

**RULES OF
THE GEORGIA DEPARTMENT OF ECONOMIC
DEVELOPMENT
FILM, MUSIC & DIGITAL ENTERTAINMENT DIVISION**

**CHAPTER 159-1-1
FILM TAX CREDIT**

TABLE OF CONTENTS

159-1-1-.01 Available Tax Credits for Film, Videotape or Digital Media
159-1-1-.02 Definitions
159-1-1-.03 Film Tax Credit Certification
159-1-1-.04 Film Tax Credit Certification Application Process
159-1-1-.05 Qualified Productions & Production Activities
159-1-1-.06 Georgia Entertainment Promotion Tax Credit
159-1-1-.07 Qualified Productions
159-1-1-.08 Appeals Process
159-1-1-.09 Effective Date

159-1-1-.01 Available Tax Credits For Film, Videotape or Digital Media.

(1) **Purpose.** This rule provides guidance concerning the application and qualification guidelines contained within the 2008 Georgia Entertainment Industry Investment Act (hereinafter “Act”) under O.C.G.A. § 48-7-40.26. There are two different credits made available under the Act; the “Base Film Tax Credit” and the “Georgia Entertainment Promotion Tax Credit” (hereinafter “GEP Tax Credit”), and collectively referred to as the “Film Tax Credit.” Each of the two available tax credits requires an independent certification application.

(2) **Coordination of Agencies.** The Georgia Film, Music and Digital Entertainment Office (GFMDE), a division of the Georgia Department of Economic Development (hereinafter GDEcD), will determine which projects qualify for the film tax credits authorized under the Act, the certification of tax credit applications, and the administration of the GEP logo. The Georgia Department of Revenue (hereinafter

Film Tax Credit

Chapter 159-1-1

“GDOR”) is the state agency responsible for implementing the proper application of the film tax credits.

(3) **Cross-Reference.** This rule shall be construed in harmony with the Rules of the Department of Revenue, Income Tax Division, Chapter 560-7-8, Returns and Collections, Rule 560-7-8-.45, entitled Film Tax Credit, which governs, among other things, the application of financial thresholds and calculations of the tax credits to be allowed.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.02 Definitions.

(1) ‘Animated’ means, with regard to the GEP Tax Credit, the movement of the GEP logo while it is seen in the finished Film, TV, or Interactive Entertainment Work, as defined by GFMDE (See rule 159-1-1-.02 below). The logo will be delivered to each customer in file formats that will provide producers of movie content, television content, music video content, and interactive video game content various versions of the GEP logo that will meet the requirement of Animated. Options will include a 3D-animated logo with several elements moving to form the GEP logo; a credit roll or scroll; a fade up and out; or a modified GEP logo promotion as agreed upon in advance by the production company or studio and GFMDE. The GEP logo may be placed before the opening titles; within the opening titles; within the content as product placement; or in the end credit roll; preferably before the below the line crew credit crawl. A deal memo, created by the requesting customer and specifically defining a proposed logo placement, must be reviewed, agreed to and signed by both GFMDE and the requesting Customer and must be executed prior to the Customer being awarded the GEP tax credit.

(2) ‘Certification Letter’ means a letter from the GDEcD indicating that the requirements to earn the Georgia “Base Film Tax Credit” have been met for the specific project named. If the project has also been certified for the GEP uplift, a designation in the certification letter will indicate that the project is so eligible and qualifies for the additional 10% GEP tax credit.

Film Tax Credit

Chapter 159-1-1

(3) 'Commercial Advertisements' means advertisements recorded on film, videotape or digital medium for multi-market distribution which extends outside the state of Georgia by way of broadcast television networks, cable, satellite, Internet, DVD, home video or motion picture theaters. Branding, marketing, promotion and/or e-advertising campaigns do not qualify. Certain animated productions do qualify.

(4) 'Console Game' refers to a form of interactive multimedia consisting of images and sounds generated by a video game console and displayed on a television or similar video/audio display system. The game itself is usually controlled and manipulated using a handheld device connected to the console called a controller. The display, speakers, console, and controls of a console can also be incorporated into one small object known as a handheld game console.

