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Commissioner

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Department of Revenue
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Frank M. O'Connell
Director

NOTICE IT-2015-7

**RE: Proposed Amendment to the Department of Revenue, Income Tax Division,
Rule 560-7-8-.45, entitled "Film 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 Chapter 560-7-8 of the Rules and Regulations of the State of Georgia by amending Rule 560-7-8-.45, entitled "Film Tax Credit."

Attached with this notice are the exact copy and synopsis of the proposed Rule. The proposed Rule is being adopted under the authority of O.C.G.A. §§ 48-2-12 and 48-7-40.26.

The Department of Revenue shall consider the adoption of the above referenced Rule at 10:00 a.m. on Tuesday, November 3, 2015 in Suite 15200 of the Department's headquarters at 1800 Century Blvd NE Atlanta, GA 30345-3205.

The Department must receive all comments regarding the above referenced proposed Rule from interested persons and parties no later than 10:00 a.m. on Tuesday, November 3, 2015. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-2293. **Please reference "Notice Number IT-2015-7" on all comments.**

Dated: September 24, 2015


Lynnette T. Riley
Commissioner
Georgia Department of Revenue

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SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE INCOME TAX DIVISION

CHAPTER 560-7-8 RETURNS AND COLLECTIONS

560-7-8-.45 Film Tax Credit.

Rule 560-7-8-.45 is being amended to bring the rule into conformity with current Georgia law and to clarify certain provisions of the rule. This Rule is necessary for the effective administration of the Department's duties under O.C.G.A. § 48-7-40.26. Specific changes are denoted in the attached Rule.

Paragraph (1) provides the purpose of the regulation.

Paragraph (2) provides for the coordination of the Department of Revenue and the Department of Economic Development in administering the statute.

Paragraph (3) provides the definitions.

Paragraph (4) provides information regarding the threshold determination for a production company or qualified interactive entertainment production company and its affiliates and the assignment of the credit by the production company or qualified interactive entertainment production company to its affiliates.

Paragraph (5) provides information regarding the Department of Economic Development's certification process and the Department of Revenue's certification of Qualified Interactive Entertainment Production Companies.

Paragraph (6) provides information and examples regarding the projects that qualify for the base investment and the production expenditures that qualify for the credit and includes the loan-out company withholding provisions.

Paragraph (7) specifies the credit amount.

Paragraph (8) specifies the credit amount limitation for a qualified interactive entertainment production company.

Paragraph (9) provides the credit cap for the film tax credit for qualified interactive entertainment production companies and affiliates and the preapproval process for taxable years beginning on or after January 1, 2016 and before January 1, 2019.

Paragraph (10) provides the procedure for a production company or qualified interactive

entertainment production company to claim the credit.

Paragraph (11) specifies the conditions and limitations for utilizing the credit.

Paragraph (12) specifies how a pass-through entity utilizes the credit.

Paragraph (13) provides that the credit can be sold or transferred and provides conditions on selling or transferring the credit.

Paragraph (14) provides the procedures for selling or transferring the credit and provides examples.

Paragraph (15) specifies the required reporting requirements for qualified interactive entertainment production companies.

Paragraph (16) provides the effective date for the regulation.

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

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

TABLE OF CONTENTS

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

(b) As used in this regulation, the terms "affiliates", "base investment", "multimarket commercial distribution", "production company", "qualified Georgia promotion", "qualified production

activities”, “state certified production”, and “total aggregate payroll” have the same meaning as in O.C.G.A. § 48-7-40.26.

(c) “Loan-out Company” means any personal service company contracted with and retained by the production company or qualified interactive entertainment production company to provide individual personnel (which are not employees of the production company or qualified interactive entertainment production company), such as artists, actors, directors, producers, writers, production designers, production managers, costume designers, directors of photography, editors, casting directors, first assistant directors, second unit directors, stunt coordinators, or similar personnel for the performance of services used directly in a qualified production activity, but not including persons retained by the production company or qualified interactive entertainment production company to provide tangible property or outside independent contractor service, such as catering, construction, trailers, equipment and transportation.

(d) “Personal Service Company” means any personal service corporation as defined in Internal Revenue Code Section 269A(b) or any other entity, which also includes a sole proprietorship or an individual being paid as an independent contractor, meeting the principal activity and the ownership ~~employee-owner~~ requirements of Internal Revenue Code Section 269A(b).

