provide all required film tax credit
1173 detail and transfer information to the Department of Revenue. Fail-
1174 ure to do so will result in the film tax credit being disallowed until
1175 the production company or qualified interactive entertainment pro-
1176 duction company complies with such requirements.

1177

1178 (f) The carry forward period of the film tax credit for the trans-
1179 feree will be the same as it was for the production company or qual-
1180 ified interactive entertainment production company. Except as pro-
1181 vided in paragraph (22) of this regulation, this credit may be carried
1182 forward for ~~five~~the number of years provided in provided in § 48-7-
1183 40.26 from the end of the tax year in which the qualifying expendi-
1184 tures were incurred. For credits subject to paragraphs (17) through
1185 (24) of this regulation, the carryforward period is as provided in par-
1186 agraph (22). For example, for a credit that has a five-year carryfor-
1187 ward: The production company or qualified interactive entertain-
1188 ment production company sells a film tax credit on September 15,

1189 2015. This credit is based on qualifying expenditures from the cal-
1190 endar 2014 tax year. The credit may be claimed by the transferee on
1191 the 2014, 2015, 2016, 2017, 2018, or 2019 return and the carry for-
1192 ward period for this credit will expire on December 31, 2019. This
1193 carry forward treatment applies regardless of whether it is being
1194 claimed by the production company, the qualified interactive enter-
1195 tainment production company, or the transferee.

1196
1197 (g) A transferee shall have only such rights to claim and use the
1198 Film Tax Credit that were available to the production company or
1199 qualified interactive entertainment production company at the time
1200 of the transfer excluding the withholding tax benefit which is not
1201 available to the transferee. Thus, a transferee shall not have the right
1202 to subsequently transfer such credit since that right has been utilized
1203 by the transferor.

1204

1205 **(14) How to Sell or Transfer the Tax Credit.**

1206

1207 (a) Direct Sale. The production company or qualified interactive
1208 entertainment production company may sell or transfer the film tax
1209 credit directly to a Georgia taxpayer (or multiple Georgia taxpayers
1210 as provided in subparagraph (13)(b) of this rule). A pass-through
1211 entity may make an election to sell or transfer the unused film tax
1212 credit earned in a taxable year at the entity level. If the pass-through
1213 entity makes the election to sell the film tax credit at the entity level,
1214 the credit does not pass through to the shareholders, members, or
1215 partners. In all cases, the effect of the sale of the credit on the income
1216 of the seller and buyer of the credit will be the same as provided in
1217 the Internal Revenue Code.

1218

1219 (b) Pass-Through Entity. The production company or qualified
1220 interactive entertainment production company may be structured as
1221 a pass-through entity. If a pass-through entity does not make an

1222 election to sell or transfer the tax credit at the entity level as provided
1223 in subparagraph (14)(a) of this rule, the tax credit will pass through
1224 to the shareholders, partners or members of the entity based on their
1225 year ending profit/loss percentage. The shareholders, members, or
1226 partners may then sell their respective film tax credit to a Georgia
1227 taxpayer.

1228
1229 (c) Transferee Pass-Through Entity. The production company or
1230 qualified interactive entertainment production company, or its
1231 shareholders, members or partners, may sell or transfer the tax credit
1232 to a pass-through entity. The pass-through entity shall elect on be-
1233 half of its shareholders, members or partners which year the credit
1234 shall be passed through to its shareholders, members or partners (ei-
1235 ther its tax year in which the income tax year of the production com-
1236 pany or qualified interactive entertainment production company,
1237 which claims the film tax credit for the project or project(s) associ-
1238 ated with the credit being sold, ends; or during any later tax year
1239 before the ~~three or five year~~ carry forward period associated with the
1240 tax credit ends as provided in subparagraph (14)(d) of this rule). If
1241 the pass-through entity has no income tax liability of its own, the
1242 pass-through entity may then pass the credit through to its share-
1243 holders, members, or partners based on the pass-through entity's
1244 year ending profit/loss percentage for such elected year. For exam-
1245 ple, if a calendar year partnership is buying the credit earned by a
1246 production company or qualified interactive entertainment produc-
1247 tion company in the calendar 2014 tax year and elects to use the
1248 credit for such year, then all of the partners receiving the credit must
1249 have been a partner in the partnership no later than the end of the
1250 2014 tax year in which the credit was established. Only partners who
1251 have a profit/loss percentage as of the end of the applicable tax year
1252 may receive their respective amount of the film tax credit.

1253

1254 (d) The credits are available for use by the transferee, provided

1255 the time has not expired for filing a claim for refund of a tax or fee
1256 erroneously or illegally assessed and collected pursuant to O.C.G.A.
1257 § 48-2-35:
1258

1259 1. In the transferee's tax year in which the income tax year of the
1260 production company or qualified interactive entertainment produc-
1261 tion company, which claims the film tax credit for the project or
1262 project(s) associated with the credit being sold, ends; or
1263

1264 2. During any later tax year before the ~~five-year~~ carry forward
1265 period associated with the tax credit ends or the ~~three-year~~ carryfor-
1266 ward period under paragraph (22) of this regulation associated with
1267 the tax credit ends.
1268

1269 (i) Example: A production company or qualified interactive en-
1270 tertainment production company reaches the \$500,000 base invest-
1271 ment threshold and claims the film tax credit in calendar 2014 tax
1272 year. There is a five-year carryforward period associated with the
1273 credit. The production company or qualified interactive entertain-
1274 ment production company sells the film tax credit to a calendar year
1275 Georgia taxpayer in calendar year 2015. The transferee Georgia tax-
1276 payer may claim the purchased film tax credit on either their 2014
1277 return (transferee's tax year in which the income tax year of the pro-
1278 duction company or qualified interactive entertainment production
1279 company ends) or their 2015, 2016, 2017, 2018, or 2019 return (dur-
1280 ing any later tax year before the ~~five-year~~ carry forward associated
1281 with the tax credit ends).
1282

1283 (ii) Example: A production company or qualified interactive en-
1284 tertainment production company reaches the \$500,000 base invest-
1285 ment threshold and claims the film tax credit in its fiscal year end
1286 June 30, 2014. There is a five-year carryforward period associated
1287 with the credit. The production company or qualified interactive

entertainment production company sells the film tax credit to a calendar year Georgia taxpayer in calendar year 2015. The transferee Georgia taxpayer may claim the purchased film tax credit on either their 2014 return (transferee's tax year in which the income tax year of the production company or qualified interactive entertainment production company ends) or their 2015, 2016, 2017, 2018, or 2019 return (during any later tax year before the five-year carry forward associated with the tax credit ends).

(15) Reporting Required for Qualified Interactive Entertainment Production Companies. For taxable years beginning on or after January 1, 2016, the qualified interactive entertainment production company shall electronically report to the Department of Revenue through the Georgia Tax Center on Form IT-QIEPC-RPT the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year as provided in subparagraphs (a) and (b) of this paragraph. Such report shall be filed on the date the qualified interactive entertainment production company files its Georgia income tax return. For purposes of this paragraph, a 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.

(a) For taxable years beginning on or after January 1, 2016, and before January 1, 2017, the qualified interactive entertainment production company shall report such number for such taxable year and separately for each of the prior two taxable years.

(b) For taxable years beginning on or after January 1, 2017, the qualified interactive entertainment production company shall report

1321 such number for each respective taxable year.

1322

1323 (c) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-
1324 61, for such taxable years, the commissioner shall report yearly to
1325 the House Committee on Ways and Means and the Senate Finance
1326 Committee. The report shall include the name, tax year beginning,
1327 and monthly average number of full-time employees for each qual-
1328 ified interactive entertainment production company. The first report
1329 shall be submitted by June 30, 2016, and each year thereafter by
1330 June 30.

1331

1332 **(16) Reporting Required for Production Companies (not ap-**
1333 **licable to Qualified Interactive Entertainment Production**
1334 **Companies).**

1335

1336 (a) Except with respect to projects subject to paragraphs (17)
1337 through (24) of this regulation, with respect to any film tax credit
1338 that is or will be claimed on or after June 1, 2016 (as well as credits
1339 for taxable years beginning before January 1, 2016 if the credit is or
1340 will be claimed on or after June 1, 2016), within 90 days of the com-
1341 pletion of the base investment or excess base investment in this state,
1342 the production company that earned the film tax credit must elec-
1343 tronically report and submit to the Department of Revenue through
1344 the Georgia Tax Center the following information:

1345

1346 1. The estimated base investment or excess base investment in
1347 this state;

1348

1349 2. The film tax credit percentage amount, either 20 percent or 30
1350 percent;

1351

1352 3. The Department of Economic Development certification num-
1353 ber; and

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4. A copy of the Department of Economic Development certification.

(b) If the production company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity but the certification from the Department of Economic Development that is attached to such submission should be in the name of the disregarded entity.

(c) If a project spans more than one year and the \$500,000 base investment threshold or excess base investment threshold is not met in the first year, the production company shall only be required to report such information in the year in which the credit will be claimed which is the year the \$500,000 base investment threshold or excess base investment threshold is met. In such case the Department of Economic Development certifications for all years should be submitted through the Georgia Tax Center. The Department of Economic Development certifications should either be submitted together as one file or the additional certification should be submitted using the additional document option.

(17) Mandatory Film Tax Credit Audit. For any project first certified by the Department of Economic Development on or after January 1, 2021 and on or before December 31, 2021, if the total amount of such film tax credit for the project exceeds \$2.5 million, the film tax credit shall not be claimed, assigned, sold, transferred, or utilized in any manner until the production company applies for a mandatory film tax credit audit under paragraph (18) of this regulation and the Department issues a final certification(s) of the film tax credit under paragraph (19) of this regulation.

(a) For any project first certified by the Department of Economic

1387 Development on or after January 1, 2022 and on or before December
1388 31, 2022, if the total amount of such film tax credit for the project
1389 exceeds \$1.25 million, the film tax credit shall not be claimed, as-
1390 signed, sold, transferred, or utilized in any manner until the produc-
1391 tion company applies for a mandatory film tax credit audit under
1392 paragraph (18) of this regulation and the Department issues a final
1393 certification(s) of the film tax credit under paragraph (19) of this
1394 regulation.

1395

1396 (b) For any project first certified by the Department of Economic
1397 Development on or after January 1, 2023, the film tax credit shall
1398 not be claimed, assigned, sold, transferred, or utilized in any manner
1399 until the production company applies for a mandatory film tax credit
1400 audit under paragraph (18) of this regulation and the Department
1401 issues a final certification(s) of the film tax credit under paragraph
1402 (19) of this regulation.

1403

1404 (c) Prior to issuing a final certification to projects covered under
1405 this paragraph, the Department shall conduct or cause to be con-
1406 ducted an audit of each project by either the Department or an inde-
1407 pendent third party certified by the Department as an eligible auditor
1408 under paragraph (19) of this regulation.

1409

1410 (d) Only projects that meet the requirements of paragraph (17)
1411 shall receive a mandatory film tax credit audit. If the production
1412 company intends to seek and is qualified for the 10% qualified Geor-
1413 gia promotion credit, such credit amount shall be considered in de-
1414 termining if the project meets the requirements of paragraph (17). If
1415 a production company applies for a mandatory film tax credit audit
1416 for a project and the Department or an eligible auditor performs an
1417 audit and the credit amount is less than the required amount under
1418 this paragraph, the project will not receive a final certification but
1419 the production company may request that a voluntary audit be

1420 completed. If the production company does not apply for a manda-
1421 tory film tax credit audit for a project that meets the requirements of
1422 this paragraph, then the credit will not be allowed to be claimed,
1423 assigned, sold, transferred, or utilized in any manner without a man-
1424 datory film tax credit audit.

1425

1426 1. Example 1: On February 1, 2021 the Department of Economic
1427 Development first certifies a project for the 20% film tax credit and
1428 the 10% credit for a qualified Georgia promotion, the project has
1429 estimated expenditures of \$10 million. At the completion of the base
1430 investment the project has a credit amount of \$3 million (the esti-
1431 mated expenditures of \$10 million equal the expenditures at the
1432 completion of the base investment). Therefore, the production com-
1433 pany must apply for a mandatory audit for this project as provided
1434 in paragraph (18) of this regulation.

1435

1436 2. Example 2: On March 1, 2021 the Department of Economic
1437 Development first certifies a project for the 20% film tax credit, the
1438 project has \$10 million in estimated expenditures. At the completion
1439 of the base investment the project has a credit amount of \$2 million
1440 (the estimated expenditures of \$10 million equal the expenditures at
1441 the completion of the base investment). This project does not qualify
1442 for or require a mandatory film tax credit audit.

1443

1444 3. Example 3: On January 31, 2021, the Department of Economic
1445 Development first certifies a project for the 20% film tax credit, the
1446 project has \$10 million in estimated expenditures. At the completion
1447 of the base investment the project has a credit amount of \$3 million
1448 (the expenditures at the completion of the base investment were \$15
1449 million instead of \$10 million). Therefore, the production company
1450 must apply for a mandatory film tax credit audit for this project as
1451 provided in paragraph (18) of this regulation.

1452

1453 4. Example 4: On December 20, 2020, the Department of Eco-
1454 nomic Development first certifies a project for the 20% film tax
1455 credit, the project has \$15 million in estimated expenditures. On Jan-
1456 uary 3, 2022 the Department of Economic Development certifies the
1457 same project for reshoots. This project does not qualify for or require
1458 a mandatory film tax credit audit.

1459

1460 (e) For projects that do not qualify for or require a mandatory
1461 film tax credit audit, the production company may request a volun-
1462 tary film tax credit audit. Voluntary film tax credit audits for projects
1463 that do not qualify for or require a mandatory film tax credit audit
1464 are accepted based on availability and the procedures established by
1465 the Department. Voluntary film tax credit audits are not subject to
1466 paragraphs (17) through (24) of this regulation.

1467

1468 (f) If a production company is issued final certification of a tax
1469 credit pursuant to paragraphs (17) through (24) of this regulation,
1470 such tax credit shall be considered earned in the taxable year in
1471 which it is issued final certification.

1472

1473 (18) **Application for Mandatory Audit.** A production company
1474 seeking to claim the film tax credit for projects covered under para-
1475 graph (17) of this regulation, must apply for an audit of the film tax
1476 credit in the manner provided by the Department within one year
1477 from the date of the completion of the state certified production
1478 where such date is defined as the date of the completion of principal
1479 photography.

1480

1481 (a) The following information shall be submitted with the appli-
1482 cation or prior to the commencement of the audit required under
1483 paragraph (17) of this regulation:

1484

1485 1. A description of the state certified production, along with its

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1486 certification as a state certified production from the Department of
1487 Economic Development;

1488

1489 2. A detailed accounting of all qualified production activities and
1490 the attendant production expenditures included in the base invest-
1491 ment for the state certified production;

1492

1493 3. A detailed listing of the employee names, social security num-
1494 bers, and Georgia wages when salaries are included in the base in-
1495 vestment;

1496

1497 4. Vendor invoices for goods or services included in the base in-
1498 vestment as requested by the Department or the eligible auditor
1499 hired to conduct the audit for the state certified production;

1500

1501 5. Contracts for goods or services included in the base investment
1502 as requested by the Department or the eligible auditor hired to con-
1503 duct the audit for the state certified production;

1504

1505 6. An Internal Revenue Service Form W-9 completed and issued
1506 by each vendor for which expenditures are included in the base in-
1507 vestment as requested by the Department or the eligible auditor
1508 hired to conduct the audit for the state certified production. The De-
1509 partment or the eligible auditor shall not request a Form W-9 from
1510 any Georgia vendor where the total amount of purchases does not
1511 exceed \$10,000 for such vendor during the taxable year on the De-
1512 partment of Economic Development's certificate for the project;

1513

1514 7. Notification of any intent to utilize an auditor other than the
1515 Department;

1516

1517 8. A description of the status of the distribution of the state certi-
1518 fied production and information related to any qualified Georgia

1519 promotion connected with such production;

1520

1521 9. The total amount of the tax credit sought for the state certified
1522 production;

1523

1524 10. A statement affirming that the contents of the application are
1525 true and correct;

1526

1527 11. Production payroll information (summary of payroll and loan
1528 out payments by person, W-2s, 1099s, etc.) issued by the payroll
1529 company must be submitted directly by the payroll company to the
1530 Department or the eligible auditor;

1531

1532 12. Disclosure of related persons or related members as such
1533 terms are defined in O.C.G.A. § 48-7-28.3. Disclosure of the total
1534 value of goods and services provided by related parties to the pro-
1535 duction company for the project as well as a breakdown of all such
1536 related party transactions. All transactions with related persons or
1537 related members must be in accordance with an "arm's length"
1538 standard and a minimum of 3 comparison bids and/or studio rate
1539 cards will be requested;

1540

1541 13. Disclosure of contracts, agreements, purchase orders or other
1542 financially binding instruments with all related persons or related
1543 members as such terms are defined in O.C.G.A. § 48-7-28.3;

1544

1545 14. Fees for the audit or the portion of the audit that will be com-
1546 pleted by the Department; and

1547

1548 15. Any other information requested by the Department.

