

Georgia Letter Ruling: LR IT-2017-02
Topic: Film Tax Credit
Date Issued: May 17, 2017

This letter is in response to your letter requesting a ruling that Vendor qualifies as a Georgia Vendor under the Film Tax Credit.

Facts as Presented by the Taxpayer

Your letter to the Department states:

“Vendor is a procurement company which in its ordinary course of business, sells or rents an assortment of property to the motion picture and television industry. Vendor procures goods, such as props and costumes (as described below). The combination of Vendor’s business relationships, volume pricing and years of experience allows Vendor to deliver these goods to its clients in a timely manner and at competitive prices.

“Vendor is a Georgia company with an office in <City>, Georgia. The office is currently staffed by one employee that works on a regular basis. Vendor also maintains some basic inventory at the office in <City>, Georgia. <deleted text>.

“Vendor charges, collects, and remits applicable sales tax on all items sold or rented to its clients.

“Vendor’s longstanding business relationships allow Vendor to extend more favorable credit terms than some clients may be able to secure on their own, especially independent productions which do not have the advantages that major studios might have in relation to the ability to procure goods at competitive prices.

“In the ordinary course of business, Vendor procures items for production companies such as specialty wardrobe, period prop pieces, custom effects pieces, etc. In some instances, Vendor may fulfill requests using its own inventory, while in other instances, it may use its nationwide network to locate hard to find items to bring them to Georgia for use in Georgia productions.

“Vendor is at financial risk for all items purchased or rented. It contracts with the supplier in its own name and not in the name of the production company. It bears the risk of delivery of the goods to the production set.

“As previously indicated, Vendor, in its regular course of business, routinely provides a large variety of production related items either from its inventory or from suppliers.

“Examples of a typical Vendor transaction:

“1) A television production company requires a very specialized, unique period wardrobe for 300 extras. The production company could not locate the specialized wardrobe, in the quantity needed or within the time required, in local stores or through their costume supplier. Vendor carries a small supply [sic] of hoop skirts but does not have the specialized wardrobe requested by the production company. Vendor would purchase the items from one of its preferred suppliers, generally located out-of-state, and have the items shipped to the production company at their shooting location. Vendor would invoice the production company from its in-state office and charge the appropriate sales tax upon delivery.

“2) A motion picture company requires a very specialized movie prop such as a functioning Sherman tank. The production company was not able to locate this type of tank in Georgia. Vendor carries in its inventory a limited number of other military props (i.e., rubber guns, uniforms) but does not have a tank in its Georgia inventory. Vendor would contract to rent and deliver the tank from one of its preferred vendors, generally located out of state. Vendor would have the item transported to the production company at their filming location. Vendor would invoice the production company from its in-state office and charge a rental fee and handling fee plus sales tax upon delivery.

“Vendor does not operate in any way to procure goods that would otherwise not be qualified goods used in the State of Georgia. A determination that Vendor is operating as a ‘Georgia vendor’ or, just as importantly, to remove doubt that Vendor operates in a way that is not merely a ‘conduit’ (under the Revenue Regulation 560-7-8-.45) would help production companies decide whether or not to utilize a company such as Vendor in Georgia.”

Issue # 1

Whether Vendor is a conduit with respect to Examples #1 and #2, above, as provided in Revenue Regulation 560-7-8-.45(6)(f)?

Issue # 2

If Vendor is a conduit, do any of its sales or rentals qualify for the film tax credit?

Authorities

O.C.G.A. § 48-7-40.26 (a)(5) provides that:

“(5) ‘Production expenditures’ means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, 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; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia 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. This term shall not include postproduction expenditures for footage shot outside the State of Georgia, marketing, story rights, or distribution, but shall not affect other qualified story rights. This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold Georgia income tax at the rate of 6 percent on all payments to 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 this title notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code Section 48-7-100. 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 this chapter, 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 this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of Chapter 7 of this title and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.”

Revenue Regulation 560-7-8-.45 (6)(f) provides that:

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

1. Production expenditures, which are attributable to the performance of services by individuals and companies directly at the filming site in Georgia who were not employees of the production company or qualified interactive entertainment production company, shall be attributed to Georgia in the same manner as salaries as provided in subparagraph (6)(g) of this rule.
2. Except as otherwise provided in this regulation, expenditures for services which are not performed at the filming site (such as insurance, 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 the service is rendered in Georgia. If the production company or qualified interactive entertainment production company is unable to track the actual time spent in Georgia, then some other reasonable method which approximates the actual time spent in Georgia may be used to determine the amount attributable to Georgia. 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 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 rule, a Georgia vendor is a vendor that:

- (i) Sells or rents property or provides a service not performed at the filming site, which is the subject of the 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.”

Ruling

Ruling on Issue #1

In order to be a Georgia vendor with respect to specific items, a vendor must carry the specific items in its own regular inventory. In Vendor’s Example #1, Vendor procures a “very specialized, unique period wardrobe for 300 extras” on behalf of a television production company. It does so, however, by purchasing the items from one of Vendor’s own “preferred suppliers, generally located out-of-state”, and then reselling or renting the wardrobe items to the production company. Vendor is not a Georgia vendor with respect to such items. Instead, Vendor is acting as a conduit within the definition of Revenue Regulation 560-7-8-.45(6)(f), and the television production company’s expenditure for the 300 wardrobe items in Example #1 would *not* be an eligible expenditure for purposes of the film tax credit. The fact that Vendor regularly carries a small supply of hoop skirts in its inventory does not change this result. A similar analysis would apply to Example #2.

Ruling on Issue #2

To the extent Vendor sells or rents costumes and props that it keeps in its regular inventory, such sales or rentals would qualify for the film tax credit.

The opinions expressed in this ruling are based upon the information contained in your request and limited to the specific transactions, facts, circumstances and taxpayer in question. The facts herein are those presented by the taxpayer and the Department accepts them as true for this ruling. If the facts presented herein change, are not true, are different, or material facts have been omitted, the conclusions reached in this ruling may change. In addition, subsequent statutory or administrative rule changes or judicial interpretations of the statutes or rules upon which this advice is based may subject similar future transactions to a different tax treatment than that expressed in this ruling.