

**RULES OF
THE GEORGIA DEPARTMENT OF ECONOMIC
DEVELOPMENT**

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

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**159-1-1-.01 Available Tax Credits For Film, Video or Interactive
Entertainment Production**

(1) Purpose. This rule provides guidance concerning the application and qualification guidelines contained within the Georgia Entertainment Industry Investment Act (hereinafter “Act”) under O.C.G.A. § 48-7-40.26. There are two separate credits made available under the Act: the 20% “Base Tax Credit” and the 10% “Georgia Entertainment Promotion (“GEP”) Tax Credit.” Each of the two available tax credits requires an independent certification application.

(2) Coordination of Agencies. The Georgia Department of Economic Development, (hereinafter “GDEcD”), will determine which projects qualify for the base tax credits authorized under the Act; will evaluate and certify marketing opportunities for the GEP Tax Credit; and will certify tax credit applications. The Georgia Department of Revenue (hereinafter “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 Georgia 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) ‘Certification Letter’ means a letter from GDEcD indicating that the requirements to earn the “Base Tax Credit” have been met for the specific project named. If the project has also been certified for the “GEP Tax Credit,” a designation in the certification letter will indicate that the project is so eligible and qualifies for the additional 10% GEP Tax Credit.

(2) ‘Commercial Advertisements’ means televised announcements sponsoring or promoting ideas, goods, entertainment projects, or services by an identified sponsor that are intended for Multimarket Commercial Distribution.

(3) ‘Development’ means any activity or expenses incurred in order to prepare the project for the preproduction phase of the project or production.

(4) ‘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 Multimarket Commercial Distribution to motion picture theaters, directly to the home video and/or DVD markets, cable television, premium cable, broadcast television, video on demand, or advertiser supported sites.

(5) ‘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 Tax Credit’ means the 20% tax credit for productions that meet the minimum investment threshold in a qualified production, as certified by GDEcD and:

(b) The ‘Georgia Entertainment Promotion Tax Credit’ (“GEP Tax Credit” or “GEP Uplift”) means the additional 10% tax credit which may be obtained for projects as outlined in Rule 159-1-1-.07.

(6) ‘Game Engine’ means the software system or code used to create and develop an interactive game with core functionality that typically includes rendering 2D or 3D graphics, sound, scripting, animation, artificial intelligence, physics, and input.

(7) ‘Game Platform’ means the electronic delivery system used to launch or play the interactive game.

(8) ‘Interactive Entertainment’ means products and services produced in Georgia and as defined and approved by GDEcD means those that meet all of the following requirements:

(a) Employs electronics including Game Platforms and Game Engines to create an interactive system with which a user can play;

(b) Contains or creates a computer-controlled virtual universe or simulated environment within which an individual using the program may interact to generate visual feedback and achieve a goal within that universe or environment as determined by the player’s skill and or luck;

(c) Contains at least three of the following six elements: animated graphical images, static graphic images, sound, text, 2d or 3d geometry, scoring/leaderboard/badges/trophies system;

(d) Are not products developed by the Qualified Interactive Entertainment Production Company or developer for internal use;

(e) Meets the requirement of Multimarket Commercial Distribution via digital platforms, including advertiser supported websites, designed for the distribution of interactive games.

(i) Projects eligible for certification include: game types/categories traditionally found in videogame or retail stores or Internet-based social, casual, serious, and social networking games on mobile, console, computer, smart device and television platforms.

(ii) Projects not eligible for certification include: Internet sites that do not meet all of the defined requirements of Interactive Entertainment; streamed linear media such as podcasts, video or

audio; interpersonal communications services such as video conferencing, wireless telecommunications, text-based channels, chat rooms, broadcast/streamed viewing enhancements; small-scale games embedded and used exclusively in advertising; and marketing and promotional websites or microsites.

(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 GDEcD.

(10) ‘Multimarket Commercial Distribution’ means distribution of projects for pay intended for mass market consumption extending to multiple markets outside the State of Georgia.