1549

1550 **(19) Certification and Decertification of Auditors and Issuing**
1551 **of the Final Certification.**

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(a) The Department shall provide for certification and decertification of certified public accountants as eligible auditors. For purposes of this regulation, the Department will certify the accounting firm. One or more persons of such accounting firm must meet the requirements of this regulation in order for the accounting firm to be certified. When the audit is submitted to the Department, one of such persons must certify on behalf of the accounting firm that the requirements of O.C.G.A. § 48-7-40.26, this regulation, and procedures developed by the Department were completed or met. To obtain certification as an eligible auditor, an eligible certified public accounting firm shall:

1. Register with the Department and be accepted by the Department on an annual basis;

2. Maintain its registration with the Georgia State Board of Accountancy and provide documentation of such when it registers and when otherwise requested by the Department;

3. Agree to and be capable of completing audits related to O.C.G.A. § 48-7-40.26 in accordance with O.C.G.A. § 48-7-40.26 and this regulation and procedures developed by the Department;

4. Pay the Department a registration fee that the Department shall set in an amount that reflects the expenses incurred by the Department for registration, etc;

5. Post and maintain any bond that the Department establishes for each eligible auditor;

6. Successfully complete all training required by the Department

1585 and pay any applicable training fees;

1586

1587 7. In order to be an eligible auditor in 2021 and 2022, have at
1588 least two years experience in auditing ten productions certified by
1589 the Department of Economic Development with a minimum base
1590 investment of at least \$5 million for each production; and in order
1591 to be an eligible auditor for 2023 and later years, have completed all
1592 requirements in O.C.G.A. § 48-7-40.26 and this regulation; pro-
1593 vided however, if for 2023 and later years, an auditor has not previ-
1594 ously been certified by the Department or does not have at least two
1595 years experience in auditing ten productions certified by Department
1596 of Economic Development with a minimum base investment of at
1597 least \$5 million for each production, such auditor will only be eligi-
1598 ble to work on film tax credit audits where the base investment is
1599 less than \$5 million until the auditor has completed ten audits; and

1600

1601 8. Have an office in Georgia and, based on hours worked, per-
1602 form at least 90 percent of the work for the audit in Georgia.

1603

1604 (b) The Department shall decertify an eligible auditor, if such au-
1605 ditor fails to meet the conditions or comply with the provisions of
1606 subparagraph (a) of this paragraph.

1607

1608 (c) The Department may decertify an eligible auditor if such au-
1609 ditor fails to complete an audit in accordance with O.C.G.A. § 48-
1610 7-40.26 and this regulation.

1611

1612 (d) A certified eligible auditor shall at no cost to the Department:

1613

1614 1. Notify the Department of the commencement of the mandatory
1615 film tax credit audit for each audit assigned to it and complete the
1616 audit in a timely manner:

1617

- 1618 2. Submit audit workpapers and supporting documentation in the
1619 format required by the Department and provide copies of written
1620 correspondence and conversation memos with the production com-
1621 pany in the format required by the Department;
1622
- 1623 3. Submit an affidavit of independence with each audit in the for-
1624 mat required by the Department;
1625
- 1626 4. Maintain for a period of seven years after completion of each
1627 mandatory film tax credit audit copies of all records pertaining to
1628 the mandatory film tax credit audit; and shall make the records avail-
1629 able upon request from the Department;
1630
- 1631 5. Participate in periodic compliance discussion group meetings
1632 with eligible auditors and the Department;
1633
- 1634 6. Participate in administrative proceeding or legal proceedings
1635 or inquiries as required regarding the mandatory film tax credit au-
1636 dit;
1637
- 1638 7. Present and conduct themselves as a credible representative of
1639 the Department and the state to maintain the public's trust; and
1640
- 1641 8. Maintain taxpayer information and confidentiality as set forth
1642 in the American Institute of Certified Public Accountant's Code of
1643 Professional Conduct.
1644
- 1645 (e) Each audit shall:
1646
- 1647 1. Be completed in accordance with O.C.G.A. § 48-7-40.26 and
1648 this regulation and procedures developed by the Department;
1649
- 1650 2. Utilize sampling methods that the Department adopts;

1651

1652 3. Follow guidance published by the Department regarding ex-
1653 penditures incurred with related persons or related members as such
1654 terms are defined in O.C.G.A. § 48-7-28.3;

1655

1656 4. Verify each reported expenditure that is included in the audit
1657 and identify and exclude each such expenditure that does not fully
1658 meet the requirements of O.C.G.A. § 48-7-40.26 and this regula-
1659 tion;

1660

1661 5. Exclude any expenditure:

1662

1663 (i) Not submitted with the application required under paragraph
1664 (18) or with respect to any expenditure required to be submitted
1665 when requested by the Department or the eligible auditor, not sub-
1666 mitted within 60 days of such request; or

1667

1668 (ii) That was incurred after the application required under para-
1669 graph (18) of this regulation was submitted;

1670

1671 6. Not be performed by an eligible accounting entity that is not
1672 determined to be independent as provided in the American Institute
1673 of Certified Public Accountants Code of Professional Conduct with
1674 respect to the production company or any of its related persons or
1675 related members as such terms are defined in O.C.G.A. § 48-7-
1676 28.3 or as otherwise provided by the Department; and

1677

1678 7. Be submitted to the Department which shall review the audit,
1679 make adjustments as necessary, and issue a final certification to the
1680 production company.

1681

1682 (f) The Department shall:

1683

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- 1684 1. Publish and regularly update a list of all eligible auditors that
1685 the Department will select to conduct the audit required under para-
1686 graph (17) of this regulation. The production company may not
1687 choose its own auditor;
1688
- 1689 2. Publish on its website the application to be certified as an eli-
1690 gible auditor as well as all requirements related to certification and
1691 conducting an audit under this paragraph. Publish on its website the
1692 auditor registration fee and any auditor bond requirements;
1693
- 1694 3. Prepare periodic training for approving eligible auditors and
1695 conduct annual review of certification of eligible auditors;
1696
- 1697 4. Review protests of disqualified or decertified auditors;
1698
- 1699 5. Develop standardized work papers for use by the production
1700 company and eligible auditors;
1701
- 1702 6. Develop secure data file transfer protocol for the Department
1703 and eligible auditors;
1704
- 1705 7. Determine whether and when sampling methods shall be used
1706 for the audits required under paragraph (17) of this regulation, the
1707 appropriate sample method and size, and if a sampling method is
1708 used, ensure that it accurately captures a truly representative sample
1709 of all ineligible expenditures across all submitted expenditures and
1710 projects the type, rate, and amount of ineligible expenditures across
1711 all submitted expenditures;
1712
- 1713 8. Notify the production company through the production com-
1714 pany's designee, that the audit was received from the eligible audi-
1715 tor;
1716

1717 9. Perform the audit of expenditures when, due to confidentiality
1718 of information, the eligible auditor is unable to access necessary in-
1719 formation that the Department is able to access;

1720

1721 10. Review each audit conducted by an eligible auditor, conduct
1722 the portions of the audit described in subparagraph (f)9. of this par-
1723 agraph, perform additional auditing as necessary, adjust the value of
1724 the tax credit as necessary, finalize the audit, and issue the final cer-
1725 tification of the tax credit to the production company;

1726

1727 11. For an audit it conducts without an eligible auditor, complete
1728 the audit, adjust the value of the tax credit as necessary, and issue
1729 the final certification of the tax credit to the production company.

1730

1731 12. Issue final list of exceptions to the eligible auditor, if appli-
1732 cable, and the production company's designee; and

1733

1734 13. Review, evaluate, and respond to a protest by the production
1735 company.

1736

1737 (20) **Reimbursement Costs for Audit.** The production company
1738 applying for a final certification of the tax credit shall agree and be
1739 required to reimburse the Department for all costs incurred by the
1740 Department for the performance of a related audit, or any portion
1741 thereof, including for review of an audit conducted by an eligible
1742 auditor, at the time of application.

1743

1744 (a) The cost of any such audit whether conducted in whole or in
1745 part by the Department, an eligible auditor, or a combination of the
1746 two shall be borne by the production company and shall not be in-
1747 cluded as an expenditure claimed under the film tax credit.

1748

1749 1. The cost of the audit depends on the production company's

1750 audit selection of either an audit performed by the Department or an
1751 audit performed in part by an eligible auditor selected by the Depart-
1752 ment. The cost for a mandatory film tax credit audit performed by
1753 the Department will be as published on the Department's website. If
1754 a portion of the film tax credit audit is performed by an eligible au-
1755 ditor selected by the Department, the Department fees will be re-
1756 duced. Once the eligible auditor is selected, such auditor shall con-
1757 tract directly with the production company and as such any fees that
1758 are paid for services rendered by an eligible auditor are paid directly
1759 to such eligible auditor. The Department may at its discretion estab-
1760 lish fees that an eligible auditor may charge.

1761

1762 (21) **Claiming the film tax credit for projects that receive a**
1763 **final certification.** If the production company is issued final certi-
1764 fication of the film tax credit under paragraph (19) of this regulation
1765 such film tax credit shall be considered earned in the taxable year in
1766 which it is issued final certification. For a production company to
1767 claim the film tax credit for a project that has received a final certi-
1768 fication, the production company must complete the appropriate in-
1769 come tax credit schedule on their Georgia income tax return even if
1770 the film tax credit is sold or transferred. No Form IT-FC "Film Tax
1771 Credit" is required. The production company may elect to use their
1772 excess film tax credit against withholding as provided in subpara-
1773 graph (10)(b) of this regulation.

1774

1775 (22) **Carry forward for projects that receive a final certifica-**
1776 **tion.** In no event shall the amount of film tax credit for a taxable
1777 year exceed the production company's income tax liability. For a
1778 project that has been issued a final certification under paragraph (19)
1779 of this regulation any unused film tax credit, for the production com-
1780 pany or any transferees, shall be allowed to be carried forward for
1781 ~~three~~ the number of years provided in O.C.G.A. § 48-7-40.26 from
1782 the close of the taxable year in which the film tax credit was issued

1783 its final certification. Film tax credits may not be carried back and
1784 applied against prior year's income tax liability.

1785

1786 (23) **No Recapture for Transferee.** The Department shall not
1787 recapture the film tax credit from the transferee if the film tax credit
1788 was issued a valid final certification under paragraph (19) of this
1789 regulation.

1790

1791 (24) **Mandatory Film Tax Credit Audit Due Process.** The pro-
1792 duction company must protest under O.C.G.A. § 48-2-46 or file an
1793 appeal with the tribunal or superior court within 30 days of the issu-
1794 ance of the final certification. If protested under O.C.G.A. § 48-2-
1795 46, any final determination can be appealed with the tribunal or su-
1796 perior court.

1797

1798 (25) **Not applicable to Qualified Interactive Entertainment**
1799 **Production Companies.** Paragraphs (17) through (24) of this regu-
1800 lation shall not apply to qualified interactive entertainment produc-
1801 tion companies.

1802

1803 (26) **Effective Date.** This regulation as amended shall become
1804 effective on January 1, ~~2024~~2025.

1805

1806 Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.26.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.51 Quality Jobs Tax Credit

The purpose of proposed Rule 560-7-8-.51 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 482 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (2) provides the definitions.
- Paragraph (7) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (12) provides the effective date of the regulation.

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 560-7-8
RETURNS AND COLLECTIONS**

TABLE OF CONTENTS

560-7-8-.51 Quality Jobs Tax Credit

560-7-8-.51 Quality Jobs Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the quality jobs tax credit under O.C.G.A. § 48-7-40.17.

(2) **Definitions.** As used in this regulation:

(a) **County average wage.** The term "county average wage" means the average wage of the county in which a new quality job is located as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor as specified in this regulation. For purposes of this definition, wages means the total dollars paid during the year to an employee, including but not limited to bonuses, incentive pay, and deductions from gross pay. As such, contributions by an employee to 401(k) plans, cafeteria plans, etc. shall be included in determining the wages. Wages does not mean contributions made by employers on

34 behalf of employees to health insurance, retirement, or any other
35 benefit program.

36
37 1. For all purposes of this regulation, bonuses shall be treated as
38 being paid ratably during the months for which the job existed dur-
39 ing the taxable year in which the bonus was paid.

40
41 (b) **New quality job.** The term "new quality job" means employ-
42 ment for an individual located in this state which:

43
44 1. Has a regular work week of thirty (30) hours or more;

45
46 2. Is not a job that is or was already located in Georgia regardless
47 of which taxpayer the individual performed services for;

48
49 3. Pays at or above 110 percent of the county average wage. For
50 purposes of determining the 110% requirement in years one through
51 seven, the job must pay at or above 110% of the county average
52 wage as reported in the most recent annual issue of the Georgia Em-
53 ployment and Wages Averages Report of the Department of Labor
54 that is available as of the last day of the tax year in which the tax-
55 payer first elected jobs to qualify as new quality jobs; thus the 110%
56 county average wage threshold remains constant over the life of the
57 credit; and

58
59 4. For a taxpayer that initially claimed the credit in a taxable year
60 beginning before January 1, 2012, the job has no predetermined end
61 date.

62
63 (c) **Qualified investment property.** The term "qualified invest-
64 ment property" means all real and personal property purchased or
65 acquired by a taxpayer for use in a qualified project, including, but
66 not limited to, amounts expended on land acquisition,

67 improvements, buildings, building improvements, and any personal
68 property to be used in the facility or facilities. Any lease for a period
69 of three years or longer of any real or personal property used in a
70 new or expanded facility or facilities which would otherwise consti-
71 tute qualified investment property shall be treated as the purchase or
72 acquisition thereof by the lessee. The taxpayer may treat the full
73 value of the leased property as qualified investment property in the
74 year in which the lease becomes binding on the lessor and the tax-
75 payer.

76
77 (d) **Qualified investment property requirement.** The term
78 "qualified investment property requirement" means the requirement
79 that a minimum of \$2.5 million in qualified investment property will
80 have been purchased or acquired by the taxpayer to be used with
81 respect to a qualified project. Such qualified investment property
82 must be placed in service by the end of the two-year period specified
83 in subparagraph (4)(b) of this regulation.

84
85 (e) **Qualified project.** The term "qualified project" means a pro-
86 ject which meets the qualified investment property requirement and
87 which involves the lease or construction of one or more new facili-
88 ties in this state or the expansion of one or more existing facilities in
89 this state. For purposes of this definition, the term "facilities" means
90 all facilities comprising a single project, including noncontiguous
91 parcels of land, improvements to such land, buildings, building im-
92 provements, and any personal property that is used in the facility or
93 facilities.

94
95 (f) **Project.** The term "project" is defined in Department of Rev-
96 enue Regulation 560-7-8-.37.

97
98 (g) **Rural County.** The term "rural county" means a county that
99 has a population of less than 50,000 with 10 percent or more of such

100 population living in poverty based upon the most recent, reliable,
101 and applicable data published by the United States Bureau of the
102 Census. On or before December 31, of each year, the Commissioner
103 of the Department of Community Affairs shall publish a list of such
104 counties.

105
106 (h) **Taxpayer.** For a taxpayer that initially qualifies to claim the
107 credit in a taxable year beginning on or after January 1, 2016, the
108 term "taxpayer" means any person required by law to file a return or
109 to pay taxes, except that any taxpayer may elect to consider the jobs
110 within its disregarded entities, as defined in the Internal Revenue
111 Code, for purposes of calculating the number of new quality jobs
112 created by the taxpayer. Such election shall be irrevocable and must
113 be made on the initial qualifying return (on Form IT-QJ) or within
114 one year of the earlier of the date the initial qualifying return was
115 filed or the date such return was due, including extensions. In the
116 event such election is made, such disregarded entities shall not be
117 separately eligible for the credit. Organizations exempt from tax
118 pursuant to O.C.G.A. § 48-7-25 shall be defined as "taxpayers" only
119 to the extent that a trade or business operated by such organization
120 generates unrelated business income as defined in Section 512 of the
121 Internal Revenue Code; for such organizations, eligibility for the
122 credit are based only on the projects and investments, which are re-
123 lated primarily to such trade or business, and the jobs that qualify
124 solely based on such trade or business.

125
126 (3) **Transferred jobs do not qualify.** New quality jobs must be
127 new to the state of Georgia. Jobs that are transferred from other
128 Georgia locations of the taxpayer, or from other Georgia locations
129 of an affiliate of the taxpayer, would not be jobs that are new to the
130 state of Georgia. However, an employee in a new quality job may
131 be employed at a temporary location in this state pending comple-
132 tion of construction or renovation work.

(4) **Establishing eligibility for the credit.**

(a) A taxpayer must establish new quality jobs or relocate new quality jobs in a taxable year that begins on or after January 1, 2009. If the taxpayer first withholds wages for new quality jobs in this state (pursuant to Code Section 48-7-101) on a date in a taxable year beginning before January 1, 2017, the taxpayer is required to employ at least fifty (50) persons in new quality jobs within one year from the first date on which the taxpayer withholds wages for new quality jobs in this state (pursuant to Code Section 48-7-101). For purposes of determining the start of such one-year period, the taxpayer shall elect the month in which they want jobs to qualify as new quality jobs. When the number of new quality jobs in a particular month, during such one-year period, exceeds the monthly average of new quality jobs that existed in the prior twelve-month period by fifty (50), such requirement shall be met. Taxpayers who were not located in Georgia during the prior twelve-month period shall use a prior twelve-month period average of zero.

1. For purposes of such prior twelve-month determination:

(i) The number of new quality jobs for each month in such period shall be computed by determining the number of jobs that would have met the definition of new quality jobs (except for the requirement that the job be new to Georgia) even if a portion of such prior twelve-month period occurs before the tax year that begins on or after January 1, 2009; and

(ii) For purposes of determining the 110% requirement for any months that occurred in the prior taxable year, the job must have paid at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages

166 Averages Report of the Department of Labor that is available as of
167 the last day of the prior taxable year.

168

169 2. Example: A calendar year taxpayer elects to have jobs qualify
170 as new quality jobs in July of 2009. The average number of new
171 quality jobs from July 2008 until June 2009 is 89. In August of 2009
172 the taxpayer has 140 new quality jobs and therefore meets the 50
173 new quality jobs requirement ($140 - 89 = 51$). Accordingly, the tax-
174 payer may claim the credit in the tax year ending 12/31/09.