(e) “Qualified Interactive Entertainment Production Company” means a company that:

1. Maintains a business location physically located in Georgia;

2. In the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company, had a total aggregate payroll of \$500,000 or more for employees working within the state;
3. Has gross income less than \$100 million for the taxable year; and
4. Is primarily engaged in qualified production activities related to interactive entertainment which have been approved by the Department of Economic Development.

Any company that has gross income less than \$100 million for the taxable year and is primarily engaged in qualified production activities related to interactive entertainment must meet the requirements in subparagraphs (3)(e)1. and (3)(e)2. and be certified as meeting such as provided in subparagraph (5)(a) in order to be eligible for the film tax credit.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person 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 establishes the amount of the 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 production company's or qualified interactive entertainment production company's affiliates under the provisions of O.C.G.A. § 48-7-42. When a 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 (13) of this rule and may not claim any excess 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.

(5) Certification of Qualified Production Activities. Prior to claiming the film tax credit (which includes the additional tax credit for including the qualified Georgia promotion), each new film, video, or digital project must be certified by the Department of Economic Development. Production companies that are required to reduce their investment basis by the amount of expenditures in prior years, must receive certification from the Department of Economic Development for current year projects prior to claiming the film tax credit. The Department of Economic Development will provide a Credit Certificate Number to the production company or qualified interactive entertainment production company for each qualifying project which is approved. The credit certificate number(s) will be used to report any transfer or sale of film tax credit by the production company or qualified interactive entertainment production company for the qualifying project(s).

(a) 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. 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.

(b) 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.

(c) 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.

(6) Production Expenditures.

(a) **Base Investment.** 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. 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 or qualified interactive entertainment production company produces 20 commercials in one calendar year, and each commercial has \$25,000 in production expenditures. The production company or qualified interactive entertainment production company can aggregate their production expenditures for multiple commercials in one calendar year (20 x

\$25,000 = \$500,000) to meet the \$500,000 base investment threshold.

2. Example 2: A production company or qualified interactive entertainment 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 or qualified interactive entertainment 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 or qualified interactive entertainment production company can claim the credit in the year the \$500,000 base investment has been achieved.

(b) Direct use. A production company or qualified interactive entertainment production company may only claim production expenditures that are directly used in a qualified production activity. In determining whether an expenditure is directly used in a qualified production activity, the Department of Revenue will consider the proximity of the expenditure to the activity as well as the causal relationship between the expenditure and the activity.

(c) Production expenditures include 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 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 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.

(d) The production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider 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 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 G2-FP to the loan-out company by January 31st of the year following the calendar year in which the withholding payments were made. Such G2-FP shall not be submitted to the Commissioner.

(i) The loan-out company shall complete Form G2-FL, which requires: the loan out company's name, address, and identification numbers; the allocated amount withheld (see subparagraph (6)(d)5.); the employee's name, address, and tax identification number; the name and identification numbers of the production company or qualified interactive entertainment production company that paid the withholding; and any other information required by the Commissioner. The loan-out company must provide Form G2-FL to the employee allocated the withholding

amount by February 28th of the year following the calendar year in which the withholding payments were made. The loan-out company must also electronically file a copy of Form G-1003 and Form G2-FL by February 28th of the year following the calendar year in which the withholding payments were made.

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

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

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

(e) Depreciation, amortization, or other expense on production expenditures with a useful life of more than one year. The costs of production expenditures with a useful life of more than one year are considered "other direct costs of producing the project in accordance with generally accepted entertainment industry practices." Such costs shall be included in the computation of the film 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 or qualified interactive entertainment 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 pre-production period shall not be included in the computation of the Film Tax Credit in this state. In order to claim depreciation, amortization, or other expense, the expenditure for the asset that generated the depreciation, amortization, or other expense, must have been incurred in this State as provided in subparagraph (6)(f) of this rule.

(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.

(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)(11). 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 multiplying the total payroll of employees who worked in Georgia by a ratio. Such ratio shall be computed by dividing the shooting days in Georgia in the state certified production by the total shooting days spent in the state certified production. For directors, producers, and other individuals who are paid a separate amount for preproduction, for actual production, and for post production, 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. The following example illustrates how to apply the shooting days method:

1. Example: A production company or qualified interactive entertainment production company has 125 employees on a state certified production in Georgia. The production company or qualified interactive entertainment production company shoots in Georgia for 4 days out of a total of 60 shooting days. The total aggregate payroll for those 125 employees is \$400,000. \$26,667 [$\$400,000$ multiplied by (4 days divided by 60 days)] of payroll would qualify as a production expenditure.