(5) 'Development' with regards to a film or television project means any activity or expenses incurred in order to prepare the project for the pre-production phase of the project or production. 'Development' also refers to the creation of a video game, the production process involved in producing a video game, referred to in the industry as video game development, as in the production process normally required to produce a video game.

(6) 'Feature Film' means, but is not limited to, a dramatic, comedic, animated or documentary film or high definition digital production with no commercial interruption, and originally intended for commercial distribution to motion picture theaters, directly to the home video and/or DVD markets, cable TV, video on demand, or any technology hereafter devised.

(7) 'Film Tax Credit' means the tax credits allowed pursuant to the 2008 Georgia Entertainment Industry Investment Act, O.C.G.A. § 48-7-40.26.

(a) The 'Base Film Tax Credit' means the tax credit that provides a 20% tax credit for all qualified and certified entertainment productions, as certified by the GDEcD, which meet the minimum investment threshold, and is effective for all taxable years beginning on or after January 1, 2008.

(b) The ‘Georgia Entertainment Promotion Tax Credit’ (“GEP Tax Credit”) means the additional 10% tax credit which may be obtained by inclusion of a promotional Georgia logo in the completed production. The logo may be placed before or within the film or TV production’s opening titles; into or out of bumpers, or in the end credits, preferably before the below the line crew credit crawl; over picture in the last three to five seconds of a music video; in various navigational areas within a video game, or as product placement in any of the above. (See rule 159-1-1-.06 (1) below)

(8) ‘Interactive Entertainment Work’ means only the creation of massively multi-player online video games (MMOG), virtual worlds and certain console games as defined and approved by GFMDE and that meets the requirement of multi-market distribution via the Internet or any other channel of exhibition.

(9) ‘Life of the Project’ means from the initial release date through all ancillary uses, markets, and distribution channels worldwide that are under the direct control of the studio or production company, unless an exemption is agreed upon by GFMDE.

(10) ‘Massively-Multi-Player Online Game’ (MMOG) refers to a video game which is capable of supporting hundreds or thousands of players simultaneously. MMOGs are played on the Internet and feature at least one persistent world.

(11) ‘Multi-Market Distribution’ means commercial distribution within the State of Georgia and which must extend to multiple markets outside the State of Georgia.

(12) ‘Music Video’ means a filmed or videotaped recorded song, often portraying musicians performing the song or including visual images interpreting the lyrics.

(13) ‘Preproduction’ means the process of preparation for actual physical production and is considered to begin with the establishment of a dedicated production office, the hiring of key crew members such as a Unit Production Manager and/or Line Producer, and includes, but is not

Film Tax Credit

Chapter 159-1-1

limited to, activities such as location scouting, hiring of crew, construction of sets, etc. Preproduction does not include the process of 'Development'. (See rule 159-1-1-.02 (5) above)

(14) 'Presentation' means the entire Feature Film, Television Pilot, Television Series, Television Film, Single Television episode or episodes, Television Specials, Music Videos, or Interactive Entertainment Work. This is not the same as a "pre-pilot" demo presentation.

(15) 'Principal Photography Start Date' means the first date of principal ongoing filming of significant portions of a qualified film that involves the main lead actors and the director.

(16) 'Production Company' is defined as a company that is primarily engaged in qualified production activities which have been approved by the Georgia Department of Economic Development and is a company that is solely and regularly involved in the creation and production of original film, television, or video game content in the State of Georgia.

(17) 'Promotional Trailers,' as defined by GFMDE, means behind the scenes specials and special edition DVD releases where credits are included.

(18) 'Television Film,' which may also be known as a 'movie of-the-week,' 'MOW,' 'television special,' 'made for television movie,' 'TV movie', or 'TV mini-series,' means a production intended for broadcast on television, whether free or via a subscription-based service.

(19) 'Television Pilot' means the initial episode produced for a proposed television series that has a running time of at least thirty minutes in length (inclusive of qualified commercial advertisements and qualified interstitial content).

(20) 'Television Series,' which may also be known as episodic television, means a regularly recurring production intended in its initial run for weekly broadcast on television, whether free or via a subscription-based service, that has a running time of at least thirty (30)

Film Tax Credit

Chapter 159-1-1

minutes in length (inclusive of qualified commercial advertisements and qualified interstitial content).