175

176 (b) Except as provided in subparagraphs (4)(c) and (4)(d) of this
177 regulation if the taxpayer first withholds wages for new quality jobs
178 on a date in a taxable year beginning on or after January 1, 2017, the
179 taxpayer is required to employ at least fifty (50) persons in new qual-
180 ity jobs within two years from the first date on which the taxpayer
181 withholds wages for new quality jobs in this state (pursuant to Code
182 Section 48-7-101). For purposes of determining the start of such
183 two-year period, the taxpayer shall elect the month in which they
184 want jobs to qualify as new quality jobs. When the number of new
185 quality jobs in a particular month, during such two-year period, ex-
186 ceeds the monthly average of new quality jobs that existed in the
187 prior twelve-month period prior to the start of the two-year period
188 by fifty (50), such requirement shall be met. Taxpayers who were
189 not located in Georgia during the prior twelve-month period shall
190 use a prior twelve-month period average of zero.

191

192 1. For purposes of such prior twelve-month determination:

193

194 (i) The number of new quality jobs for each month in such period
195 shall be computed by determining the number of jobs that would
196 have met the definition of new quality jobs (except for the require-
197 ment that the job be new to Georgia) even if a portion of such prior
198 twelve-month period occurs before the tax year that begins on or

199 after January 1, 2017; and

200

201 (ii) For purposes of determining the 110% requirement for any
202 months that occurred in the prior taxable year, the job must have
203 paid at or above 110% of the county average wage as reported in the
204 most recent annual issue of the Georgia Employment and Wages
205 Averages Report of the Department of Labor that is available as of
206 the last day of the prior taxable year.

207

208 2. Example: A calendar year taxpayer elects to have jobs qualify
209 as new quality jobs in January of 2017. The average number of new
210 quality jobs from January 2016 until December 2016 is 109. In Au-
211 gust of 2018 the taxpayer has 160 new quality jobs and therefore
212 meets the 50 new quality jobs requirement ($160 - 109 = 51$). Accord-
213 ingly, the taxpayer may claim the credit in the tax year ending
214 12/31/2018.

215

216 (c) If the taxpayer first withholds wages for new quality jobs on
217 a date in a taxable year beginning on or after January 1, 2020, the
218 taxpayer is only required to employ at least ten (10) persons in new
219 quality jobs within a single rural county within one year from the
220 first date on which the taxpayer withholds wages for new quality
221 jobs in this state (pursuant to Code Section 48-7-101), provided that
222 such county is designated as a tier 1 county by the Commissioner of
223 Community Affairs in accordance with Code Section 48-7-40. For
224 purposes of determining the start of such one-year period, the tax-
225 payer shall elect the month in which they want jobs to qualify as
226 new quality jobs. When the number of new quality jobs in a partic-
227 ular month, during such one-year period, exceeds the monthly aver-
228 age of new quality jobs that existed in the prior twelve-month period
229 by ten (10), such requirement shall be met. Taxpayers who were not
230 located in Georgia during the prior twelve-month period shall use a
231 prior twelve-month period average of zero.

1. For purposes of such prior twelve-month determination:

(i) The number of new quality jobs for each month in such period shall be computed by determining the number of jobs that would have met the definition of new quality jobs (except for the requirement that the job be new to Georgia) even if a portion of such prior twelve-month period occurs before the tax year that begins on or after January 1, 2020; and

(ii) For purposes of determining the 110% requirement for any months that occurred in the prior taxable year, the job must have paid at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the prior taxable year.

2. Example: A calendar year taxpayer elects to have jobs qualify as new quality jobs in July of 2020. The average number of new quality jobs from July 2019 until June 2020 is 60. In August of 2020 the taxpayer has 71 new quality jobs in a rural county that is in a tier 1 county and therefore meets the 10 new quality jobs requirement ($71 - 60 = 11$) for a rural county located in a tier 1 county. Accordingly, the taxpayer may claim the credit in the tax year ending 12/31/2020.

(d) If the taxpayer first withholds wages for new quality jobs on a date in a taxable year beginning on or after January 1, 2020, the taxpayer is only required to employ at least twenty-five (25) persons in new quality jobs within a single rural county within one year from the first date on which the taxpayer withholds wages for new quality jobs in this state (pursuant to Code Section 48-7-101), provided that such county is designated as a tier 2 county by the Commissioner of

Community Affairs in accordance with Code Section 48-7-40. For purposes of determining the start of such one-year period, the taxpayer shall elect the month in which they want jobs to qualify as new quality jobs. When the number of new quality jobs in a particular month, during such one-year period, exceeds the monthly average of new quality jobs that existed in the prior twelve-month period by twenty-five (25), such requirement shall be met. Taxpayers who were not located in Georgia during the prior twelve-month period shall use a prior twelve-month period average of zero.

1. For purposes of such prior twelve-month determination:

(i) The number of new quality jobs for each month in such period shall be computed by determining the number of jobs that would have met the definition of new quality jobs (except for the requirement that the job be new to Georgia) even if a portion of such prior twelve-month period occurs before the tax year that begins on or after January 1, 2020; and

(ii) For purposes of determining the 110% requirement for any months that occurred in the prior taxable year, the job must have paid at or above 110% of the county average wage as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the prior taxable year.

2. Example: A calendar year taxpayer elects to have jobs qualify as new quality jobs in July of 2020. The average number of new quality jobs from July 2019 until June 2020 is 50. In August of 2020 the taxpayer has 76 new quality jobs in a rural county located in a tier 2 county and therefore meets the 25 new quality jobs requirement ($76 - 50 = 26$) in a rural county located in a tier 2 county. Accordingly, the taxpayer may claim the credit in the tax year ending

298 12/31/2020.

299

300 (e) In the taxable year in which the taxpayer first employs the
301 required number of persons in new quality jobs under this para-
302 graph, the taxpayer shall be entitled to claim the quality jobs tax
303 credit even if the average number of new quality jobs is less than the
304 required number of new quality jobs under this paragraph for such
305 taxable year. However, in subsequent taxable years the average
306 number of new quality jobs must be at least the required number of
307 new quality jobs under this paragraph for a taxable year in order for
308 the new quality jobs to be claimed. If such required average number
309 of new quality jobs requirement is not met, the taxpayer shall forfeit
310 the right to claim the credit for such jobs in such taxable year. How-
311 ever, if in a subsequent taxable year such required average number
312 of new quality jobs requirement is met, the taxpayer may continue
313 taking the credit and shall resume the credit schedule from when the
314 credit was initially claimed.

315

316 (f) Once the taxpayer has determined under subparagraph (4)(a),
317 (4)(b), (4)(c), or (4)(d) of this regulation that they qualify for the
318 credit, the new quality jobs are determined for a taxable year by
319 computing the average number of new quality jobs subject to Geor-
320 gia income tax withholding for the taxable year and subtracting from
321 this number the average number of new quality jobs in the prior tax-
322 able year.

323

324 1. These averages shall be determined by the following method:

325

326 (i) For each month of the taxable year, count the total number of
327 new quality jobs that are subject to Georgia income tax withholding
328 as of the last payroll period of the month (each job must individually
329 meet the definition of new quality job as provided in subparagraphs
330 (2)(b)1., 3., and 4. of this regulation and cannot have been, for any

time before the taxpayer first elects to have jobs qualify as new quality jobs, a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for).

(ii) Add the monthly totals of new quality jobs (each job must individually meet the definition of new quality job as provided in subparagraphs (2)(b)1., 3., and 4. of this regulation and cannot have been, for any time before the taxpayer first elects to have jobs qualify as new quality jobs, a job that is or was already located in Georgia regardless of which taxpayer the individual performed services for).

(iii) Divide the results by the number of months in the taxable year.

2. However, for the initial year the new quality jobs credit is claimed (year one) the increase in new quality jobs is determined for such taxable year by computing the average number of new quality jobs subject to Georgia income tax withholding for the taxable year in the manner specified above and subtracting from this number the average number of new quality jobs in the prior twelve month period as determined in subparagraph (4)(a), (4)(b), (4)(c), or (4)(d) of this regulation.

3. Example: Taxpayer elects to have jobs qualify as new quality jobs in July of 2009. The prior twelve-month period average number of jobs from July 2008 until June 2009 is 89. In August of 2009 the taxpayer meets the 50 new quality jobs requirement because they have 140 jobs ($140 - 89 = 51$) so the tax year ending 12/31/09 will be the taxpayer's year one. Assume the average number of new quality jobs from January 2009 to December 2009 is 132. The taxpayer is eligible to claim credits for 43 new quality jobs ($132 - 89$) in year one. Assume the average number of new quality jobs from January 2010

364 to December 2010 is 180. The taxpayer is eligible to claim 48 new
365 quality jobs in year two (180-132) and the 43 new quality jobs main-
366 tained from year one.

367

368 4. Example: Taxpayer elects to have jobs qualify as new quality
369 jobs in January of 2017. The prior twelve-month period average
370 number of jobs from January 2016 until December 2016 is 109. In
371 August of 2018 the taxpayer meets the 50 new quality jobs require-
372 ment because they have 160 jobs (160-109=51) so the tax year end-
373 ing 12/31/2018 will be the taxpayer's year one. Assume the average
374 number of new quality jobs from January 2018 to December 2018
375 is 158. The taxpayer is eligible to claim credits for 49 new quality
376 jobs (158-109) in year one. Assume the average number of new
377 quality jobs from January 2019 to December 2019 is 240. The tax-
378 payer is eligible to claim 82 new quality jobs in year two (240-158)
379 and 49 new quality jobs maintained from year one.

380

381 (g) Other credits.

382

383 1. The taxpayer must elect not to receive the tax credits provided
384 for by Code Sections 48-7-40 and 48-7-40.1 for such jobs. This
385 election is deemed to have been made when the taxpayer claims the
386 quality jobs tax credit on its state income tax return. Taxpayers may
387 not alternatively claim the jobs credit provided by Code Sections 48-
388 7-40 and 48-7-40.1 and the quality jobs tax credit with respect to
389 such jobs. These credits are not interchangeable. Jobs for which the
390 job tax credit is claimed under Code Sections 48-7-40 and 48-7-
391 40.1 shall be excluded from all calculations for the quality jobs tax
392 credit under this regulation.

393

394 2. The taxpayer must elect not to receive the tax credits provided
395 for by Code Sections 48-7-40.2, 48-7-40.3, 48-7-40.4, 48-7-
396 40.7, 48-7-40.8, and 48-7-40.9 for such project. This election is

deemed to have been made when the taxpayer claims the quality jobs tax credit on its state income tax return. Taxpayers cannot alternatively elect to claim the investment tax credit or the optional investment tax credit in one year and the quality jobs tax credit in the next year for a given project. These credits are not interchangeable. Taxpayers may elect to take only one of the investment, optional investment, or quality jobs tax credit for a given project.

(5) Credit amount per new quality job created in the same tax year. A taxpayer that has established eligibility for the quality jobs tax credit shall receive the same credit amount for each new quality job created in the same tax year. The credit amount is as follows and is based on a comparison of the average weekly wage for all new quality jobs in both prior and subsequent seven-year periods (determined below in subparagraph (5)(c) of this regulation) with the county average wage, as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the taxable year in which the new quality jobs were created:

Average Weekly Wage/County Average Wage	Credit Amount
110% but less than 120%	\$2,500
120% but less than 150%	\$3,000
150% but less than 175%	\$4,000
175% but less than 200%	\$4,500
200% or more	\$5,000

(a) Credit for new quality jobs created in year one may be claimed in year one and may also be claimed for each of the four immediately succeeding taxable years, provided the new quality jobs are maintained in each year, and provided that the average number of new quality jobs required in subparagraph (4)(e) of this

430 regulation are maintained in each year. The credit amount for new
431 quality jobs created in the same tax year must be recalculated each
432 year for the four immediately succeeding taxable years using the ap-
433 plicable county average wage (from the year in which the new qual-
434 ity jobs were created).

435
436 (b) **Credit amount for additional new quality jobs created in**
437 **years two through seven.** Additional new quality jobs means those
438 new quality jobs created in years two through seven that increase the
439 monthly full-time employment average for such years above the
440 monthly full-time employment average for year one. The credit
441 amount for additional new quality jobs created in years two through
442 seven shall be determined by using the applicable county average
443 wage from the year in which the additional new quality jobs are cre-
444 ated.

445
446 (c) The average weekly wage for all new quality jobs in a taxable
447 year shall be calculated using the following method:

448
449 1. Aggregate the actual wages paid for all new quality jobs in that
450 taxable year.

451
452 2. Divide the result by the average number of all new quality
453 jobs.

454
455 3. Divide the result by 52 to arrive at the average weekly wage
456 paid to each new quality job.

457
458 (d) The average weekly wage shall then be compared to the
459 county average wage from the year in which the new quality jobs
460 were deemed created.

461
462 (e) Example: Taxpayer creates 50 new quality jobs in year one.

The average weekly wage paid for each of these 50 jobs is \$725. The county average wage is \$652. Taxpayer creates 20 additional new quality jobs in year two which results in 70 new quality jobs that are eligible for the credit. The average weekly wage paid for each of these 70 jobs is \$785. The county average wage for year two is \$660.

1. Year One: Since the taxpayer's "average weekly wage/county average wage" for year one is 111% ($\$725/\652), which is between 110% and 120% of the county average wage, the taxpayer will be eligible to claim a credit of \$2,500 for each of the 50 new quality jobs. The taxpayer's credit amount for year one is \$125,000.

2. Year Two:

(i) Jobs created in year one: The taxpayer will be eligible to claim a credit amount of \$3,000 for the year one 50 new quality jobs deemed maintained in year two since the "average weekly wage/county average wage" is 120% ($\$785/\652) ($\text{credit} = \$3,000 \times 50 \text{ new quality jobs} = \$150,000$).

(ii) Jobs created in year two: Since the taxpayer's "average weekly wage/county average wage" for year two is 119% ($\$785/\660), which is between 110% and 120% of the county average wage, the taxpayer will be eligible to claim a credit of \$2,500 for each of the 20 new quality jobs deemed created in year two ($\text{credit} = \$2,500 \times 20 \text{ new quality jobs} = \$50,000$).

(iii) The taxpayer's total credit amount for year two is \$150,000 + \$50,000 = \$200,000.

(f) Credit amount for a taxpayer with new quality jobs in more than one county. If a taxpayer qualifies for the quality jobs

tax credit and has new quality jobs located in different counties, for each year jobs are created, a weighted county average wage for the counties must be computed to calculate the credit amount. If a taxpayer creates a subsequent seven-year job creation period under paragraph (8) of this regulation and the new qualified project is located in a different county then the previous seven-year job creation period counties, all new quality jobs created in such subsequent seven-year job creation period shall be treated as being created in such different county and as such this subparagraph shall not apply. First, the average wage for each county, as reported in the most recent annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor that is available as of the last day of the taxable year in which the new quality jobs were deemed created, must be multiplied by a ratio. The numerator of the ratio consists of the total new quality jobs in the county created in such year and the denominator of the ratio consists of the total new quality jobs created in such year in all counties. Once this multiplication is done for all counties, the resulting amounts should be added together to arrive at the weighted county average wage for the counties. The weighted county average wage for each year jobs are created is compared to the average weekly wage for all new quality jobs to determine the taxpayer's credit amount in the same manner as provided in paragraph (5) of this regulation. Such weighted county average wage is not used to determine if the job is a new quality job.

(6) Computation of the quality jobs tax credit based on twelve-month periods only. In years two through seven-, a taxpayer must compute increases and decreases in full-time jobs on the basis of twelve month periods only, even when the taxpayer has taxable years that are not equal to twelve months. This may cause the quality jobs tax credit calculation period to be different from the tax year of the taxpayer.

529 **(7) Claiming the credit.** The quality jobs tax credit shall be
530 claimed on an income tax return for the first taxable year in which
531 the taxpayer first becomes eligible for the credit. The quality jobs
532 tax credit must be claimed within one year of the earlier of the date
533 the original return was filed or the date such return was due, includ-
534 ing extensions.

535
536 (a) Income tax. For a taxpayer to claim the quality jobs tax credit,
537 the taxpayer must submit Form IT-QJ and a listing of new quality
538 jobs employees, which includes the name of the employee, the last
539 four digits of the employee's social security number, wages, and any
540 other information that the Commissioner may request, with the tax-
541 payer's Georgia income tax return. A software program's Form IT-
542 QJ that is electronically filed with the Georgia income tax return in
543 the manner specified by the Department satisfies this requirement.

544
545 (b) Withholding tax. A taxpayer may claim any excess quality
546 jobs tax credit against its withholding tax liability. The withholding
547 tax benefit may only be applied against the withholding tax account
548 used by the taxpayer for payroll purposes. Unless an election is
549 made pursuant to subparagraph (2)(h) of this regulation, in the event
550 the entity that earned the credit is a single member limited liability
551 company that is disregarded for income tax purposes, the withhold-
552 ing tax benefit may only be applied against the withholding tax lia-
553 bility that is attributable to wages paid by the single member limited
554 liability company. A taxpayer must notify the commissioner ~~each~~
555 ~~year of their~~, in the manner specified in subparagraph (7)(b)1., be-
556 low, for any tax year for which they are making an irrevocable elec-
557 tion to take all or a part of the credit against the quarterly or monthly
558 withholding tax payments for such taxpayer. When this election is
559 made, the excess quality jobs tax credit will not pass through to the
560 shareholders, partners, or members of the taxpayer if the taxpayer is
561 a pass-through entity.