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

1. SUI (state unemployment insurance);
2. FUI (federal unemployment insurance);
3. FICA (employer portion);

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

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

6. Service fees paid to a payroll company (this includes workers compensation) but only if the payroll company is a Georgia vendor.

(i) Other Fringe Benefits. The following fringe benefits are attributed to Georgia as follows:

1. Meal per diems if incurred in Georgia; and
2. Hotel per diems if incurred in Georgia.

(7) Credit Amount.

(a) A production company or qualified interactive entertainment production 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.

(b) 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.

(8) Credit Amount Limitation for a Qualified Interactive Entertainment Production Company. 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 calendar year directly preceding the start of the taxable year the qualified interactive entertainment production company claims the film tax credit. 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.

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

(b) For taxable years beginning on or after January 1, 2014, and before January 1, 2015, 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 shall not exceed \$12.5 million. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed \$1.5 million for taxable years beginning on or after January 1, 2014 and before January 1, 2015;

(c) For taxable years beginning on or after January 1, 2015, and before January 1, 2016, 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 shall not exceed \$12.5 million. The maximum credit amount allowed for any qualified interactive entertainment production company and its

affiliates which are qualified interactive entertainment production companies shall not exceed \$1.5 million for taxable years beginning on or after January 1, 2015 and before January 1, 2016; and

(d) For taxable years beginning on or after January 1, 2016, and before January 1, 2019, 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 shall not exceed \$12.5 million for each taxable year. The maximum credit amount allowed for any qualified interactive entertainment production company and its affiliates which are qualified interactive entertainment production companies shall not exceed \$1.5 million for each taxable year beginning on or after January 1, 2016 and before January 1, 2019; and

~~(de)~~ The film tax credit for qualified interactive entertainment production companies shall not be available for taxable years beginning on or after January 1, ~~2019~~2016.

(ef) Allocation of Film Tax Credit for Qualified Interactive Entertainment Production Company and Affiliates. For taxable years beginning on or after January 1, 2013 and before January 1, 2016, theThe Commissioner shall allow the film tax credit for any qualified interactive entertainment production company and affiliates on a first-come, first served basis. The paper filing date or electronic filing date of the qualified interactive entertainment production company's income tax return that claims the film tax credit as provided in paragraph (10) of this regulation shall be used to determine such first-come, first-served basis. At the time the credit is claimed, all qualified interactive entertainment production companies must also send a paper copy of the Form IT-FC "Film Tax Credit" to the address listed on such form. Failure to send

such paper copy may cause the qualified interactive entertainment production company to not be allowed the film tax credit.

(fg) 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 and before January 1, 2019. For taxable years beginning on or after January 1, 2016 and before January 1, 2019, 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 production company's applicable Georgia income tax return must be based on the actual film tax credit earned pursuant O.C.G.A. § 48-7-40.26 and this regulation and cannot exceed the amount preapproved. If the qualified interactive entertainment production 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 qualified interactive entertainment production company nor shall such excess preapproved amount be assigned, sold, or transferred to any other taxpayer.

2. Notification. The Department will notify each qualified interactive entertainment production company of the tax credits preapproved or denied to such qualified interactive entertainment production company.

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

4. 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 subparagraph (9)(d) of this regulation, then the tax credits shall be allocated among the qualified interactive entertainment production companies who submitted Form IT-QIEPC-AP on the day the maximum aggregate limit was exceeded

on a pro rata basis based upon amounts otherwise allowed under O.C.G.A. § 48-7-40.26, and this regulation. Only credit amounts on applications received on the day the maximum aggregate limit was exceeded will be allocated on a pro rata basis.

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

6. In the event it is determined that the qualified interactive entertainment production company has not met all the requirements of O.C.G.A. § 48-7-40.26 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.

(10) Production Company or Qualified Interactive Entertainment Production Company Claiming Credit.

(a) Income Tax. For a production company or qualified interactive entertainment production company to claim the film tax credit, it must attach Form IT-FC "Film Tax Credit", ~~and the~~ Department of Economic Development credit certification(s), and an approved Form IT-QIEPC-AP, if applicable to its Georgia income tax return for each tax year in which the qualified expenditures were incurred.

