

Georgia Letter Ruling: LR IT-2014-04  
Topic: Film Tax Credit  
Date Issued: July 29, 2014

This letter is in response to your letter requesting a ruling that Taxpayer 1 may rescind a sale of the film tax credit and then sell the film tax credit to a different purchaser.

### **Facts as Presented by Taxpayer**

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“On <date>, Taxpayer 1 entered into a tax credit purchase and sale agreement (the ‘Agreement’) with an individual named Taxpayer 2 (the ‘Buyer’) <deleted text>.

“Subsequently, Taxpayer 2 discovered that, as a result of a mistake of fact, Taxpayer 2 would not obtain the tax benefits Taxpayer 2 originally expected to receive from the purchase of the Transferred Tax Credits.” <deleted text>

### **Issue #1**

Whether Taxpayer 1 and Taxpayer 2 may rescind the sale of the film tax credit to Taxpayer 2 by (1) entering into a written rescission agreement, rescinding the agreement; (2) refunding the purchase price of the transferred film tax credits to Taxpayer 2; and (3) submitting a Form IT-TRANS retracting the sale?

### **Issue #2**

Whether after the sale is rescinded, Taxpayer 1 may sell the transferred film tax credits to a new purchaser?

### **Authorities**

Georgia Code § 48-7-40.26 (g) provides that:

“(g) Any tax credits with respect to a state certified production earned by a production company or qualified interactive entertainment production company and previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax may be transferred or sold in whole or in part by such production company or qualified interactive entertainment production company to another Georgia taxpayer, subject to the following conditions:

(1) Such production company or qualified interactive entertainment production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

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

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the production company or qualified interactive entertainment production company is in full compliance;

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

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company or qualified interactive entertainment production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (f) of this Code section. To the extent that such production company or qualified interactive entertainment production company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such production company or qualified interactive entertainment production company; and

(6) The transferee must acquire the tax credits in this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.”

Revenue Regulation 560-7-8-.45 (11) provides that:

“(11) **Selling or Transferring the Film Tax Credit.** The production company or qualified interactive entertainment production company may sell or transfer in whole or in part any film tax credit, previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax, to another Georgia taxpayer subject to the following conditions:

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

(b) The taxpayer may only make a one-time sale or transfer of film tax credits earned in each taxable year. However, the sale or transfer may involve more than one transferee and more than one sale date. The sale may occur in a year or years after the film tax credit is earned but must occur before the expiration of the carry forward period of such credit. For example, a production company or qualified interactive entertainment production company earns a \$500,000 credit in year 1. In year 2 the production company or qualified interactive entertainment production company sells \$200,000 of the credit to taxpayer 2 and \$50,000 to taxpayer 3. In year 3 the production company or qualified interactive entertainment production 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.

(c) The film tax credit may be transferred before the tax return is filed by the production company or qualified interactive entertainment production company. 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.

(e) The production company or qualified interactive entertainment production company must provide all required film tax credit detail and transfer information to the Department of Revenue.

Failure to do so will result in the film tax credit being disallowed until the production company or qualified interactive entertainment production company complies with such requirements.

(f) The carry forward period of the film tax credit for the transferee will be the same as it was for the production company or qualified interactive entertainment production company. This credit may be carried forward for five years from the end of the tax year in which the qualifying expenditures were incurred. For example: The production company or qualified interactive entertainment production company sells a film tax credit on September 15, 2014. This credit is based on qualifying expenditures from the calendar 2013 tax year. The credit may be claimed by the transferee on the 2013, 2014, 2015, 2016, 2017, or 2018 return and the carry forward period for this credit will expire on December 31, 2018. This carry forward treatment applies regardless of whether it is being claimed by the production company, the qualified interactive entertainment production company or the transferee.

(g) A transferee shall have only such rights to claim and use the Film Tax Credit that were available to the production company or qualified interactive entertainment production 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.”

## **Ruling**

### **Ruling on Issue #1**

O.C.G.A. § 48-7-40.26 provides an income tax credit for a production company that has at least \$500,000 of qualified expenditures in Georgia in a state certified production. Based on the facts stated herein, it is the opinion of this Department that Taxpayer 1 and Taxpayer 2 may rescind the sale of the film tax credit by (1) entering into a written rescission agreement; (2) refunding Taxpayer 2 the purchase price of the transferred film tax credits and; (3) submitting a Form IT-TRANS retracting the sale.

### **Ruling on Issue #2**

Based on the facts stated herein, it is the opinion of this Department that after the sale is rescinded, then Taxpayer 1 may sell the transferred film tax credits to another purchaser as provided in the film tax credit statute and regulation.

The opinions expressed in this ruling are based upon the information contained in your request and are limited to the specific transactions and taxpayer in question. A ruling has no precedential value except to the person to whom the ruling was issued and then only for the specific transaction addressed in the ruling. Should the circumstances regarding this transaction change, or differ materially from those represented, then this ruling may become invalid. In addition, please be advised that subsequent statutory or administrative rule changes or judicial interpretations of the statutes and rules upon which this advice is based may subject similar future transactions to a different tax treatment than those expressed in this response.