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1. Notice of Intent. To claim any excess tax credit not used on the income tax return against the taxpayer's withholding tax liability, the taxpayer must file Revenue Form IT-WH through the Georgia Tax Center within the three-year statute of limitations period ~~thirty (30) days~~ after the due date of the Georgia income tax return (including extensions) ~~or within thirty (30) days after the filing of a timely filed Georgia income tax return, whichever occurs first~~. Failure to file this form as provided in this subparagraph will result in disallowance of the withholding tax benefit. Such irrevocable election may only be made one time with respect to each tax year for which the credit is claimed, for all or part of the excess tax credit remaining at the time of the election. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year. If an election is made pursuant to subparagraph (2)(h) of this regulation, the taxpayer shall each year include an attachment showing the amounts they want to use against the withholding liabilities of the taxpayer and each of its qualifying disregarded entities.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (7)(b)1. of this regulation is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the taxpayer stating the tax credit amount which may be applied against withholding and when the taxpayer may begin to claim the tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments.

595
596 **(8) Subsequent seven-year job creation period.** For taxable
597 years beginning on or after January 1, 2017, a taxpayer may create
598 a subsequent seven-year job creation period for a new qualified pro-
599 ject in Georgia. In order to create the subsequent seven-year job cre-
600 ation period, the taxpayer must complete the creation of a qualified
601 project in a taxable year beginning on or after January 1, 2017 and
602 create 50 or more new quality jobs above its single previous high
603 yearly average number of new quality jobs during any prior seven-
604 year job creation period, at the site or sites of the qualified project
605 or the facility or facilities resulting therefrom. A subsequent seven-
606 year job creation period is subject to all the requirements
607 of O.C.G.A. § 48-7-40.17 and this regulation.

608
609 (a) A taxpayer that begins a subsequent seven-year job creation
610 period must notify the Department by completing the applicable sec-
611 tions regarding a subsequent seven-year job creation period on Form
612 IT-QJ.

613
614 (b) If a taxpayer begins a subsequent seven-year job creation pe-
615 riod, existing new quality jobs generated under previous seven-year
616 job creation periods shall continue to be eligible for the quality jobs
617 tax credit. New quality jobs created under a subsequent seven-year
618 job creation period shall count toward the subsequent period. No
619 new quality jobs may be created under previous periods of eligibility
620 after a subsequent seven-year job creation period of eligibility has
621 begun. New quality jobs created in a subsequent seven-year job cre-
622 ation period shall not be counted as additional new quality jobs un-
623 der a previous seven-year job creation period. A taxpayer must
624 maintain the number of new quality jobs created in previous seven-
625 year job creation periods in order to claim new quality jobs in sub-
626 sequent seven-year job creation periods. Therefore, to determine the
627 number of new quality jobs in a particular year that are attributable

to each seven-year job creation period, the taxpayer shall begin with the first seven-year job creation period and attribute to it new quality jobs up to the single high yearly average number of new quality jobs for that seven-year job creation period. Continue in that manner by attributing the remainder of new quality jobs to each subsequent seven-year job creation period from the oldest to the newest seven-year job creation period, up to the single high yearly average number of new quality jobs for each seven-year job creation period. The remainder of new quality jobs after all previous seven-year creation periods have been thus attributed shall be attributed to the most recent seven-year job creation period.

(c) A taxpayer may create more than one subsequent seven-year job creation period.

(d) If at the time a taxpayer begins a subsequent seven-year job creation period, the taxpayer had a year or years in the prior seven-year job creation period where the number of new quality jobs were below the single high yearly average number of new quality jobs, the taxpayer shall be allowed to make an irrevocable election to use the average number of new quality jobs for the completed years in the prior seven-year job creation period instead of the single high yearly average number of new quality jobs for all purposes under paragraph (8) of this regulation. Such election must be made on the initial qualifying return (on Form IT-QJ) or within one year of the earlier of the date the initial qualifying return was filed or the date such return was due, including extensions. If such election is made, the number of new quality jobs in the years subsequent to the completed years for the prior seven-year job creation period shall be deemed to not exceed the average number of new quality jobs for the completed years in the prior seven-year job creation period. New quality jobs over such average number shall be attributed to the subsequent seven-year job creation period as provided in paragraph (8)

661 of this regulation.

662

663 (e) For purposes of computing the credit amount per new quality
664 job as provided in paragraph (5) of this regulation, the taxpayer shall
665 compute the average weekly wage for all new quality jobs including
666 those in any prior seven-year job creation period.

667

668 (f) Form IT-QJ includes an example of how to attribute new qual-
669 ity jobs when a taxpayer begins a subsequent seven-year job creation
670 period.

671

672 (9) **Carry forward.** Any quality jobs tax credit which is claimed
673 but not used in a taxable year may be carried forward for 10 years
674 from the close of the taxable year in which the new quality jobs were
675 created. For example, quality job tax credits created by an employ-
676 ment increase in year one, but not used in year one, may be carried
677 forward to years two through eleven.

678

679 (10) **Pass-through entities.** When the taxpayer is a pass-through
680 entity, and has no income tax liability of its own, the tax credits will
681 pass to its members, shareholders, or partners based on the year end-
682 ing profit/loss percentage and the limitations of this regulation. The
683 credit forms will initially be filed with the tax return of the taxpayer
684 to establish the amount of the credit available for pass through. The
685 credit will then pass through to its shareholders, members, or part-
686 ners to be applied against the tax liability on their income tax returns.
687 The shareholders, members, or partners may not claim any excess
688 quality jobs tax credit against their withholding tax liabilities. The
689 credits are available for use as a credit by the shareholders, mem-
690 bers, or partners for their tax year in which the income tax year of
691 the pass-through entity ends. For example: A partnership earns the
692 credit for its tax year ending January 31, 2010. The partnership
693 passes the credit to a calendar year partner. The credit is available

694 for use by the partner beginning with the calendar 2010 tax year.
695

696 (11) **No waiver for a job already located in Georgia.** Since the
697 definition of new quality job in O.C.G.A. § 48-7-40.17 requires that
698 the job not be a job that is or was already located in Georgia, regard-
699 less of which taxpayer the individual performed services for, the
700 Commissioner has no authority to grant a waiver of this require-
701 ment.
702

703 (12) **Effective Date.** This regulation as amended shall be appli-
704 cable to taxable years beginning on or after January 1, 2025. How-
705 ever, subparagraph (2)(h) of this regulation shall be applicable to
706 taxable years beginning on or after January 1, 2023. Taxable years
707 beginning before January 1, 2025 will be governed by the regula-
708 tions of Chapter 560-7 as they exist before January 1, 2025 in the
709 same manner as if the amendments set forth in this regulation had
710 not been promulgated, except that subparagraph (2)(h) of this regu-
711 lation as amended will still govern for taxable years beginning on or
712 after January 1, 2023.
713

714
715 Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.17.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.59 Postproduction Film Tax Credit

The purpose of proposed Rule 560-7-8-.59 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (14) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (15) provides the carryforward period of the credit.
- Paragraph (18) provides the rules for selling or transferring the credit.
- Paragraph (19) provides the procedures of selling or transferring the credit.
- Paragraph (21) provides the effective date of the regulation.

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 560-7-8
RETURNS AND COLLECTIONS**

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560-7-8-.59 Postproduction Film Tax Credit

560-7-8-.59 Postproduction Film Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the postproduction film tax credit under O.C.G.A. § 48-7-40.26A.

(2) **Definitions.** As used in this regulation, the terms "affiliates", "multimarket commercial distribution", "qualified postproduction activities", "qualified production", and "total aggregate payroll" have the same meaning as in O.C.G.A. § 48-7-40.26A.

(a) "Postproduction Company" means a company that:

1. Maintains a business location physically located in Georgia;
2. Has total aggregate payroll of \$250,000 or more for employees working within the state in the taxable year that the postproduction company claims the postproduction film tax credit; or for a

34 postproduction company that has incurred at least \$100,000 but less
35 than \$500,000 in qualified postproduction expenditures, has a total
36 aggregate payroll of at least \$100,000 but less than \$500,000 for
37 employees working within the state in the taxable year that the post-
38 production company claims the postproduction film tax credit.

39
40 3. Is engaged in qualified postproduction activities; and

41
42 4. Has been certified by the Department as provided in paragraph
43 (3) of this regulation.

44
45 This term shall not mean or include any form of business owned,
46 affiliated, or controlled, in whole or in part, by any company or per-
47 son which is in default on any tax obligation of the state, or a loan
48 made by the state or a loan guaranteed by the state. In the instance
49 of a work for hire in which one postproduction company hires an-
50 other postproduction company to engage in qualified postproduction
51 activities for pay, the hired postproduction company shall be con-
52 sidered a service provider for the hiring postproduction company
53 and the hiring postproduction company shall be entitled to the post-
54 production film tax credit for postproduction expenditures related to
55 the hired postproduction company only if the Department certifies
56 that the hired postproduction company is a Georgia company em-
57 ploying workers in this state and that the work on the postproduction
58 expenditures is solely in this state. In order to make such certifica-
59 tion, the postproduction company must certify on Form IT-PC that
60 the hired postproduction company is a Georgia company employing
61 workers in this state and that the work on the postproduction ex-
62 penditures is solely in this state. If the Department determines at any
63 time that the certification is not valid, then the Department shall dis-
64 allow the postproduction expenditures related to the hired postpro-
65 duction company. In the event that the hiring postproduction com-
66 pany does not qualify for the postproduction film tax credit, because

67 the hiring postproduction company does not meet the definition of a
68 postproduction company under O.C.G.A. § 48-7-40.26A and this
69 paragraph, then the hired postproduction company would be entitled
70 to the postproduction film tax credit for its qualified postproduction
71 expenditures provided it otherwise qualifies.

72
73 (b) "Work for hire" means an arrangement whereby one postpro-
74 duction company contracts with another postproduction company to
75 engage in qualified postproduction activities pursuant to a produc-
76 tion services agreement. Merely financing or providing funding to a
77 postproduction company does not make the financing/funding com-
78 pany the "hiring" postproduction company for purposes of the post-
79 production film tax credit. In the instance of co-productions, the
80 claiming company must attach a written agreement to Form IT-PFC
81 when the credit is claimed as to which party will be entitled to earn
82 and claim the tax credit. Failure to execute and attach such agree-
83 ment shall result in the loss of the postproduction film tax credit.

84
85 **(3) Certification for a Postproduction Company.**

86
87 (a) The postproduction company must electronically certify on
88 Form IT-PC to the Department of Revenue through the Georgia Tax
89 Center that:

90
91 1. The postproduction company maintains a business location
92 physically located in this state; and

93
94 2. The postproduction company has expended or intends to ex-
95 pend a total aggregate payroll of \$250,000 or more for employees
96 working within this state in the taxable year that the postproduction
97 company claims the postproduction film tax credit; or if the postpro-
98 duction company has incurred at least \$100,000 but less than
99 \$500,000 in qualified postproduction expenditures, that the

100 postproduction company has expended or intends to expend a total
101 aggregate of at least \$100,000 but less than \$500,000 for employees
102 working within this state in the taxable year that the postproduction
103 company claims the postproduction film tax credit.

104
105 (b) If the postproduction company is a disregarded entity then
106 such information should be submitted in the name of the owner of
107 the disregarded entity.

108
109 **(4) Qualified Postproduction Expenditures.** Qualified post-
110 production expenditures include postproduction expenditures in-
111 curred in this state that are directly used in qualified postproduction
112 activities, including without limitation the following: costs associ-
113 ated with photography and sound synchronization, expenditures (ex-
114 cluding license fees) incurred with Georgia companies for sound re-
115 cordings and musical compositions, lighting, and related services
116 and materials; editing and related services; rental of facilities and
117 equipment; leasing of vehicles; costs of food and lodging; digital or
118 tape editing, film processing, transfers of film to tape or digital for-
119 mat, sound mixing, computer graphics services, special effects ser-
120 vices, and animation services; total aggregate payroll; airfare, if pur-
121 chased through a Georgia travel agency or travel company; insur-
122 ance costs and bonding, if purchased through a Georgia insurance
123 agency; and other direct postproduction costs for the project in ac-
124 cordance with generally accepted entertainment industry practices.
125 This term includes postproduction expenditures for footage shot in-
126 side or outside of Georgia.

127
128 (a) Depreciation, amortization, or other expense on qualified
129 postproduction expenditures with a useful life of more than one
130 year. The costs of qualified postproduction expenditures with a use-
131 ful life of more than one year are considered "other direct costs of
132 the qualified postproduction activities in accordance with generally

133 accepted entertainment industry practices." Such costs shall be in-
134 cluded in the computation of the postproduction film tax credit for
135 the taxable year based upon the depreciation, amortization, or other
136 expense included in the computation of Georgia taxable income of
137 the postproduction company for the applicable taxable year. Such
138 depreciation, amortization, or other expense shall be prorated based
139 upon the time the asset is used in qualified postproduction activities
140 in this state. Depreciation, amortization, or other expense on ex-
141 penditures incurred before the postproduction period shall not be in-
142 cluded in the computation of the postproduction film tax credit. In
143 order to claim depreciation, amortization, or other expense, the qual-
144 ified postproduction expenditure for the asset that generated the de-
145 preciation, amortization, or other expense, must have been incurred
146 in this state as provided in subparagraph (4)(b) of this regulation.

147
148 (b) Qualified postproduction expenditures incurred in this state.
149 In order to be considered to have been incurred in this state, the fol-
150 lowing rules shall apply:

151
152 1. Qualified postproduction expenditures, which are attributable
153 to the performance of services by individuals and companies di-
154 rectly at the postproduction site in Georgia who were not employees
155 of the postproduction company, shall be attributed to Georgia in the
156 same manner as salaries as provided in subparagraph (4)(c) of this
157 regulation.

158
159 2. Except as otherwise provided in this regulation, expenditures
160 for services which are not performed at the postproduction site (such
161 as insurance, service fees paid to a payroll company including work-
162 ers compensation if the service fees include such, editing and related
163 services, digital or tape editing, film processing, transfers of film to
164 tape or digital format, sound mixing, computer graphics services,
165 special effects services, animation services, etc.) will be allowed if

the vendor is a Georgia vendor and will be attributed to Georgia if and only to the extent the service is rendered in Georgia. If the postproduction company is unable to track the cost of services rendered in Georgia, then some other reasonable method which approximates the cost of services rendered in Georgia may be used to determine the amount attributable to Georgia but such approximation will be subject to adjustment by the Department. In the event the services are subcontracted to a company that would not otherwise qualify and/or such subcontracted company renders the services outside Georgia, the expenditure for such services shall not be considered to have been incurred in this state.

3. Purchases and rentals of property. In order to include qualified postproduction expenditures for purchases and rentals of property, the property must have been used in Georgia and purchased or rented from a Georgia vendor. Purchase receipts, invoices, contracts, or other documentation shall be used to determine this.

4. Georgia Vendor. For purposes of this regulation, a Georgia vendor is a vendor that:

(i) Sells or rents property, which is regularly kept in their inventory, or provides a service not performed at the postproduction site, which is the subject of the qualified postproduction expenditure, in their ordinary course of business; and

(ii) Has a physical location in Georgia with at least one individual working at such location on a regular basis. Registering with the Georgia Secretary of State or appointing a registered agent in Georgia does not establish a physical location in Georgia.

However, a vendor that acts as a conduit to enable purchases and rentals to qualify that would not otherwise qualify shall not be

199 considered a Georgia vendor with respect to such purchases and
200 rentals.

201

202 (c) Salaries. Total aggregate payroll, as such term is used in this
203 regulation, includes bonuses, incentive pay, and other compensation
204 paid to an employee which is included in the employees Form W-2
205 "Wage and Tax Statement". Reimbursed expenses, per diems, or
206 employer paid benefits and taxes are not included in aggregate pay-
207 roll unless such amounts are included as wages, tips, or other com-
208 pensation in the employee's Form W-2 "Wage and Tax Statement".
209 For purposes of this regulation, the term "employee" means any of-
210 ficer of a corporation or any individual who, under the Internal Rev-
211 enue Service rules applicable in determining the employer-em-
212 ployee relationship, has the status of an employee. Guaranteed pay-
213 ments to partners do not qualify for the postproduction film tax
214 credit and are not included in total aggregate payroll. Except as oth-
215 erwise provided in this paragraph, if the postproduction company is
216 unable to track the actual time spent by an employee in Georgia, the
217 postproduction company may calculate the total aggregate payroll
218 in Georgia by some other reasonable method which approximates
219 the actual time spent in Georgia but such approximation will be sub-
220 ject to adjustment by the Department. For all individuals who are
221 paid a separate amount for postproduction, the amount that is in-
222 curred in Georgia shall be based on the amount paid for such period
223 and prorated based on the actual time spent in Georgia by the em-
224 ployee in such period. If the postproduction company is unable to
225 track the actual time spent by the individual in Georgia, the postpro-
226 duction company may calculate the total aggregate payroll in Geor-
227 gia by some other reasonable method which approximates the actual
228 time spent in Georgia for such period but such approximation will
229 be subject to adjustment by the Department.