(b) Withholding Tax. The production company or qualified interactive entertainment production company may claim any excess 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 production company and is attributable to withholding for such employees for withholding periods approved in subparagraph (10)(b)3. The withholding tax benefit may only be applied against the withholding tax account used by the production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider for payroll purposes. In the event the production company or qualified interactive entertainment 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)(b)3. Any production company or qualified interactive entertainment production company that qualifies to take all or a part of the film tax credit against withholding tax otherwise due the Department of Revenue, must make an irrevocable election to do so as a part of its notification to the Commissioner required under this subparagraph. When this election is made, the excess film tax credit will not pass through to the shareholders, partners, or members of the production company or qualified interactive entertainment production company if the production company or qualified interactive entertainment production company is a pass-through entity.

1. Notice of Intent. To claim any excess film tax credit not used on the income tax return against the production company's or qualified interactive entertainment production company's withholding tax liability, the production company or qualified interactive entertainment production company must file Revenue Form IT-WH *Notice of Intent* at least thirty (30) days prior to the due date of the Georgia income tax return (including extensions) or at least thirty (30) days prior to the filing of the income tax return, whichever occurs first. Failure to file this form as indicated will result in disallowance of the withholding tax benefit. 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 income tax return claiming the film tax credit 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 or qualified interactive entertainment production company stating the film tax credit amount which may be applied against withholding and when the production company or its payroll service provider or qualified interactive entertainment production company or its payroll service provider may begin to claim the film 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 or the qualified interactive entertainment production company or its payroll service provider.

(c) Use of Other Tax Credits. Production companies or qualified interactive entertainment production companies claiming the film 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 film tax credit.

(11) Conditions and Limitations.

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

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

(c) There is a five-year carry forward period from the end of the tax year in which the qualifying expenditures were made and the production company or qualified interactive entertainment production company established the amount of the film tax credit for such tax year. Any film tax credits that cannot be used against a taxpayer's income tax liability in the year established will be carried forward. For example, the amount of a film tax credit established in the calendar 2014 tax year may be carried forward until it expires on December 31, 2019.

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

(e) Any Department of Revenue audit triggered by a production company's or qualified interactive entertainment production company's use or transfer of a film tax credit will require the production company or qualified interactive

entertainment production company to reimburse the Department of Revenue for all costs associated with the audit. The Department of Revenue will inform the production company or qualified interactive entertainment production company that the audit is a 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 provision.

(12) **Pass-Through Entities.** When a production company or qualified interactive entertainment production company generating a film tax credit is a pass-through entity, and has no income tax liability of its own, the film 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 or qualified interactive entertainment production company that incurred the qualifying expenditures to establish the amount of the film 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 film 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, 2014. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2014 tax year.

(13) **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 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. 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, 2015. This credit is based on qualifying expenditures from the calendar 2014 tax year. The credit may be claimed by the transferee on the 2014, 2015, 2016, 2017, 2018, or 2019 return and the carry forward period for this credit will expire on December 31, 2019. 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.

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

(a) **Direct Sale.** The production company or qualified interactive entertainment production company may sell or transfer the film tax credit directly to a Georgia taxpayer (or multiple Georgia taxpayers as provided in subparagraph (13)(b) of this rule). A pass-through entity may make an election to sell or transfer the unused film tax credit earned in a taxable year at the entity level. If the pass-through entity makes the election to sell the 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 production company or qualified interactive entertainment production 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 (14)(a) of this rule, 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 film tax credit to a Georgia taxpayer.

(c) **Transferee Pass-Through Entity.** The production company or qualified interactive entertainment production 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 production company or qualified interactive entertainment production company, which claims the film tax credit for the project or project(s) associated with the credit being sold, ends; or during any later tax year before the five year carry forward period associated with the tax credit ends as provided in subparagraph (14)(d) of this rule). 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 production company or qualified interactive entertainment production company in the calendar 2014 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 2014 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 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 production company or qualified interactive entertainment

production company, which claims the film tax credit for the project or project(s) associated with the credit being sold, ends; or

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

(i) Example: A production company or qualified interactive entertainment production company reaches the \$500,000 base investment threshold and claims the film tax credit in calendar 2014 tax year. The production company or qualified interactive entertainment production company sells the film tax credit to a Georgia taxpayer in calendar 2015 tax year. 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, and before January 1, 2019, 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, and before January 1, 2019, the qualified interactive entertainment production company shall report such number for each respective taxable year.

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

(1516) Effective Date. This regulation as amended shall be applicable to taxable years beginning on or after January 1, 2014~~2016~~. Except as specifically provided in this regulation, taxable years beginning before January 1, 2014~~2016~~ will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2014~~2016~~ in the same manner as if the amendments set forth in this regulation had not been promulgated.

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