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

(12) ‘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 limited to, activities such as location scouting, hiring of crew, construction of sets, etc. Preproduction does not include the process of ‘Development’. (See paragraph (3) of this rule)

(13) ‘Presentation’ means the entire Feature Film, Television Pilot, Television Series, Television Film, Single Television episode or episodes, Television Specials, Music Video(s), or Interactive Entertainment Product. This is not the same as a “pre-pilot” demo presentation.

(14) ‘Principal Photography Start Date’ means the first date of principal ongoing filming of significant portions of a qualified film that involves the main lead actor(s) and the director.

(15) ‘Production Company’ is defined as a company that is primarily engaged in qualified production activities which have been approved by GDEcD.

(16) ‘Qualified Interactive Entertainment Company’ means a company whose gross income is less than \$100 million that is primarily engaged in qualified production activities related to interactive entertainment which has been approved by GDEcD. 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 GDEcD 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 GDEcD exceeds 50% of their total expenses for their taxable year.

(17) ‘Television Film,’ which may also be known as a ‘Movie of-the-Week,’ ‘MOW,’ ‘Television Special,’ ‘Made for Television Movie,’ ‘TV Movie,’ or ‘TV Miniseries,’ means a production intended for broadcast on television, whether free or via a subscription-based service.

(18) ‘Pilot’ means the initial episode produced for a proposed Series.

(19) ‘Series,’ which may also be known as episodic programming, means a regularly recurring production intended in its initial run for broadcast on television.

(20) ‘Work for Hire’ means an arrangement whereby one production company contracts with another production company to engage in qualified production activities pursuant to a production services agreement. Merely financing or providing funding to a production company does not make the financing/funding company the “hiring” company for purposes of the entertainment tax credit statute.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.03 Film Tax Credit Certification.**(1) State Certified Production.**

(a) Project Certification Requirement. Prior to claiming any Film Tax Credit, each new film, video, television or Interactive Entertainment product must be certified as meeting the guidelines and the intent of the Act. Projects are certified by GDEcD on a project-by-project basis. The types of projects eligible to receive the Base Tax Credits are Feature Films, Television Films, Series or Episodes, Commercial Advertisements, Music Videos, and Interactive Entertainment Projects as defined and approved by GDEcD. 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. The maximum credit for any Qualified Interactive Entertainment Production Company and their affiliates which are qualified interactive entertainment production companies is \$5 million. Beginning January 1, 2013, the maximum total tax credits allowed for Interactive Entertainment companies is \$25 million, based on a first come, first serve basis based on the dates set forth in Rule 560-7-8-.45. Therefore, certification of interactive entertainment projects does not guarantee that credits will be available. All projects must be applied for and certified individually. Certification applications for film and television projects should be sent to the Georgia Film, Music & Digital Entertainment office. Certification applications for Interactive Entertainment companies should be sent to the Interactive Entertainment and Digital Media Office. Both offices are located at 75 Fifth Street NW, Suite 1200, Atlanta, GA 30308.

(b) 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 prerecorded broadcast of athletic events;
2. Live or prerecorded news programs;
3. Local talk shows or other local interest programming not intended for Multimarket Distribution;
4. Projects and content consisting solely of footage not shot, recorded, or originally created in Georgia;
5. Website development;
6. Corporate marketing, industrial or training productions;
7. Any productions in violation of Title 16 Chapter 12 of the state's Obscenity Statute;

8. Sole platform arcade video games;
9. Small scale games embedded and used exclusively in advertising, marketing and promotional websites or microsites;
10. Infomercials, Infotainment, and Solicitation-based productions;
11. Political and Editorial-based content programming;
12. Any expenditure made or incurred outside the state of Georgia, and productions that do not meet the \$500,000 base investment requirement;
13. Marketing campaigns; and
14. Internet sites and digital media projects that do not meet all of the defined requirements of Interactive Entertainment; interpersonal communications services such as video conferencing, wireless telecommunications, text-based channels, chat rooms, or broadcast/streamed viewing enhancements.