230

231 (d) Fringe Benefits. The following benefits are attributed to

232 Georgia in the same manner as salaries as provided in subparagraph
233 (4)(c) of this regulation:

234

235 1. SUI (state unemployment insurance);

236

237 2. FUI (federal unemployment insurance);

238

239 3. FICA (employer portion);

240

241 4. Pension and welfare if the amounts are paid as part of pension,
242 health, and welfare plans (these would not be required to be paid to
243 a Georgia vendor);

244

245 5. Health insurance premiums if these amounts are paid as part
246 of pension, health, and welfare plans (these would not be required
247 to be paid to a Georgia vendor);

248

249 (i) Other Fringe Benefits. The following fringe benefits are at-
250 tributed to Georgia as follows:

251

252 1. Meal per diems, as set forth by United States General Services
253 Administration, if incurred in Georgia; and

254

255 2. Hotel per diems, as set forth by United States General Services
256 Administration, if incurred in Georgia.

257

258 (e) Direct use. A postproduction company may only claim quali-
259 fied postproduction expenditures that are directly used in a qualified
260 postproduction activity. In determining whether a postproduction
261 expenditure is directly used in a qualified postproduction activity,
262 the Department of Revenue will consider the proximity of the ex-
263 penditure to the activity as well as the causal relationship between
264 the expenditure and the activity.

265
266 **(5) Credit Amount.** Except as provided in paragraph (6) of this
267 regulation, a postproduction company that meets or exceeds
268 \$500,000 in qualified postproduction expenditures in a taxable year
269 as provided in O.C.G.A. § 48-7-40.26A and this regulation, shall be
270 allowed a tax credit of 20 percent of the qualified postproduction
271 expenditures; and an additional tax credit of 10 percent of the qual-
272 ified postproduction expenditures shall be allowed if the qualified
273 production expenditures under O.C.G.A. § 48-7-40.26 and upon
274 which the qualified postproduction expenditures were incurred,
275 were filmed in this state; an additional 5 percent of the qualified
276 postproduction expenditures shall be allowed if the qualified post-
277 production expenditures were incurred in a tier 1 or tier 2 county as
278 designated by the Commissioner of Community Affairs un-
279 der O.C.G.A. § 48-7-40.

280
281 **(6) Credit amount for small postproduction companies.** A
282 postproduction company that has incurred at least \$100,000 but less
283 than \$500,000 in qualified postproduction expenditures and has a
284 total aggregate payroll in this state of at least \$100,000 but less than
285 \$500,000 in a taxable year shall be allowed a tax credit of 20 percent
286 of the qualified postproduction expenditures in a taxable year.

287
288 **(7) Credit Amount Limitation.** A postproduction company's
289 credit amount shall not exceed the amounts in paragraph (5) or (6)
290 of this regulation, and for any single tax year shall not exceed the
291 postproduction company's total aggregate payroll expended to em-
292 ployees working within this state for the taxable year that the post-
293 production company claims the postproduction film tax credit. Any
294 amount in excess of this credit limit shall not be eligible for carry
295 forward to succeeding years' tax liability, nor shall such excess
296 amount be eligible for use against the postproduction company's
297 quarterly or monthly payment under O.C.G.A. § 48-7-103, nor shall

298 such excess amount be assigned, sold, or transferred to any other
299 taxpayer.

300

301 **(8) Credit Cap (not applicable to small postproduction com-**
302 **panies under paragraph (10) of this regulation).** For taxable years
303 beginning on or after January 1, 2018 and before January 1, 2023,
304 in no event shall the aggregate amount of tax credits allowed un-
305 der O.C.G.A. § 48-7-40.26A for a postproduction company exceed
306 \$10 million per tax year.

307

308 (a) The postproduction film tax credit shall not be available for
309 taxable years beginning on or after January 1, 2023.

310

311 (b) If the aggregate amount of tax credits claimed, under para-
312 graph (8) of this regulation, by postproduction companies during a
313 year is less than the aggregate annual cap applicable to such year,
314 the unclaimed portion of the aggregate annual cap shall be added to
315 the aggregate annual cap applicable to the next succeeding year or
316 years until it is fully claimed. Since a postproduction company can
317 apply for preapproval and claim the credit until the end of the three
318 year period provided in O.C.G.A. § 48-2-35, the Department will
319 add the unclaimed portion after such three year period.

320

321 1. For example, for the 2018 preapproval year the preapproval
322 and claiming can occur as late as September 15, 2023 (a corporation
323 with a taxable year that begins on December 1, 2018 and ends on
324 November 15, 2019 with an original return due date of September
325 15, 2020). The Department will add the unclaimed portion to the
326 2019 preapproval year as soon after that date as practical.

327

328 **(9) Maximum Credit Amount per Postproduction Company**
329 **and Its Affiliates which are Postproduction Companies.** The
330 maximum credit amount allowed under paragraph (8) of this

331 regulation for any postproduction company and its affiliates which
332 are postproduction companies shall not exceed 20 percent of the ag-
333 gregate amount of postproduction film tax credits available for such
334 taxable year under paragraph (8) of this regulation.
335

336 **(10) Credit Cap for small postproduction companies.** For tax-
337 able years beginning on or after January 1, 2018 and before January
338 1, 2023, in no event shall the aggregate amount of tax credits al-
339 lowed for postproduction companies that have incurred at least
340 \$100,000 but less than \$500,000 in qualified postproduction ex-
341 penditures and have a total aggregate payroll in this state of at least
342 \$100,000 but less than \$500,000 in a taxable year, exceed \$1 million
343 per taxable year. The credit cap under this paragraph is separate
344 from and shall not be included in the aggregate credit cap under par-
345 agraph (8) of this regulation.
346

347 (a) The postproduction film tax credit for small postproduction
348 companies shall not be available for taxable years beginning on or
349 after January 1, 2023.
350

351 **(11) Preapproval for Postproduction Companies (not appli-**
352 **cable to Small Postproduction Companies under Paragraph (12)**
353 **of this Regulation).** Any postproduction company seeking preap-
354 proval to claim tax credits under paragraph (8) of this regulation,
355 must submit the appropriate forms to the Department through the
356 Georgia Tax Center as provided in this subparagraph.
357

358 (a) Application. A postproduction company seeking preapproval
359 to claim the tax credits under paragraph (8) of this regulation must
360 electronically submit Form IT-PC-AP through the Georgia Tax Cen-
361 ter. A postproduction company that has submitted its Form IT-PC
362 for certification by the Department or that submits Form IT-PC on
363 the same day as Form IT-PC-AP is submitted may request

preapproval from the Department before meeting the requirements of the postproduction film tax credit. Such postproduction company must estimate their credit amounts on Form IT-PC-AP. The amount of tax credit claimed by the postproduction company on the postproduction company's applicable Georgia income tax return must be based on the actual postproduction film tax credit earned under O.C.G.A. § 48-7-40.26A and this regulation and cannot exceed the amount preapproved. If the postproduction company is preapproved for an amount that exceeds the amount that is calculated using the actual numbers when the return is filed, the excess preapproved amount cannot be claimed by the postproduction company nor shall such excess preapproved amount be assigned, sold, or transferred to any other taxpayer or added to the paragraph (8) credit cap. If the postproduction company is a disregarded entity then such information should be submitted in the name of the owner of the disregarded entity.

(b) Notification. The Department will notify each postproduction company of the tax credits preapproved or denied to such postproduction company.

(c) Allocation of Tax Credit. The Commissioner shall allow the tax credits on a first-come, first-served basis. The date the Form IT-PC-AP is electronically submitted shall be used to determine such first-come, first-served basis.

(d) Applications received on the day the maximum credit amount is reached. In the event that the credit amounts on applications received by the Commissioner exceed the maximum aggregate limit in paragraph (8) of this regulation, then the tax credits shall be allocated among the postproduction companies who submitted Form IT-PC-AP on the day the maximum aggregate limit was exceeded on a pro rata basis based upon amounts otherwise allowed

397 under O.C.G.A. § 48-7-40.26A, and this regulation. Only credit
398 amounts on applications received on the day the aggregate credit cap
399 was exceeded will be allocated on a pro rata basis.

400

401 (e) Once the credit cap is reached for a taxable year, postproduc-
402 tion companies who meet the requirements of the postproduction
403 film tax credit during such taxable year shall no longer be eligible
404 for a credit under O.C.G.A. § 48-7-40.26A. If any Form IT-PC-AP
405 is received after the taxable year preapproval limit has been reached,
406 then it shall be denied and not be reconsidered for preapproval at
407 any later date.

408

409 (f) In the event it is determined that the postproduction company
410 has not met all the requirements of O.C.G.A. § 48-7-40.26A and this
411 regulation, then the amount of credits shall not be preapproved or
412 the preapproved credits shall be retroactively denied. With respect
413 to such denied credits, tax, interest, and penalties shall be due if the
414 credits have already been claimed.

415

416 **(12) Preapproval for Small Postproduction Companies.** Any
417 postproduction company seeking preapproval to claim tax credits
418 under paragraphs (10) of this regulation, must submit the appropri-
419 ate forms to the Department through the Georgia Tax Center as pro-
420 vided in this subparagraph.

421

422 (a) Application. A postproduction company seeking preapproval
423 to claim the tax credits under paragraph (10) of this regulation must
424 electronically submit Form IT-SPC-AP through the Georgia Tax
425 Center. A postproduction company that has submitted its Form IT-
426 PC for certification by the Department or that submits Form IT-PC
427 on the same day as Form IT-SPC-AP is submitted may request pre-
428 approval from the Department before meeting the requirements of
429 the postproduction film tax credit. Such postproduction company

430 must estimate their credit amounts on Form IT-SPC-AP. The
431 amount of tax credit claimed by the postproduction company on the
432 postproduction company's applicable Georgia income tax return
433 must be based on the actual postproduction film tax credit earned
434 under O.C.G.A. § 48-7-40.26A and this regulation and cannot ex-
435 ceed the amount preapproved. If the postproduction company is pre-
436 approved for an amount that exceeds the amount that is calculated
437 using the actual numbers when the return is filed, the excess preap-
438 proved amount cannot be claimed by the postproduction company
439 nor shall such excess preapproved amount be assigned, sold, or
440 transferred to any other taxpayer or added to the paragraph (10)
441 credit cap. If the postproduction company is a disregarded entity
442 then such information should be submitted in the name of the owner
443 of the disregarded entity.

444
445 (b) Notification. The Department will notify each postproduction
446 company of the tax credits preapproved or denied to such postpro-
447 duction company.

448
449 (c) Allocation of Tax Credit. The Commissioner shall allow the
450 tax credits on a first-come, first-served basis. The date the Form IT-
451 SPC-AP is electronically submitted shall be used to determine such
452 first-come, first-served basis.

453
454 (d) Applications received on the day the maximum credit amount
455 is reached. In the event that the credit amounts on applications re-
456 ceived by the Commissioner exceed the maximum aggregate limit
457 in paragraph (10) of this regulation, then the tax credits shall be al-
458 located among the postproduction companies who submitted Form
459 IT-SPC-AP on the day the maximum aggregate limit was exceeded
460 on a pro rata basis based upon amounts otherwise allowed un-
461 der O.C.G.A. § 48-7-40.26A, and this regulation. Only credit
462 amounts on applications received on the day the aggregate credit cap

was exceeded will be allocated on a pro rata basis.

(e) Once the credit cap is reached for a taxable year, postproduction companies who meet the requirements of the postproduction film tax credit during such taxable year shall no longer be eligible for a credit under O.C.G.A. § 48-7-40.26A. If any Form IT-SPC-AP is received after the taxable year preapproval limit has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(f) In the event it is determined that the small postproduction company has not met all the requirements of O.C.G.A. § 48-7-40.26A and this regulation, then the amount of credits shall not be preapproved or the preapproved credits shall be retroactively denied. With respect to such denied credits, tax, interest, and penalties shall be due if the credits have already been claimed.

(13) Qualified Postproduction Expenditures Not Eligible for the Postproduction Film Tax Credit. Any qualified postproduction expenditures for which a production company claims the tax credit under O.C.G.A. § 48-7-40.26 are not eligible for the postproduction film tax credit under O.C.G.A. § 48-7-40.26A and this regulation.

(14) Claiming the Postproduction Film Tax Credit. A postproduction company claiming tax credits under paragraph (8) or (10) of this regulation must attach Form IT-PFC to its Georgia income tax return for each tax year in which the credit is claimed.

(a) **Withholding Tax.** The postproduction company may claim any excess postproduction film tax credit against its withholding tax liability or the withholding tax liability of its payroll service providers provided such withholding tax liability is with respect to the

employees of the postproduction company and is attributable to withholding for such employees for withholding periods approved in subparagraph (14)(a)3. of this regulation. The withholding tax benefit may only be applied against the withholding tax account used by the postproduction company or its payroll service provider for payroll purposes. In the event the postproduction company is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company or against the withholding tax liability of its payroll service providers provided such withholding tax liability is attributable to wages paid by its payroll service provider with respect to the individuals providing services to the single member limited liability company and is attributable to withholding for such employees for withholding periods approved in subparagraph (14)(a)3. of this regulation. Any postproduction company that qualifies to take all or a part of the postproduction film tax credit against withholding tax otherwise due the Department of Revenue, must notify the Commissioner, in the manner specified in subparagraph (14)(b)1., below, for any tax year for which they are making make an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such company do so as a part of its notification to the Commissioner required under this subparagraph. When this election is made, the excess postproduction film tax credit will not pass through to the shareholders, partners, or members of the postproduction company if the postproduction company or is a pass-through entity.

1. Notice of Intent. To claim any excess postproduction film tax credit not used on the income tax return against the postproduction company's withholding tax liability, the postproduction company must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period

529 ~~(30) days after the due date of the Georgia income tax return (in-~~
530 ~~cluding extensions) or within thirty (30) days after the filing of a~~
531 ~~timely filed Georgia income tax return, whichever occurs first.~~ Fail-
532 ure to file this form as provided in this subparagraph will result in
533 disallowance of the withholding tax benefit. Such irrevocable elec-
534 tion may only be made one time with respect to each tax year for
535 which the credit is claimed, for all or part of the excess tax credit
536 remaining at the time of the election. However, in the case of a credit
537 which is earned in more than one taxable year, the election to claim
538 the withholding credit will be available for the credit earned in such
539 subsequent year.

540
541 2. Review Period. The Department of Revenue has one hundred
542 twenty (120) days from the date the applicable Form IT-WH under
543 subparagraph (14)(a)1. of this regulation is received to review the
544 credit and make a determination of the amount eligible to be used
545 against withholding tax.

546
547 3. Letter of Eligibility. Once the review is completed, a letter will
548 be sent to the postproduction company stating the postproduction
549 film tax credit amount which may be applied against withholding
550 and when the postproduction company or its payroll service pro-
551 vider may begin to claim the postproduction film tax credit against
552 withholding tax. The Department of Revenue shall treat this amount
553 as a credit against future withholding tax payments and will not re-
554 fund any previous withholding payments made by the postproduc-
555 tion company or its payroll service provider.

556
557 (b) Use of Other Tax Credits. Postproduction companies claim-
558 ing the postproduction film tax credit may not claim the job tax
559 credit, headquarters tax credit, or quality jobs tax credit for employ-
560 ees whose wages are used to calculate the postproduction film tax
561 credit.

(c) Assignment of Credit to Affiliates. Once the postproduction company establishes the amount of the postproduction film tax credit by filing the tax return for the taxable year in which the credit was earned, the credit may then be assigned to the postproduction company's affiliates under the provisions of O.C.G.A. § 48-7-42. When a postproduction film tax credit is assigned to an affiliated entity, the affiliated entity may apply the credit solely against its own income tax liability. The affiliated entity may not sell or transfer the credit pursuant to paragraph (18) of this regulation and may not claim any excess postproduction film tax credit against its withholding tax. Any unused credit may be carried forward by such affiliated entity until the credit is used or it expires, whichever occurs first.

(15) **Carry Forward.** Any credit that is claimed but not used in a taxable year may be carried forward for ~~five~~the number of years provided in O.C.G.A. § 48-7-40.26A from the close of the taxable year in which the qualified postproduction expenditures were made and the postproduction company established the amount of the postproduction film tax credit for that taxable year.

(a) Postproduction film tax credits may not be carried back and applied against a prior year's income tax liability.

(16) **Audits.** Any Department of Revenue audit triggered by a postproduction company's use or transfer of a postproduction film tax credit will require the postproduction company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the postproduction company that the audit is a postproduction film tax credit audit and thus subject to this clause prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this

595 provision.

596

597 **(17) Pass-Through Entities.** When a postproduction company
598 generating a postproduction film tax credit is a pass-through entity,
599 and has no income tax liability of its own, the postproduction film
600 tax credit will pass to its members, shareholders, or partners based
601 on the year ending profit/loss percentage. The credit forms will ini-
602 tially be filed with the tax return of the postproduction company that
603 incurred the qualifying postproduction expenditures to establish the
604 amount of the postproduction film tax credit available for pass
605 through. The credit will then pass through to its shareholders, mem-
606 bers, or partners to be applied against the tax liability on their in-
607 come tax returns. The shareholders, members, or partners may not
608 claim any excess postproduction film tax credit against their with-
609 holding tax liabilities or against the withholding tax liabilities of
610 their payroll service providers. The credits are available for use as a
611 credit by the shareholders, members, or partners for their tax year in
612 which the income tax year of the pass-through entity ends. For ex-
613 ample: A partnership earns the credit for its tax year ending January
614 31, 2019. The partnership passes the credit to a calendar year part-
615 ner. The credit is available for use by the partner beginning with the
616 calendar 2019 tax year.