(21) 'Virtual World' means a computer-based simulated environment intended for its users to inhabit and interact via avatars. These avatars are typically depicted as textual, two-dimensional, or three dimensional graphic representations of people, although other forms are possible (auditory and touch sensations for example). Some, but not all, virtual worlds allow for multiple users.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.03 Film Tax Credit Certification.

(1) State Certified Production.

Project Certification Requirement. Prior to claiming any Film Tax Credit, each new film, video, television or video game project must be certified as meeting the guidelines and the intent of the Act. Projects are certified by the Georgia Film, Music & Digital Entertainment division (GFMDE) on a project by project basis. Producers may be asked to provide budget information, funding sources, distribution agreements, production schedules, and personnel information. Only one production company may claim the tax credit, per project, and the production company must be regularly and solely in the business of producing original film, television or video game content.

(a) Projects Not Eligible for Certification.

Certain categories of projects do not qualify for the Film Tax Credit or the Georgia Entertainment Promotion including, but not limited to, the following:

1. Live or recorded broadcast or sporting events (except to the extent that any footage used is a minor part of an otherwise qualifying production);

Film Tax Credit

Chapter 159-1-1

2. Live or prerecorded news programs & certain awards shows;
3. Local TV talk shows originating in or airing from local TV stations; Call-in talk shows; Live talk shows;
4. Projects and content consisting of footage not shot, recorded or originally produced in Georgia;
5. Music scoring of content shot outside the state of Georgia;
6. Corporate marketing, industrial or training productions;
7. Pornographic films or videos;
8. Trailers promoting theatrical films;
9. Promos or interstitials promoting or marketing entertainment content that was not produced in Georgia
10. Website development;
11. Certain interactive productions; video game platform design and/or manufacturing for purchase; (but see Rule 159-1-1-.05(4) below);
12. Sole platform arcade video games;
13. Games of Chance websites and other games of chance productions.
14. Productions performed strictly ‘for hire’, unless the hiring party waives its right to claim the tax credits;
15. Any Qualified Production performed as a ‘work for hire’, where the owner of the results of the Qualified Production has filed a Certification Application;
16. Small scale games included in advertising, marketing and promotional websites or microsites; all forms of social media, social networking, marketing and brand promotion;
17. Development costs, marketing and promotion expenses, distribution expenses, or any expenses incurred prior to preproduction or after post production of a feature film, television production or video game;
18. Infomercials, Infotainment, Edutainment content and Solicitation based productions do not qualify as “entertainment” as defined by GFMDE.
19. Auction based TV shows; and Political and Editorial based content do not qualify.
20. Any expenditures made or incurred outside the state of Georgia and productions that do not meet the \$500,000 minimum spend requirement.

(c) **Certification Letter.** Projects which meet the certification requirements will be sent a Certification Letter with a project certification number and the tax credit percentage level for which the project is eligible. Only one certification letter per project will be awarded. In the instance of Co-Productions or “work for hire” situations, both companies must provide an agreement as to which party will earn the tax credits. The Certification Letter or Letters must be included, along with required GDOR’s Forms, with the production company’s Georgia tax return when claiming the tax credit.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.04 Film Tax Credit Certification Application Process.

(1) Film and television production companies or studios must submit a completed certification application not earlier than ninety (90) days prior to the scheduled start of principal photography and a shooting script to GFMDE for all feature films and television projects in order to be considered for approval. Video game and virtual world developers must submit a synopsis of each project(s) along with a certification application not earlier than ninety (90) days before the beginning of game development. Music video producers must submit song lyrics and a basic outline of the storyline elements along with a completed certification application not earlier than thirty (30) days prior to the scheduled start of principal photography. Commercial production companies must submit a listing of the television commercial(s) being produced and a completed certification application(s) not earlier than (30) days prior to the start of principal photography.

(2) For projects which are not completed within the applicant’s tax year (fiscal year or calendar year), a new project certification must be applied for each successive tax year. A certification letter must be obtained for each project for each year that tax credits are claimed. This rule applies to all multi-year entertainment productions that qualify for the Tax Credits including, but not limited to, feature films, television series, other television productions, music videos, and video game development. Large, multi-year video game productions must apply and be certified for the base Film Tax Credit and the GEP Tax Credit each

year a video game production is in development or production. The GEP logo is required to be prominently displayed in agreed upon areas of the game and on the game company's website for the duration of the development phase and permanently embedded in the initial version and subsequent versions of the game, website, promotional materials and product packaging for the life of the game series.