(c) Certification Letter. Projects that 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. GDEcD shall use reasonable efforts to make a certification decision and, if appropriate, provide the Certification Letter to the Production Company within sixty (60) days of the submission of the application; provided however, that if such Certification Letter is not sent within this sixty (60) day period, the production company may, in its sole discretion, deem its application to be denied, and begin the appeals process outlined in Rule 159-1-1-.08. Only one Certification Letter per project will be awarded. In the instance of co-productions, both companies must provide an agreement as to which party will earn the tax credits. In the instance of a work-for-hire, the work-for-hire company will not be eligible for the Film Tax Credit. A Certification Letter for each project claiming tax credits must be included, along with required GDOR 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) For all feature films and television projects to be considered for approval, film and television production companies or studios must submit a completed certification application with a shooting script not earlier than ninety (90) days prior to the Principal Photography Start Date. Producers of Interactive Entertainment products and services must submit a synopsis of each project along with a certification application not earlier than ninety (90) days before the beginning of Interactive Entertainment production. 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 Principal Photography Start Date. 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 Principal Photography Start Date.

(2) For projects that 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, Series, other television productions, and Interactive Entertainment Products.

(3) All projects must be fully funded and have an existing Multimarket Commercial 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, DVD sales and distribution, or an advertiser supported website.

Authority: O.C.G.A. §48-7-40.26.

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

(1) The Base Tax Credit applies to all qualified and certified entertainment productions, as determined solely by GDEcD, including Feature Films, Pilots, Series, Television Films, Specials, Episodes, Commercial Advertisements; Music Videos and Interactive

Entertainment products which have been approved and certified by GDEcD.

(2) Production Companies must create, produce, and record original content made in the State of Georgia in whole or in part to qualify for the Film Tax Credit. Work-for-hire service companies, including postproduction houses, catering companies, equipment rental houses, and motion picture laboratories are not eligible to receive the Film Tax Credit, but the Production Companies employing them may include these expenditures as part of their project expenses.

(3) 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 may claim them as an expense toward the production of a video game project.

(4) Expenditures incurred in Georgia for postproduction are qualified only if the project was shot, recorded, or originally created in whole or in part in the state. Postproduction of footage shot outside the state is not a qualified expenditure.

(5) 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.

(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 projects specified in Rule 159-1-1-.07 and which have been approved and certified by GDEcD.

(2) GEP Tax Credit certification applications must be submitted to GDEcD. To qualify, projects may opt to include the GEP logo and a link to <http://www.tourgeorgiafilm.com/> in the promotional website as outlined in O.C.G.A. §48-7-40.26, or they may offer other opportunities of equal or greater marketing value to the State. Applications will be reviewed and signed agreements will be executed. Projects that are not eligible or approved for the GEP Tax Credit may still be eligible for the Base Film Tax Credit. Once all agreed upon obligations have been met, GDEcD will issue a letter confirming fulfillment. If an applicant has claimed the GEP Tax Credit and fails to fulfill all of the obligations of the marketing agreement with GDEcD, the GEP Tax Credit will be disallowed.

(3) If the producers of movie content, television content, music video content or interactive game content opt to include the Georgia logo in their project and a link to <http://www.tourgeorgiafilm.com/> in the promotional website as outlined in O.C.G.A. §48-7-40.26, GDEcD will deliver the GEP Logo to each qualified GEP Tax Credit applicant on a DATA DVD disc containing various versions of the GEP logo at no charge. The GEP Logo will only be provided to applicants that GDEcD has certified as meeting the requirements to receive the GEP Tax Credit. Furthermore, it is required that each qualified GEP tax credit applicant utilizing the logo to fulfill the GEP Tax Credit requirements provide to GDEcD a DVD verifying the actual placement of the GEP Logo in the completed film, television production, music video or Interactive Entertainment Production. If the inclusion of the GEP Logo is prohibited by the Children's Television Act, or any other local, state or federal government policy, or if a pilot does not go to series and will not be aired, or if the production company cannot, for any reason, fulfill the placement requirements, GDEcD will offer acceptable alternatives to allow the GEP tax credit to the applicant and the greatest level of promotion for the state of Georgia.