617

618 **(18) Selling or Transferring the Postproduction Film Tax**
619 **Credit.** The postproduction company may sell or transfer in whole
620 or in part any postproduction film tax credit, previously claimed but
621 not used by such postproduction company against its income tax, to
622 another Georgia taxpayer subject to the following conditions:

623

624 (a) The taxpayer may only make a one-time sale or transfer of
625 postproduction film tax credits earned in each taxable year. How-
626 ever, the sale or transfer may involve more than one transferee and
627 more than one sale date. The sale may occur in a year or years after

the postproduction film tax credit is earned but must occur before the expiration of the carry forward period of such credit. For example, a postproduction company earns a \$500,000 credit in year 1. In year 2 the postproduction company sells \$200,000 of the credit to taxpayer 2 and \$50,000 to taxpayer 3. In year 3 the postproduction company sells the remaining \$250,000 of the credit to taxpayer 4. However, taxpayer 2, taxpayer 3, and taxpayer 4 are not allowed to resell the credit since the credit can only be sold one-time.

(b) The postproduction film tax credit may be transferred before the tax return is filed by the postproduction company provided the postproduction film tax credit has been earned. Preapproval for the credit by itself does not qualify as earning the credit. The amount transferred cannot exceed the amount of the credit which will be claimed and not used on the income tax return of the postproduction company.

(c) The postproduction company must file Form IT-TRANS "Notice of Tax Credit Transfer" with both the Department of Economic Development and Department of Revenue within 30 days after each transfer or sale of the postproduction film tax credit. Form IT-TRANS must be submitted electronically to the Department of Revenue through the Georgia Tax Center or alternatively as provided in subparagraph (18)(c)1. of this regulation. The Department of Revenue will not process any Form IT-TRANS submitted or filed in any other manner. If the postproduction company is a disregarded entity then Form IT-TRANS should be filed in the name of the owner of the disregarded entity but the Form IT-PFC should be in the name of the disregarded entity.

1. The web-based portal on the Georgia Tax Center. The postproduction company may provide selective information to a representative for the purpose of allowing the representative to submit Form

IT-TRANS on their behalf on the Georgia Tax Center outside of a login. The provision of such information shall authorize the representative to submit such Form IT-TRANS. The representative must provide all information required by the web-based portal on the Georgia Tax Center to submit Form IT-TRANS.

(d) The postproduction company must provide all required postproduction film tax credit detail and transfer information to the Department of Revenue. Failure to do so will result in the postproduction film tax credit being disallowed until the postproduction company complies with such requirements.

(e) The carry forward period of the postproduction film tax credit for the transferee will be the same as it was for the postproduction company. This credit may be carried forward for ~~five~~ the number of years provided in O.C.G.A. § 48-7-40.26A from the end of the tax year in which the qualifying postproduction expenditures were incurred. For example: The postproduction company sells a postproduction film tax credit on September 15, 2019. This credit is based on qualifying expenditures from the calendar 2018 tax year and can be carried forward five years. The credit may be claimed by the transferee on the 2018, 2019, 2020, 2021, 2022, or 2023 return and the carry forward period for this credit will expire on December 31, 2023. This carry forward treatment applies regardless of whether it is being claimed by the postproduction company or the transferee.

(f) A transferee shall have only such rights to claim and use the postproduction film tax credit that were available to the postproduction company at the time of the transfer excluding the withholding tax benefit which is not available to the transferee. Thus, a transferee shall not have the right to subsequently transfer such credit since that right has been utilized by the transferor.

(19) **How to Sell or Transfer the Tax Credit.**

(a) Direct Sale. The postproduction company may sell or transfer the postproduction film tax credit directly to a Georgia taxpayer (or multiple Georgia taxpayers as provided in subparagraph (18)(a) of this regulation). A pass-through entity may make an election to sell or transfer the unused postproduction film tax credit earned in a taxable year at the entity level. If the pass-through entity makes the election to sell the postproduction film tax credit at the entity level, the credit does not pass through to the shareholders, members, or partners. In all cases, the effect of the sale of the credit on the income of the seller and buyer of the credit will be the same as provided in the Internal Revenue Code.

(b) Pass-Through Entity. The postproduction company may be structured as a pass-through entity. If a pass-through entity does not make an election to sell or transfer the tax credit at the entity level as provided in subparagraph (19)(a) of this regulation, the tax credit will pass through to the shareholders, partners or members of the entity based on their year ending profit/loss percentage. The shareholders, members, or partners may then sell their respective postproduction film tax credit to a Georgia taxpayer.

(c) Transferee Pass-Through Entity. The postproduction company, or its shareholders, members or partners, may sell or transfer the tax credit to a pass-through entity. The pass-through entity shall elect on behalf of its shareholders, members or partners which year the credit shall be passed through to its shareholders, members or partners (either its tax year in which the income tax year of the postproduction company, which claims the postproduction film tax credit ends; or during any later tax year before the ~~five-year~~ carry forward period associated with the tax credit ends as provided in subparagraph (19)(d) of this regulation). If the pass-through entity

has no income tax liability of its own, the pass-through entity may then pass the credit through to its shareholders, members, or partners based on the pass-through entity's year ending profit/loss percentage for such elected year. For example, if a calendar year partnership is buying the credit earned by a postproduction company in the calendar 2019 tax year and elects to use the credit for such year, then all of the partners receiving the credit must have been a partner in the partnership no later than the end of the 2019 tax year in which the credit was established. Only partners who have a profit/loss percentage as of the end of the applicable tax year may receive their respective amount of the postproduction film tax credit.

(d) The credits are available for use by the transferee, provided the time has not expired for filing a claim for refund of a tax or fee erroneously or illegally assessed and collected pursuant to O.C.G.A. § 48-2-35:

1. In the transferee's tax year in which the income tax year of the postproduction company, which claims the postproduction film tax credit ends; or

2. During any later tax year before the ~~five-year~~ carry forward period associated with the tax credit ends.

(i) Example: A postproduction company reaches the \$500,000 in qualified postproduction expenditures in a taxable year, receives preapproval, and claims the postproduction film tax credit in calendar 2019 tax year. There is a five-year carryforward period associated with the credit. The postproduction company sells the postproduction film tax credit to a calendar year Georgia taxpayer in calendar year 2020. The transferee Georgia taxpayer may claim the purchased postproduction film tax credit on either their 2019 return (transferee's tax year in which the income tax year of the

postproduction company ends) or their 2020, 2021, 2022, 2023, or 2024 return (during any later tax year before the five-year carry forward associated with the tax credit ends).

(ii) Example: A postproduction company reaches the \$500,000 base investment threshold and claims the postproduction film tax credit in its fiscal year end June 30, 2019. There is a five-year carryforward period associated with the credit. The postproduction company sells the postproduction film tax credit to a calendar year Georgia taxpayer in calendar year 2020. The transferee Georgia taxpayer may claim the purchased postproduction film tax credit on either their 2019 return (transferee's tax year in which the income tax year of the postproduction company ends) or their 2020, 2021, 2022, 2023, or 2024 return (during any later tax year before the five-year ~~carry forward~~ carryforward associated with the tax credit ends).

(20) Required Reporting. For taxable years beginning on or after January 1, 2018, and before January 1, 2023, the postproduction company shall electronically report to the Department of Revenue through the Georgia Tax Center on Form IT-PC-RPT the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year. Such report shall be filed on the date the postproduction company files its Georgia income tax return. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours a week; and that 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.

(a) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall report yearly to

Returns and Collections

Chapter 560-7-8

793 the House Committee on Ways and Means and the Senate Finance
794 Committee. The report shall include the name, tax year beginning,
795 and monthly average number of full-time employees for each post-
796 production company. The first report shall be submitted by June 30,
797 2018, and each year thereafter by June 30.

798

799 (21) **Effective Date.** This regulation shall be applicable to taxable
800 years beginning on or after January 1, ~~2018~~2025.

801

802 Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.26A.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.61 Musical Tax Credit

The purpose of proposed Rule 560-7-8-.61 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (10) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (14) provides the effective date of the regulation.

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 560-7-8
RETURNS AND COLLECTIONS**

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560-7-8-.61 Musical Tax Credit

560-7-8-.61 Musical Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-40.33.

(2) **Coordination of Agencies.** The Department of Economic Development is the state agency responsible for certifying which projects qualify for the tax credit under O.C.G.A. § 48-7-40.33.

(3) **Definitions.**

(a) As used in this regulation, the terms "musical or theatrical performance", "production company", "qualified production activities", "qualified production expenditures", "recorded musical performance", "resident", "spending threshold", "state certified production", and "total aggregate payroll" have the same meaning as in O.C.G.A. § 48-7-40.33.

(b) The term "production site" means:

1. For a musical or theatrical performance, the site or sites where the production is developed, prepared, planned, rehearsed, or performed.

2. For a recorded musical performance, the site or sites where the production is prepared, planned, or recorded.

(4) Qualified Production Expenditures. Qualified production expenditures include production expenditures incurred in this state on direct account of qualified production activities, including without limitation the following: set construction and operation; wardrobe, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures (excluding license fees) incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; total aggregate payroll; talent and producer fees; technical fees; crew fees; per diem costs paid to employees; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices; and payments to a loan-out company.

(a) Depreciation, amortization, or other expense on qualified production expenditures with a useful life of more than one year. The costs of qualified production expenditures with a useful life of more than one year are considered "other direct costs of the qualified production activities in accordance with generally accepted

entertainment industry practices." Such costs shall be included in the computation of the musical tax credit for the taxable year based upon the depreciation, amortization, or other expense included in the computation of Georgia taxable income of the production company for the applicable taxable year. Such depreciation, amortization, or other expense shall be prorated based upon the time the asset is used in qualified production activities in this state. Depreciation, amortization, or other expense on expenditures incurred before the production period shall not be included in the computation of the musical tax credit. In order to claim depreciation, amortization, or other expense, the qualified production expenditure for the asset that generated the depreciation, amortization, or other expense, must have been incurred in this state as provided in subparagraph (4)(b) of this regulation.

(b) Qualified production expenditures incurred in this state. In order to be considered to have been incurred in this state, the following rules shall apply:

1. Qualified production expenditures, which are attributable to the performance of services by individuals and companies directly at the production site in Georgia who were not employees of the production company, shall be attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation.

2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the production site (such as insurance, service fees paid to a payroll company including workers compensation if the service fees include such, editing and related services, digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, animation services, etc.) will be allowed if the vendor is a Georgia vendor and will be attributed to Georgia if

and only to the extent the service is rendered in Georgia. If the production company is unable to track the cost of services rendered in Georgia, then some other reasonable method which approximates the cost of services rendered in Georgia may be used to determine the amount attributable to Georgia but such approximation will be subject to adjustment by the Department. In the event the services are subcontracted to a company that would not otherwise qualify and/or such subcontracted company renders the services outside Georgia, the expenditure for such services shall not be considered to have been incurred in this state.

3. Purchases and rentals of property. In order to include qualified production expenditures for purchases and rentals of property, the property must have been used in Georgia and purchased or rented from a Georgia vendor. Purchase receipts, invoices, contracts, or other documentation shall be used to determine this.

4. Georgia Vendor. For purposes of this regulation, a Georgia vendor is a vendor that:

(i) Sells or rents property, which is regularly kept in their inventory, or provides a service not performed at the production site, which is the subject of the qualified production expenditure, in their ordinary course of business; and

(ii) Has a physical location in Georgia with at least one individual working at such location on a regular basis. Registering with the Georgia Secretary of State or appointing a registered agent in Georgia does not establish a physical location in Georgia.

However, a vendor that acts as a conduit to enable purchases and rentals to qualify that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases and rentals.

(c) Salaries. Total aggregate payroll, as such term is used in this regulation, includes bonuses, incentive pay, and other compensation paid to an employee which is included in the employee's Form W-2 "Wage and Tax Statement". Reimbursed expenses, per diems, or employer paid benefits and taxes are not included in aggregate payroll unless such amounts are included as wages, tips, or other compensation in the employee's Form W-2 "Wage and Tax Statement". For purposes of this regulation, the term "employee" means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee. Guaranteed payments to partners do not qualify for the musical tax credit and are not included in total aggregate payroll. Except as otherwise provided in this paragraph, if the production company is unable to track the actual time spent by an employee in Georgia, the production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia but such approximation will be subject to adjustment by the Department. For all individuals who are paid a separate amount for production, the amount that is incurred in Georgia shall be based on the amount paid for such period and prorated based on the actual time spent in Georgia by the employee in such period. If the production company is unable to track the actual time spent by the individual in Georgia, the production company may calculate the total aggregate payroll in Georgia by some other reasonable method which approximates the actual time spent in Georgia for such period but such approximation will be subject to adjustment by the Department.

(d) Fringe Benefits. The following benefits are attributed to Georgia in the same manner as salaries as provided in subparagraph (4)(c) of this regulation:

- 166
- 167 1. SUI (state unemployment insurance);
- 168
- 169 2. FUI (federal unemployment insurance);
- 170
- 171 3. FICA (employer portion);
- 172
- 173 4. Pension and welfare if the amounts are paid as part of pension,
- 174 health, and welfare plans (these would not be required to be paid to
- 175 a Georgia vendor);
- 176
- 177 5. Health insurance premiums if these amounts are paid as part
- 178 of pension, health, and welfare plans (these would not be required
- 179 to be paid to a Georgia vendor);
- 180
- 181 (i) Other Fringe Benefits. The following fringe benefits are at-
- 182 tributed to Georgia as follows:
- 183
- 184 1. Meal per diems, as set forth by United States General Services
- 185 Administration, if incurred in Georgia; and
- 186
- 187 2. Hotel per diems, as set forth by United States General Services
- 188 Administration, if incurred in Georgia.
- 189
- 190 (e) Direct account. A production company may only claim qual-
- 191 ified production expenditures on direct account of a qualified pro-
- 192 duction activity. In determining whether a production expenditure is
- 193 on direct account of a qualified production activity, the Department
- 194 of Revenue will consider the proximity of the expenditure to the ac-
- 195 tivity as well as the causal relationship between the expenditure and
- 196 the activity; and the applicable rules of the Department of Economic
- 197 Development and any determination made by the Department of
- 198 Economic Development regarding whether a qualified production

199 expenditure is on direct account of a qualified production activity.
200

201 (5) **Credit Amount.** A production company that meets or ex-
202 ceeds \$500,000 in qualified production expenditures in a taxable
203 year for a musical or theatrical performance; or \$250,000 in quali-
204 fied production expenditures in a taxable year for a recorded musical
205 performance which is incorporated into or synchronized with a
206 movie, television, or interactive entertainment production; or
207 \$100,000 in qualified production expenditures in a taxable year for
208 any other recorded musical performance, as provided in O.C.G.A. §
209 48-7-40.33 and this regulation, shall be allowed a tax credit of 15
210 percent of the qualified production expenditures; and an additional
211 5 percent shall be allowed for qualified production expenditures in-
212 curred in a tier 1 or tier 2 county as designated by the Commissioner
213 of Community Affairs under O.C.G.A. § 48-7-40.
214

215 (6) **Credit Cap for Production Companies and Affiliates.** In
216 no event shall the aggregate amount of tax credits allowed un-
217 der O.C.G.A. § 48-7-40.33 for production companies and their affil-
218 iates which are production companies exceed the following
219 amounts:
220

221 (a) For taxable years beginning on or after January 1, 2018 and
222 before January 1, 2019, the aggregate amount of tax credits allowed
223 under O.C.G.A. § 48-7-40.33 for production companies shall not
224 exceed \$5 million. The maximum credit amount allowed for any
225 production company and its affiliates which are production compa-
226 nies shall not exceed 20 percent of the aggregate amount of tax cred-
227 its available for such taxable year;
228

229 (b) For taxable years beginning on or after January 1, 2019 and
230 before January 1, 2020, the aggregate amount of tax credits allowed
231 under O.C.G.A. § 48-7-40.33 for production companies shall not

232 exceed \$10 million. The maximum credit amount allowed for any
233 production company and its affiliates which are production compa-
234 nies shall not exceed 20 percent of the aggregate amount of tax cred-
235 its available for such taxable year;

236
237 (c) For taxable years beginning on or after January 1, 2020 and
238 before January 1, 2023, the aggregate amount of tax credits allowed
239 under O.C.G.A. § 48-7-40.33 for production companies shall not
240 exceed \$15 million per taxable year. The maximum credit amount
241 allowed for any production company and its affiliates which are pro-
242 duction companies shall not exceed 20 percent of the aggregate
243 amount of tax credits available for such taxable years; and

244
245 (d) The musical tax credit shall not be available for taxable years
246 beginning on or after January 1, 2023.

247
248 (7) **Preapproval.** Before requesting preapproval from the De-
249 partment, the production company must apply for pre-certification
250 from the Department of Economic Development to ensure that the
251 project meets the requirements of O.C.G.A. § 48-7-40.33. Any pro-
252 duction company seeking preapproval to claim tax credits under par-
253 agraphs (6) of this regulation, must submit the appropriate forms to
254 the Department through the Georgia Tax Center as provided in this
255 paragraph.