(3) All projects must be fully funded and have an existing multi-market distribution contract, or intend in good faith to seek such distribution outside the state of Georgia in order to qualify for the Film Tax Credit. Qualified distribution includes international, national or regional distribution via broadcast television, satellite television, cable television, movie theaters, video on demand, retail outlets, home video, online video game subscription distribution, Internet distribution, DVD sales and distribution, or other forms of distribution that may hereafter be devised. If for any reason the project is not distributed to multiple markets outside the state of Georgia (thereby eliminating any promotional value of the GEP logo), the GEP Tax Credit will be disallowed.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.05 Qualified Productions & Production Activities.

(1) The Film Tax Credit applies to all qualified and certified entertainment productions, as determined solely by GFMDE, including and limited to major studio feature films, independent feature films, television pilots; dramatic/comedic/reality television series; television films, TV specials, TV episodes, TV commercial advertisements; music videos; massively multi-player online video games (MMOG); certain console video games; virtual worlds; animated feature films and animated TV series; and the production of original musical scores used in any of these types of projects which have been approved and certified by the GFMDE.

(2) Production companies must create, produce, and record original content made in the State of Georgia in order to qualify for the film tax credit. Work-for-hire service companies, post production houses, catering

Film Tax Credit

Chapter 159-1-1

companies, equipment rental houses, and motion picture laboratories are not eligible to receive the tax credit, but the producers employing them may include these expenditures as part of their project expenses.

(3) Expenditures for the Development phase of projects do not Qualify for the Film Tax Credit. Projects must have entered 'Preproduction' in order for expenditures to qualify for the Film Tax Credit.

(4) Studios designing platforms for outside game developers are not eligible for the film tax credit; however, the studio that buys these platforms from a Georgia vendor with a location in Georgia may claim them as an expense toward the production of a video game project.

(5) Expenditures incurred in Georgia by producers for postproduction of projects produced and recorded in the state qualify for the tax credit, except for postproduction expenditures for Marketing and Distribution, which do not qualify.

(6) Qualified commercial advertisements are eligible for the base Film Tax Credit; however, such commercial advertisements are not eligible for the GEP Tax Credit.

(7) Any misrepresentation of project information may result in denial or revocation of certification.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.06 Georgia Entertainment Promotion Tax Credit.

(1) The GEP Tax Credit is available only for major studio feature films, independent feature films, TV pilots, TV episodes; dramatic/comedic/reality TV series; television films, TV specials, music videos; certain console video games; massively multi-player online video games (MMOG); virtual worlds; and animated feature films and animated TV series which have been approved and certified by the GFMDE.

(2) The GEP Tax Credit certification applications must be submitted to the GFMDE. Applications will be reviewed and decisions will be issued. Projects that are not eligible or approved for the GEP Tax Credit may still be eligible for the base Film Tax Credit. If an applicant has claimed the GEP Tax Credit and fails to include the GEP Logo in the original finished product per the agreed upon placement, the GEP Tax Credit may be disallowed.

(3) Once production of a qualified entertainment project has been completed in Georgia, the applicant or customer will request that the GEP Logo be delivered to said customer. The GFMDE will deliver the GEP Logo to each qualified GEP Tax Credit applicant on a DATA DVD disc at no charge. The GEP Logo will only be provided to customers that the GFMDE has certified as meeting the requirements to receive the GEP Tax Credit. The GFMDE must approve all logo placements, on a case by case basis. Furthermore, it is required that each qualified GEP tax credit applicant provide to GFMDE a DVD verifying the actual placement of the GEP Logo in the completed film, television production, music video or video game.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.07 Qualified Productions.

(1) 'Qualified Movie Production' means a feature film that has been granted certification by the GFMDE. Feature films must include a shooting script for review along with their film tax credit certification application and GEP application (if applicable). After completion of the project, a digital copy of the project containing the GEP logo must be sent to the GFMDE for review. Depending on the type of project and position within the movie titles or credits, an approximately five second exposure of the GEP logo, as provided by the GFMDE, must be included before or during the opening titles, as product placement within the production, or in the end credits, preferably before the below the line crew credit crawl in the end credit roll to earn the 10% uplift. The GEP logo must be included within the Presentation and in Behind-the-scenes specials and special edition DVD releases where credits are included.

