

ALERTS

Georgia Department Of Revenue Issues Rules Affecting Entertainment Tax Credits

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On Sept. 24, 2015, the Georgia Department of Revenue (DOR) issued [Notice IT-2015-7](#), which is proposed amendments to Rule 560-7-8-.45. These rules affect entertainment tax credits.

Any comments should be submitted to the Georgia DOR prior to the hearing on Nov. 3 at 10 a.m.

The amendment creates changes to conform the Georgia DOR's regulations to the current version of OCGA 48-7-40.26 (the Act). The vast majority of the changes affect the interactive entertainment (IE) industry portions of the Act. The only part which affects the film industry is one section clarifying the definition of personal service company. The remainder of the regulations introduce the preapproval process for IE companies and procedures that will govern such preapproval process.

Summary of Changes:

In paragraph (3)(d), the definition of "personal service company" (PSC) is clarified to include a sole proprietorship or an individual being paid as an independent contractor and meeting the principal activity and the ownership requirements of IRC Section 269A(b). This amendment blurs the distinction on PSCs and independent contractors. The Act requires that production companies withhold on payments to "loan out companies" in order to qualify for the tax credit. Loan out companies are defined as PSCs with a non-exclusive list of examples of types of positions like actors, directors, etc. Failing to properly withhold on payments to these PSCs could result in a denial of credit for those payments. Production companies should consider being careful in discerning the types of entities with which they do business.

Interactive Entertainment (IE) Section:

In paragraph 9(d), the rules now list the correct Sunset Date for IE, which is Jan. 1, 2019, and the correct amount of cap for each taxable year of \$12.5 million and \$1.5 million per company claiming the IE incentive.

Paragraph 9(h) introduces the preapproval process for IE incentives starting Jan. 1, 2019. Preapproval is required for any company seeking the IE incentive.

1. An IE company must submit form IT-QIEPC-AP through the Georgia Tax Center. The amount of preapproved IE tax credit cannot be exceeded even if more is earned nor can the amount of IE tax credits exceed the cap.

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2. The DOR will notify the IE company of the amount of IE tax credits preapproved or denied
3. IE credits will be issued by the film office on a first-come, first served basis
4. In the event that the IE credit amount on the applications received by the film office exceed the amount of cap on the day that they are received, the film office will apportion them on a pro rata basis. Any excess not earned or claimed will not be usable or assignable by the IE company. The unused IE credit does not go back into the pool to be given to another IE applicant.
5. Once the cap is reached, any further applications will be denied and not be considered for preapproval for a future date.
6. If it is determined that an IE company has not met any requirements under the Act then the IE credit will be retroactively denied.

Paragraph 15 introduces new reporting requirements for IE companies. It requires IE companies to provide information related to the number of full time employees subject to Georgia income tax that are employed by the IE company. For tax year 2016, the IE company may also be required to indicate the number of such employment numbers for the prior two years.

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