256
257 (a) Application. A production company seeking preapproval to
258 claim the tax credits under paragraph (6) of this regulation must
259 electronically submit Form IT-MC-AP and their pre-certification
260 from the Georgia Department of Economic Development through
261 the Georgia Tax Center. A production company may request preap-
262 proval from the Department before meeting the requirements of the
263 musical tax credit. Such production company must estimate their
264 credit amounts on Form IT-MC-AP. The amount of tax credit

265 claimed by the production company on the production company's
266 applicable Georgia income tax return must be based on the actual
267 musical tax credit earned under O.C.G.A. § 48-7-40.33 and this reg-
268 ulation and cannot exceed the amount preapproved. If the produc-
269 tion company is preapproved for an amount that exceeds the amount
270 that is calculated using the actual numbers when the return is filed,
271 the excess preapproved amount cannot be claimed by the production
272 company nor shall such excess preapproved amount be assigned to
273 any other taxpayer or added to the credit cap under paragraph (6) of
274 this regulation. If the production company is a disregarded entity
275 then such information should be submitted in the name of the owner
276 of the disregarded entity.

277
278 (b) Notification. The Department will notify each production
279 company of the tax credits preapproved or denied to such production
280 company.

281
282 (c) Allocation of Tax Credit. The Commissioner shall allow the
283 tax credits on a first-come, first-served basis. The date the Form IT-
284 MC-AP is electronically submitted shall be used to determine such
285 first-come, first-served basis.

286
287 (d) Applications received on the day the maximum credit amount
288 is reached. In the event that the credit amounts on applications re-
289 ceived by the Commissioner exceed the maximum aggregate limit
290 in paragraph (6) of this regulation, then the tax credits shall be allo-
291 cated among the production companies who submitted Form IT-
292 MC-AP on the day the maximum aggregate limit was exceeded on
293 a pro rata basis based upon amounts otherwise allowed un-
294 der O.C.G.A. § 48-7-40.33, and this regulation. Only credit amounts
295 on applications received on the day the aggregate credit cap was ex-
296 ceeded will be allocated on a pro rata basis.

298 (e) Once the credit cap is reached for a taxable year, production
299 companies who meet the requirements of the musical tax credit dur-
300 ing such taxable year shall no longer be eligible for a credit un-
301 der O.C.G.A. § 48-7-40.33. If any Form IT-MC-AP is received after
302 the taxable year preapproval limit has been reached, then it shall be
303 denied and not be reconsidered for preapproval at any later date.

304

305 (f) In the event it is determined that the production company has
306 not met all the requirements of O.C.G.A. § 48-7-40.33 and this reg-
307 ulation, then the amount of credits shall not be preapproved or the
308 preapproved credits shall be retroactively denied. With respect to
309 such denied credits, tax, interest, and penalties shall be due if the
310 credits have already been claimed.

311

312 **(8) Musical or Theatrical Performance or Recorded Musical**
313 **Performance with Qualified Production Expenditures in More**
314 **Than One Year.** A musical or theatrical performance or recorded
315 musical performance which occurs over two or more years shall be
316 considered a single project. The production company should request
317 preapproval for the year the applicable spending threshold is met,
318 and if necessary must request preapproval for any later year with
319 qualified production expenditures.

320

321 (a) Example 1: A production company has \$700,000 in qualified
322 production expenditures during two years (they spend \$300,000 in
323 year 1 and \$400,000 in year 2) producing one musical or theatrical
324 performance. The production company may aggregate their quali-
325 fied production expenditures over the two years for this single pro-
326 ject to achieve the \$500,000 spending threshold. The production
327 company must request preapproval in year 2 for \$700,000 (the year
328 the \$500,000 spending threshold is met), and if preapproved, claim
329 the credit on their applicable year 2 Georgia income tax return.

330

331 (b) Example 2: A production company has \$800,000 in qualified
332 production expenditures during two years (they spend \$600,000 in
333 year 1 and \$200,000 in year 2) producing one musical or theatrical
334 performance. The production company may aggregate their quali-
335 fied production expenditures over the two years for this single pro-
336 ject to achieve the \$500,000 spending threshold. The production
337 company must request preapproval in year 1 for \$600,000 (the year
338 the \$500,000 spending threshold is met) and in year 2 the production
339 company must request preapproval for \$200,000 of production ex-
340 penditures (the later year). If preapproved for year 1, the production
341 company must claim the \$600,000 on their applicable year 1 Geor-
342 gia income tax return and if preapproved for year 2 the production
343 company must claim \$200,000 on their applicable year 2 Georgia
344 income tax return.

345
346 (9) **Qualified Production Expenditures Not Eligible for the**
347 **Musical Tax Credit.** Any qualified production expenditures for
348 which a production company claims the tax credit under O.C.G.A.
349 § 48-7-40.26 are not eligible for the musical tax credit un-
350 der O.C.G.A. § 48-7-40.33 and this regulation.

351
352 (10) **Claiming the Musical Tax Credit.** A production company
353 claiming tax credits under paragraph (6) of this regulation must at-
354 tach Form IT-MC, and their final certification from the Georgia De-
355 partment of Economic Development to its Georgia income tax re-
356 turn for each tax year in which the credit is claimed.

357
358 (a) **Withholding Tax.** The production company may claim any
359 excess musical tax credit against its withholding tax liability or the
360 withholding tax liability of its payroll service providers provided
361 such withholding tax liability is with respect to the employees of the
362 production company and is attributable to withholding for such em-
363 ployees for withholding periods approved in subparagraph (10)(a)3.

of this regulation. The withholding tax benefit may only be applied against the withholding tax account used by the production company or its payroll service provider for payroll purposes. In the event the production company is a single member limited liability company that is disregarded for income tax purposes, the withholding tax benefit may only be applied against the withholding tax liability that is attributable to wages paid by the single member limited liability company or against the withholding tax liability of its payroll service providers provided such withholding tax liability is attributable to wages paid by its payroll service provider with respect to the individuals providing services to the single member limited liability company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(a)3. of this regulation. Any production company that qualifies to take all or a part of the musical tax credit against withholding tax otherwise due the Department of Revenue, must notify the Commissioner, in the manner specified in subparagraph (10)(a)1., below, for any tax year for which they are making make an irrevocable election to take all or a part of the credit against the quarterly or monthly withholding tax payment for such company do so as a part of its notification to the Commissioner required under this subparagraph. When this election is made, the excess musical tax credit will not pass through to the shareholders, partners, or members of the production company if the production company is a pass-through entity.

1. Notice of Intent. To claim any excess musical tax credit not used on the income tax return against the production company's withholding tax liability, the production company must file Revenue Form IT-WH *Notice of Intent* through the Georgia Tax Center within the three-year statute of limitations period (30) days after the due date of the Georgia income tax return (including extensions) ~~or within thirty (30) days after the filing of a timely filed Georgia income tax return, whichever occurs first.~~ Failure to file this form as

provided in this subparagraph will result in disallowance of the withholding tax benefit. Such irrevocable election may only be made one time with respect to each tax year for which the credit is claimed, for all or part of the excess tax credit remaining at the time of the election. However, in the case of a credit which is earned in more than one taxable year, the election to claim the withholding credit will be available for the credit earned in such subsequent year.

2. Review Period. The Department of Revenue has one hundred twenty (120) days from the date the applicable Form IT-WH under subparagraph (10)(a)1. of this regulation is received to review the credit and make a determination of the amount eligible to be used against withholding tax.

3. Letter of Eligibility. Once the review is completed, a letter will be sent to the production company stating the musical tax credit amount which may be applied against withholding and when the production company or its payroll service provider may begin to claim the musical tax credit against withholding tax. The Department of Revenue shall treat this amount as a credit against future withholding tax payments and will not refund any previous withholding payments made by the production company or its payroll service provider.

(b) Use of Other Tax Credits. Production companies claiming the musical tax credit may not claim the job tax credit, headquarters tax credit, or quality jobs tax credit for employees whose wages are used to calculate the musical tax credit.

(c) Assignment of Credit to Affiliates. Once the production company establishes the amount of the musical tax credit by filing the tax return for the taxable year in which the credit was earned, the credit may then be assigned to the production company's affiliates

under the provisions of O.C.G.A. § 48-7-42. When a musical tax credit is assigned to an affiliated entity, the affiliated entity may apply the credit solely against its own income tax liability. The affiliated entity may not claim any excess musical tax credit against its withholding tax. Any unused credit may be carried forward by such affiliated entity until the credit is used or it expires, whichever occurs first.

(11) **Carry Forward.** Any credit that is claimed but not used in a taxable year may be carried forward for five years from the close of the taxable year in which the qualified production expenditures were made and the production company established the amount of the musical tax credit for that taxable year.

(a) Musical tax credits may not be carried back and applied against a prior year's income tax liability.

(12) **Audits.** Any Department of Revenue audit triggered by a production company's use of a musical tax credit will require the production company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the production company that the audit is a musical tax credit audit and thus subject to this clause prior to the commencement of the audit. Routine audits of the taxpayer's activity in Georgia are not subject to this provision.

(13) **Pass-Through Entities.** When a production company generating a musical tax credit is a pass-through entity, and has no income tax liability of its own, the musical tax credit will pass to its members, shareholders, or partners based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the production company that incurred the qualifying production expenditures to establish the amount of the musical tax

credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess musical tax credit against their withholding tax liabilities or against the withholding tax liabilities of their payroll service providers. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2019. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2019 tax year.

(14) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, ~~2018~~2025.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.33(reserved).

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.66 Personal Protective Equipment Manufacturer Jobs Tax Credit

The purpose of proposed Rule 560-7-8-.66 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (1) provides the purpose of the rule.
- Paragraph (7) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (8) provides the carryforward period of the credit.
- Paragraph (11) provides the effective date of the regulation.

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7
INCOME TAX DIVISION**

**SUBJECT 560-7-8
RETURNS AND COLLECTIONS**

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560-7-8-.66 Personal Protective Equipment Manufacturer Jobs Tax Credit

**560-7-8-.66 Personal Protective Equipment Manufacturer Jobs
Tax Credit**

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § ~~48-7-40.1~~ 48-7-40.1A.

(2) **Definitions.**

(a) "Establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed.

(b) "Hand sanitizer" means any hand antiseptic, hand rub, soap, or agent applied to the hands for the purpose of removing common pathogens, including, but not limited to, hand cleaners and sanitizers provided for under 7 C.F.R. Section 3201.18.

34 (c) "Personal protective equipment" or "PPE" means any protec-
35 tive clothing, helmets, gloves, face shields, goggles, facemasks,
36 hand sanitizer, and respirators or other equipment designed to pro-
37 tect the wearer from injury or to prevent the spread of infection, dis-
38 ease, virus, or other illness. Such term shall include equipment iden-
39 tified under 29 C.F.R. Section 1910, Subpart I.

40
41 (d) "Personal protective equipment manufacturer" or "PPE man-
42 ufacturer" means any business enterprise which is engaged in the
43 manufacturing of PPE in this state. Such term shall also include any
44 business enterprise which, in response to COVID-19, began manu-
45 facturing PPE in this state. Such term shall not include retail busi-
46 nesses that sell PPE. Such term shall not include a manufacturer that
47 manufactures the material used in the personal protective equipment
48 but not the personal protective equipment itself. Such term shall not
49 include a manufacturer that manufactures the equipment used to
50 manufacture the personal protective equipment.

51
52 (3) **Credit Amount.** A personal protective equipment manufac-
53 turer that qualifies for the jobs tax credit under O.C.G.A. § 48-7-
54 40 or 48-7-40.1 and the applicable jobs tax credit regulations and
55 claims the jobs tax credit as provided in Revenue Regulation 560-7-
56 8-.36 shall be allowed an additional \$1,250 personal protective
57 equipment manufacturer jobs tax credit for those qualifying jobs to
58 the extent they are engaged in the qualifying activity of manufactur-
59 ing personal protective equipment in Georgia during the taxable
60 year.

61
62 (4) **Maximum Amount of Credit.** The personal protective
63 equipment manufacturer jobs tax credit may be used to offset 100%
64 of the personal protective equipment manufacturer's Georgia in-
65 come tax liability derived from operations within this state.

67 (5) **Eligibility.** A personal protective equipment manufacturer
68 shall be eligible for the additional personal protective equipment
69 manufacturer jobs tax credit under paragraph (3) of this regulation
70 at an individual establishment of the business. If more than one busi-
71 ness activity is conducted at the establishment, then only those jobs
72 engaged in the qualifying activity of manufacturing personal protec-
73 tive equipment in Georgia shall be eligible for the additional per-
74 sonal protective equipment manufacturer jobs tax credit.

75
76 (a) The determination of whether a job is considered engaged in
77 the qualifying activity of manufacturing personal protective equip-
78 ment in Georgia shall be determined on a monthly basis. In order to
79 qualify for the PPE tax credit, such job must first qualify for and be
80 claimed for the jobs tax credit under O.C.G.A. § 48-7-40 or 48-7-
81 40.1. The personal protective equipment manufacturer must com-
82 pute a monthly average number of jobs engaged in the qualifying
83 activity of manufacturing personal protective equipment in Georgia.
84 Any job that is included in the jobs tax credit calculation (either a
85 new or maintained job), where 50 percent or more of the time is
86 spent on the qualifying activity of manufacturing personal protective
87 equipment in Georgia, shall be eligible to be included in the total for
88 such month, but in no case can such number exceed the number of
89 jobs that are included in the jobs tax credit computation for such
90 month. A job should be excluded from the monthly computation for
91 any month that it does not meet the 50 percent requirement. Once
92 the monthly average is computed, the number that is allowed cannot
93 exceed the number of jobs that are allowed for the jobs tax credit for
94 such year.

95
96 (b) For example. A taxpayer started their business in 2019 and
97 manufactures personal protective equipment in Georgia and also has
98 another business in Georgia. The taxpayer qualified for and claimed
99 the jobs tax credit for jobs at both businesses. Not all the jobs

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100 included in the jobs tax credit are involved in the manufacture of
101 personal protective equipment. The taxpayer has the following job
102 numbers in 2020:

103

Month in 2020	Eligible for the Jobs Tax Credit	Allowed for the PPE Credit
January	50	25
February	52	27
March	55	30
April	60	35
May	71	46
June	68	43
July	55	30
August	52	27
September	55	30
October	66	41
November	44	19
December	60	35
Monthly Average - Number of jobs eligible for the jobs tax credit and allowed for the PPE credit	57	32

104

105 (c) Only jobs that are involved in the qualifying activity of man-
106 ufacturing personal protective equipment in Georgia are allowed to
107 be included when claiming the personal protective equipment man-
108 ufacturer jobs tax credit. This shall include managers, sales jobs, and
109 support jobs that are involved in the qualifying activity of manufac-
110 turing personal protective equipment in Georgia provided such pers-
111 ons meet the other requirements including the 50% requirement.

112

113 **(6) Conditions and Limitations.** The personal protective equip-
114 ment manufacturer jobs tax credit shall be allowed subject to the
115 conditions and limitations under O.C.G.A. §§ 48-7-40 or 48-7-
116 40.1 and the applicable jobs tax credit regulations. The personal pro-
117 tective equipment manufacturer jobs tax credit shall be disallowed
118 during any year that the taxpayer does not qualify as a personal pro-
119 tective equipment manufacturer but the PPE manufacturer may
120 requalify in a later year if they meet the requirements.

121
122 (a) Personal protective equipment manufacturers that make the
123 election provided in O.C.G.A. §§ 48-7-40(m) or 48-7-40.1(k) to use
124 their 2019 jobs tax credit numbers for their 2020 or 2021 jobs tax
125 credit, cannot use their 2019 jobs tax credit numbers to determine
126 the personal protective equipment manufacturer jobs tax credit for
127 2020 or 2021. Only personal protective equipment manufacturing
128 jobs actually created or maintained in each respective year can be
129 claimed.

130
131 **(7) Claiming the Credit.** For a personal equipment manufac-
132 turer to claim the personal protective equipment manufacturer jobs
133 tax credit, the personal protective equipment manufacturer must
134 submit Form IT-CA with the personal protective equipment manu-
135 facturer's Georgia income tax return each year the credit is claimed.
136 A software program's Form IT-CA that is electronically filed with
137 the Georgia income tax return in the manner specified by the De-
138 partment satisfies this requirement.

139
140 (a) Withholding tax. A personal protective equipment manufac-
141 turer may claim any excess personal protective equipment manufac-
142 turer jobs tax credit against its withholding tax liability. Except in
143 the case of a timely assignment under O.C.G.A. § 48-7-42, the with-
144 holding tax benefit may only be applied against the withholding tax
145 account used by the personal protective equipment manufacturer for

146 payroll purposes. In the event the personal protective equipment
147 manufacturer that earned the credit is a single member limited lia-
148 bility company that is disregarded for income tax purposes, the with-
149 holding tax benefit may only be applied against the withholding tax
150 liability that is attributable to wages paid by the single member lim-
151 ited liability company, but note that such benefit may also be as-
152 signed pursuant to O.C.G.A. § 48-7-42. A personal protective equip-
153 ment manufacturer must notify the commissioner ~~each year of its, in~~
154 the manner specified in subparagraph (7)(a)1., below, for any tax
155 year for which they are making an irrevocable election to take all or
156 a part of the credit against the quarterly or monthly withholding tax
157 payments for such personal protective equipment manufacturer.
158 When this election is made by a pass-through entity, the excess per-
159 sonal protective equipment manufacturer jobs tax credit will not
160 pass through to the shareholders, partners, or members of the per-
161 sonal protective equipment manufacturer if the personal protective
162 equipment manufacturer is a pass-through entity.