(2) ‘Qualified TV Production’ means television pilots, television series (in whole or in part), television films, and TV specials which have been given certification by the GFMDE. Television productions must include a shooting script for review with the GEP application. After completion of the project, a digital copy of the project containing the GEP logo must be sent to the GFMDE for review. To qualify for the GEP uplift, the production must include a five second Georgia promotional logo in the body of the program, per each broadcast 30 minutes (inclusive of qualified commercial advertisements and qualified interstitial content); to be placed in the opening title sequence; as a bumper into or out of a commercial break; or in a prominent position in each single project’s end credits; preferably before the below the line crew credit crawl; however, in no instances may the logo be shrunk or sped up in the credits without prior approval by GFMDE. The logo exposure time may be aggregated, if necessary, in order to meet the five second requirement and must be approved by GFMDE.

(3) ‘Qualified Music Video’ means music video projects certified by the GFMDE. To qualify for the GEP uplift, a minimum of a three to five second Georgia logo exposure must occur at the end of the finished product, as well as in all units sold, and included in all online promotions. The finished music video project must be submitted to the GFMDE for review before the GEP uplift will be approved. Music video producers must provide a song lyric sheet and general outline of the storyboard of the music video in advance of production or prior to approval of the GEP certification. Demonstrated Multi-market Distribution outside the state of Georgia is required.

(4) ‘Qualified Interactive Work’ means interactive entertainment that is limited to certain console video game products, a massively multi-player online video game (MMOG), or a virtual world product produced in Georgia with multi-market distribution extending outside the State of Georgia. To qualify for the GEP uplift, interactive projects must include a total of fifteen seconds of Georgia promotional logo exposure in units sold, and up to a three second GEP logo adjacency in all online promotions. The fifteen second requirement may be aggregated and met through up to three separate and distinct displays of the GEP logo throughout the video game or virtual world product totaling fifteen seconds. Placement of the GEP logo within a video game or virtual

Film Tax Credit

Chapter 159-1-1

world must be discussed in advance with the GFMDE. Video game developers must provide a synopsis of the game architecture, navigation and story plotlines before the project can be certified.

(5) In all cases, the GDEcD and the GFMDE will have authority for the certification of all projects; the denial of certification for any project; the denial of certification of the GEP; the agreed upon type, style, length and placement of the GEP logo, and the settlement of all disputes regarding the GEP.

(6) Every effort will be made to negotiate in good faith with customers at all times in order to provide the greatest level of promotion, economic impact and jobs creation for the state of Georgia.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.08 Appeal Process.

If the authorized applicant's certification application is disapproved by the GFMDE, or the approved applicant disagrees with the type of tax credits granted by the GFMDE, the applicant shall have the right to appeal. In the case of a disapproval of a certification application, an appeal may be made by sending a letter to: Mr. Elmer Stancil, Manager of Community and Government Relations, Georgia Department of Economic Development, 75 Fifth Street, NW, Suite 1200, Atlanta, Georgia 30308, within thirty (30) days from the date of issuance of the denial letter by GFMDE. In the case of an appeal from a disagreement of the percentage of tax credit issued, such appeal shall be made by sending a letter to the same address as listed above within thirty (30) days from the issuance of the certificate of tax credit. Failure to request an appeal within thirty (30) days will finalize the denial decision and/or the percentage of the tax credit.

Upon receipt of a timely letter of appeal, the Manager of Community and Government Relations will address the merits of the appeal and the nature of the dispute with the Commissioner of the GDEcD, who will make the final decision. The GDEcD shall make a report on the appeal to the GFMDE and the GDEcD shall issue a final order within sixty days

Film Tax Credit

Chapter 159-1-1

of the report. A copy of the final order will be issued to the appellant within ten (10) days after the date the GDEcD renders the final order.

Any further appeals must be made before the Office of State Administrative Hearings.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.09 Effective Date. This chapter is applicable to taxable years beginning on or after January 1, 2008.

Authority: O.C.G.A. §48-7-40.26.

PROPOSED