(4) If the agreed upon alternative marketing promotion has not been fulfilled within two years of initial application, the GEP Tax Credit will be retracted. In the event the marketing alternatives agreement terms are not agreed upon and the project is not distributed to multiple markets outside the state of Georgia, the GEP Tax Credit will be disallowed.

Authority: O.C.G.A. §48-7-40.26.

159-1-1-.07 Qualified Productions for GEP Tax Credit

(1) ‘Qualified Movie Production’ means a Feature Film that has been granted certification by GDEcD. 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 five-second long GEP logo before the below the line crew crawl and the address of the promotional website must be sent to GDEcD for review. If alternative marketing agreements have been made with GDEcD, proof of fulfillment must be forwarded to GDEcD within 24 months, or the GEP Tax Credit will be disallowed.

(2) ‘Qualified TV Production’ means Pilots, Series (in whole or in part), Television Films, and specials that have been given certification by GDEcD. 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 with the address of the promotional website must be sent to GDEcD for review. To qualify for the GEP Tax Credit, the production must include a five (5) second Georgia promotional logo in the body of the program; 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 with no less than a half screen exposure. If alternative marketing agreements have been made with GDEcD, proof of fulfillment must be forwarded to GDEcD within 24 months, or the GEP Tax Credit will be disallowed.

(3) ‘Qualified Music Video’ means music video projects certified by GDEcD. To qualify for the GEP Tax Credit, a minimum of a 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. If alternative marketing agreements have been made with GDEcD, proof of fulfillment must be forwarded to GDEcD within 24 months, or the 10% uplift will be disallowed. The finished music video project must be submitted to GDEcD for review before the GEP Tax Credit 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 Multimarket Commercial Distribution outside the state of Georgia is required.

(4) ‘Qualified Interactive Game’ means Interactive Entertainment products and services that meet the requirements of this chapter.

(5) To qualify for the GEP Tax Credit, interactive entertainment products and services must include a total of fifteen (15) seconds of

Georgia promotional logo exposure in units sold, and up to a three (3) second GEP logo adjacency in all online promotions. The fifteen (15) second requirement may be aggregated and met through up to three (3) separate and distinct displays of the GEP logo throughout the interactive entertainment product totaling fifteen (15) seconds. Placement of the GEP logo within an Interactive Entertainment Products & Services must be discussed in advance with GDEcD. Interactive Entertainment developers must provide a synopsis of the game or Interactive product including architecture, navigation and story plotlines before the project can be certified. If alternative marketing agreements have been made with GDEcD, proof of fulfillment must be forwarded to GDEcD within 24 months, or the GEP Tax Credit will be disallowed.

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

(7) Every effort will be made to negotiate in good faith with applicants 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 Appeals Process.

(1) If the authorized applicant's certification application is disapproved by GDEcD or the approved applicant disagrees with the type of tax credits granted by GDEcD, or if GDEcD fails to provide the applicant with a certification decision within the sixty (60) day period, 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 the 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 GDEcD. 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.

(2) 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 GDEcD, who will make the final decision. GDEcD shall make a report on the appeal to the GDEcD and GDEcD shall issue a final order within sixty (60) days of the report. A copy of the final order will be issued to the appellant within ten (10) days after the date GDEcD renders the final order.

(3) 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 as amended shall be applicable to taxable years beginning on or after January 1, 2013. Taxable years beginning before January 1, 2013 will be governed by the regulations of Chapter 159-1 as they exist before January 1, 2013 in the same manner as if the amendments set forth in this chapter had not been promulgated.

Authority: O.C.G.A. §48-7-40.26.