163
164 1. Notice of Intent. To claim any excess tax credit not used on the
165 income tax return against the personal protective equipment manu-
166 facturer's withholding tax liability, the personal protective equip-
167 ment manufacturer must file Revenue Form IT-WH through the
168 Georgia Tax Center within the three-year statute of limitations pe-
169 riod ~~thirty (30) days after the due date of the Georgia income tax~~
170 ~~return (including extensions) or within thirty (30) days after the fil-~~
171 ~~ing of a timely filed Georgia income tax return, whichever occurs~~
172 ~~first~~. Failure to file this form as provided in this subparagraph will
173 result in disallowance of the withholding tax benefit. Such irrevoca-
174 ble election may only be made one time with respect to each tax year
175 for which the credit is claimed, for all or part of the excess tax credit
176 remaining at the time of the election. However, in the case of a credit
177 which is earned in more than one taxable year, the election to claim
178 the withholding credit will be available for the credit earned in such

179 subsequent year.

180

181 2. Review Period. The Department of Revenue has one hundred
182 twenty (120) days from the date the applicable Form IT-WH under
183 subparagraph (7)(a)1. of this regulation is received to review the
184 credit and make a determination of the amount eligible to be used
185 against withholding tax.

186

187 3. Letter of Eligibility. Once the review is completed, a letter will
188 be sent to the personal protective equipment manufacturer stating
189 the tax credit amount which may be applied against withholding and
190 when the personal protective equipment manufacturer may begin to
191 claim the tax credit against withholding tax. The Department of
192 Revenue shall treat this amount as a credit against future withhold-
193 ing tax payments and will not refund any previous withholding pay-
194 ments.

195

196 (8) **Carry Forward.** Any personal protective equipment manu-
197 facturer jobs tax credit which is claimed but not used in a taxable
198 year may be carried forward for ~~10~~the number of years provided in
199 O.C.G.A. § 48-7-40.1A from the close of the taxable year in which
200 the qualifying personal protective equipment manufacturer jobs
201 were created. ~~For example, personal protective equipment manufac-~~
202 ~~turer jobs tax credits created by an employment increase in year one,~~
203 ~~but not used in year one, may be carried forward to years two~~
204 ~~through eleven.~~

205

206 (9) **Pass-Through Entities.** When the personal protective equip-
207 ment manufacturer is a pass-through entity, and has no income tax
208 liability of its own, the tax credit will pass to its individual members,
209 shareholders, or partners based on their year ending profit/loss per-
210 centage. The credit forms will initially be filed with the tax return of
211 the pass-through entity to establish the amount of the credit available

for pass through. The credit will then pass through to its individual shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess personal protective equipment manufacturer jobs tax credit against their withholding tax liabilities. The credits are available for use as a credit by the individual shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2021. The partnership passes the credit to a calendar year partner. The credit is available for use by the individual partner beginning with the calendar 2021 tax year.

(10) **Sunset Date.** No personal protective equipment manufacturer jobs tax credit shall be claimed and allowed for any jobs created on or after January 1, 2025; provided, however, jobs created before such date are eligible for the remaining installments provided the requirements of O.C.G.A. §§ 48-7-40, 48-7-40.1, and 48-7-40.1A and the related regulations are met.

(11) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, ~~2020~~2025.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.1A.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7 INCOME TAX DIVISION

SUBJECT 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.67 Life Sciences Manufacturing Job Tax Credit

The purpose of proposed Rule 560-7-8-.67 is to bring the rule into conformity with current Georgia law and to clarify certain provisions in the rule, including incorporating the provisions of House Bill 1181 from the 2023-2024 Session of the General Assembly and changing the limitations on claiming the withholding tax benefit for the credit. The following paragraphs have been changed (specific changes are denoted in the attached rule).

- Paragraph (1) provides the purpose of the rule.
- Paragraph (2) provides the definitions.
- Paragraph (7) provides the restriction on claiming the personal protective equipment manufacturer jobs tax credit for the same jobs.
- Paragraph (8) specifies the rules for claiming the credit and electing the withholding claim benefit for excess tax credits.
- Paragraph (9) provides the carryforward period of the credit.
- Paragraph (11) provides the effective date of the regulation.

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560-7-8-.67 Life Sciences Manufacturing Job Tax Credit

560-7-8-.67 Life Sciences Manufacturing Job Tax Credit

(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § ~~48-7-40.1~~ B48-7-40.1B.

(2) **Definitions.**

(a) As used in this regulation, the terms "establishment", "medical equipment and supplies manufacturer", and "pharmaceutical and medicine manufacturer" shall have the same meaning as in O.C.G.A. § ~~48-7-40.1~~ B48-7-40.1B.

(b) "Life Sciences Manufacturing Job Tax Credit" is the credit established under O.C.G.A. § ~~48-7-40.1~~ B48-7-40.1B that is allowed to a medical equipment and supplies manufacturer and pharmaceutical and medicine manufacturer.

34 (3) **Credit Amount.** A medical equipment and supplies manu-
35 facturer or a pharmaceutical and medicine manufacturer, that quali-
36 fies for the job tax credit under O.C.G.A. § 48-7-40 or 48-7-
37 40.1 and the applicable job tax credit regulations thereunder, shall
38 be allowed an additional \$1,250 life sciences manufacturing job tax
39 credit for jobs created on or after July 1, 2021 that are engaged in
40 the qualifying activity of manufacturing medical equipment or sup-
41 plies or manufacturing pharmaceuticals or medicine in Georgia dur-
42 ing the taxable year.

43
44 (4) **Maximum Amount of Credit.** The life sciences manufactur-
45 ing job tax credit may be used to offset 100% of the medical equip-
46 ment and supplies manufacturer's and pharmaceutical and medicine
47 manufacturer's Georgia income tax liability derived from operations
48 within this state.

49
50 (5) **Eligibility.** A medical equipment and supplies manufacturer
51 and pharmaceutical and medicine manufacturer shall be eligible for
52 the life sciences manufacturing job tax credit under paragraph (3) of
53 this regulation at an individual establishment of the business. If
54 more than one business activity is conducted at the establishment,
55 then only those jobs engaged in the qualifying activity of manufac-
56 turing medical equipment or supplies or manufacturing pharmaceu-
57 ticals or medicine in Georgia shall be eligible for the life sciences
58 manufacturing job tax credit.

59
60 (a) The determination of whether a job is considered engaged in
61 the qualifying activity of manufacturing medical equipment or sup-
62 plies or manufacturing pharmaceuticals or medicine in Georgia shall
63 be determined on a monthly basis. In order to qualify for the life
64 sciences manufacturing job tax credit, such job must first qualify for
65 and be claimed for the job tax credit under O.C.G.A. § 48-7-
66 40 or 48-7-40.1. The medical equipment and supplies manufacturer

or the pharmaceutical and medicine manufacturer must compute a monthly average number of jobs engaged in the qualifying activity of manufacturing medical equipment and supplies or manufacturing pharmaceuticals or medicine in Georgia. Any job created on or after July 1, 2021 that is included in the job tax credit calculation, where 50 percent or more of the time is spent in a month on the qualifying activity of manufacturing medical equipment or supplies or manufacturing pharmaceuticals or medicine in Georgia, shall be eligible to be included in the total for such month, but in no case can such number exceed the number of jobs that are included in the job tax credit computation for such month. A job must be excluded from the monthly computation for any month that it does not meet the 50 percent requirement. Once the monthly average is computed, the number that is allowed cannot exceed the number of jobs that are allowed for the job tax credit for such year.

(b) For example. A taxpayer started its business in 2022 and such business manufactures medical equipment and supplies in Georgia and the taxpayer also has another business in Georgia. The taxpayer qualified for and claimed the job tax credit for jobs at both businesses. However, not all the jobs included in the job tax credit are involved in the manufacture of medical equipment and supplies. The taxpayer has the following job numbers in 2022:

Month in 2022	Eligible for the Jobs Tax Credit	Allowed for the life sciences manufacturing job tax credit
January	50	25
February	52	27
March	55	30
April	60	35
May	71	46

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June	68	43
July	55	30
August	52	27
September	55	30
October	66	41
November	44	19
December	60	35
Monthly Average - Number of jobs eligible for the job tax credit and allowed for the life sciences manufacturing job tax credit	57	32

91

92 (c) Only jobs that are involved in the qualifying activity of man-
93 ufacturing medical equipment or supplies or manufacturing pharma-
94 ceuticals or medicine in Georgia are allowed to be included when
95 claiming the life sciences manufacturing job tax credit. This shall
96 include managers, sales jobs, and support jobs that are involved in
97 the qualifying activity of manufacturing medical equipment and
98 supplies or manufacturing pharmaceuticals or medicine in Georgia
99 provided such persons meet the other requirements including the
100 50% monthly requirement.

101

102 (6) **Conditions and Limitations.** The life sciences manufactur-
103 ing job tax credit shall be allowed subject to the conditions and lim-
104 itations under O.C.G.A. §§ 48-7-40 or 48-7-40.1 and the applicable
105 job tax credit regulations. The life sciences manufacturing job tax
106 credit shall be disallowed during any year that the taxpayer does not
107 qualify as a medical equipment and supplies manufacturer or a phar-
108 maceutical and medicine manufacturer but the medical equipment
109 and supplies manufacturer or the pharmaceutical and medicine man-
110 ufacturer may requalify in a later year if they meet the requirements.

111

112 (a) Medical equipment and supplies manufacturers and

pharmaceutical and medicine manufacturers that make the election provided in O.C.G.A. §§ 48-7-40(m) or 48-7-40.1(k) to use their 2019 job tax credit numbers for their 2021 job tax credit, cannot use their 2019 job tax credit numbers to determine the life sciences manufacturing job tax credit for 2021.

(b) Only medical equipment and supplies manufacturing or pharmaceutical and medicine manufacturing jobs actually created on or after July 1, 2021 can be claimed. As such any job included in the job tax credit computation that was created before July 1, 2021 shall not be eligible for the life sciences manufacturing job tax credit. To determine the number of jobs created on or after July 1, 2021 for any year that includes July 1, 2021, the number of jobs created on or after July 1, 2021 shall be computed by subtracting the average for the months before July 1, 2021 from the average for the year.

1. For example. A taxpayer was in business before July 1, 2021 and has a business that manufactures medical equipment and supplies in Georgia and also has another business in Georgia. The taxpayer qualified for and claimed the job tax credit for jobs at both businesses. However, not all the jobs included in the job tax credit are involved in the manufacture of medical equipment and supplies. The number of jobs created on or after July 1, 2021 that are eligible for the life sciences manufacturing job tax credit is computed as follows:

Month in 2021	Eligible for the Jobs Tax Credit	Allowed for the life sciences manufacturing job tax credit
January	30	25
February	32	27
March	35	30
April	40	35

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May	51	46
June	58	43
Average for Jan to June	41	34
July	75	50
August	60	50
September	99	65
October	75	60
November	60	58
December	75	73
Monthly Average for Entire Year	58	47

Monthly average for entire year
less Average for Jan to June and
allowed for the life sciences
manufacturing job tax credit 13

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2. For a fiscal year that begins on or after January 1, 2021 and which includes July 1, 2021, the same computation should be performed to determine the number of jobs created on or after July 1, 2021 but there will be different months before and different months after July 1, 2021.

(7) Cannot claim the Personal Protective Equipment Manufacturer Jobs Tax Credit for the Same Jobs. Taxpayers may not claim the life sciences manufacturing job tax credit for any job for

150 which the taxpayer claims the tax credit provided under Code Sec-
151 tion ~~48-7-40.1 A~~48-7-40.1A. Jobs for which the personal protective
152 equipment manufacturer jobs tax credit is claimed under Code Sec-
153 tion ~~48-7-40.1 A~~48-7-40.1A shall be excluded from all calculations
154 for the life sciences manufacturing job tax credit under this regula-
155 tion. Also, in no case can the number of jobs claimed under Code
156 Section ~~48-7-40.1 A~~48-7-40.1A and Code Section ~~48-7-40.1 B~~48-
157 ~~7-40.1B~~ together exceed the number of jobs that are included in the
158 job tax credit computation.

159
160 **(8) Claiming the Credit.** For a medical equipment and supplies
161 manufacturer or pharmaceutical and medicine manufacturer to
162 claim the life sciences manufacturing job tax credit, the medical
163 equipment and supplies manufacturer or pharmaceutical and medi-
164 cine manufacturer must submit Form IT-CA with the medical equip-
165 ment and supplies manufacturer or pharmaceutical and medicine
166 manufacturer's Georgia income tax return each year the credit is
167 claimed. A software program's Form IT-CA that is electronically
168 filed with the Georgia income tax return in the manner specified by
169 the Department satisfies this requirement.

170
171 **(a) Withholding tax.** A medical equipment and supplies manu-
172 facturer or pharmaceutical and medicine manufacturer may claim
173 any excess life sciences manufacturing job tax credit against its
174 withholding tax liability. Except in the case of a timely assignment
175 under O.C.G.A. § 48-7-42, the withholding tax benefit may only be
176 applied against the withholding tax account used by the medical
177 equipment and supplies manufacturer or the pharmaceutical and
178 medicine manufacturer for payroll purposes. In the event the medi-
179 cal equipment and supplies manufacturer or the pharmaceutical and
180 medicine manufacturer that earned the credit is a single member lim-
181 ited liability company that is disregarded for income tax purposes,
182 the withholding tax benefit may only be applied against the

183 withholding tax liability that is attributable to wages paid by the sin-
184 gle member limited liability company, but note that such benefit
185 may also be assigned pursuant to O.C.G.A. § 48-7-42. A medical
186 equipment and supplies manufacturer or a pharmaceutical and med-
187 icine manufacturer must notify the commissioner ~~each year of its, in~~
188 the manner specified in subparagraph (8)(a)1., below, for any tax
189 year for which they are making an irrevocable election to take all or
190 a part of the credit against the quarterly or monthly withholding tax
191 payments for such medical equipment and supplies manufacturer or
192 pharmaceutical and medicine manufacturer. When this election is
193 made by a pass-through entity, the excess life sciences manufactur-
194 ing job tax credit will not pass through to the shareholders, partners,
195 or members of the medical equipment and supplies manufacturer or
196 the pharmaceutical and medicine manufacturer if the medical equip-
197 ment and supplies manufacturer or the pharmaceutical and medicine
198 manufacturer is a pass-through entity.

199
200 1. Notice of Intent. To claim any excess tax credit not used on the
201 income tax return against the medical equipment and supplies man-
202 ufacturer's or the pharmaceutical and medicine manufacturer's with-
203 holding tax liability, the medical equipment and supplies manufac-
204 turer or the pharmaceutical and medicine manufacturer must file
205 Revenue Form IT-WH through the Georgia Tax Center within the
206 three-year statute of limitations period ~~thirty (30) days~~ after the due
207 date of the Georgia income tax return (including extensions) ~~or~~
208 ~~within thirty (30) days after the filing of a timely filed Georgia in-~~
209 ~~come tax return, whichever occurs first.~~ Failure to file this form as
210 provided in this subparagraph will result in disallowance of the with-
211 holding tax benefit. Such irrevocable election may only be made one
212 time with respect to each tax year for which the credit is claimed,
213 for all or part of the excess tax credit remaining at the time of the
214 election. However, in the case of a credit which is earned in more
215 than one taxable year, the election to claim the withholding credit

216 will be available for the credit earned in such subsequent year.

217

218 2. Review Period. The Department of Revenue has one hundred
219 twenty (120) days from the date the applicable Form IT-WH under
220 subparagraph (8)(a)1. of this regulation is received to review the
221 credit and make a determination of the amount eligible to be used
222 against withholding tax.

223

224 3. Letter of Eligibility. Once the review is completed, a letter will
225 be sent to the medical equipment and supplies manufacturer or the
226 pharmaceutical and medicine manufacturer stating the tax credit
227 amount which may be applied against withholding and when the
228 medical equipment and supplies manufacturer or the pharmaceutical
229 and medicine manufacturer may begin to claim the tax credit against
230 withholding tax. The Department of Revenue shall treat this amount
231 as a credit against future withholding tax payments and will not re-
232 fund any previous withholding payments.

233

234 **(9) Carry Forward.** Any life sciences manufacturing job tax
235 credit which is claimed but not used in a taxable year may be carried
236 forward for ~~10~~the number of years provided in O.C.G.A. § 48-7-
237 40.1B from the close of the taxable year in which the life sciences
238 manufacturing job tax credit jobs were created. ~~For example, life~~
239 ~~sciences manufacturing job tax credit created by an employment in-~~
240 ~~crease in year one, but not used in year one, may be carried forward~~
241 ~~to years two through eleven.~~

242

243 **(10) Pass-Through Entities.** When the medical equipment and
244 supplies manufacturer or the pharmaceutical and medicine manufac-
245 turer is a pass-through entity, and has no income tax liability of its
246 own, the tax credit will pass to its individual members, shareholders,
247 or partners based on their year ending profit/loss percentage. The
248 credit forms will initially be filed with the tax return of the pass-

through entity to establish the amount of the credit available for pass through. The credit will then pass through to its individual shareholders, members, or partners to be applied against the tax liability on their income tax returns. The shareholders, members, or partners may not claim any excess life sciences manufacturing job tax credit against their withholding tax liabilities. The credits are available for use as a credit by the individual shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2022. The partnership passes the credit to a calendar year partner. The credit is available for use by the individual partner beginning with the 2022 calendar tax year.

(11) Effective Date. This regulation shall be ~~effective on July 1, 2021 and shall be~~ applicable to taxable years beginning on or after January 1, 2024.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-40.1B.