

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

**CHAPTER 159-1-2
MUSICAL TAX CREDIT**

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(1) **Purpose.** This regulation provides guidance concerning the implementation and administration of the tax credit under O.C.G.A. § 48-7-40.33.

(2) **Coordination of Agencies.** The Department of Economic Development is the state agency responsible for certifying which projects qualify for the tax credit under O.C.G.A. § 48-7-40.33. The Georgia Department of Revenue is the state agency responsible for administering tax credits earned under O.C.G.A. § 48-7-40.33.

(3) **Cross-Reference.** These regulations shall be construed in harmony with the regulations of the Georgia Department of Revenue, Income Tax Division, Chapter 560-7-8, Returns and Collections, Rule 560-7-8-.61, titled Musical Tax Credit.

(4) **Definitions.**

(a) As used in this regulation, the terms “musical or theatrical performance”, “production company”, “qualified production activities”, “qualified production expenditures”, “recorded musical performance”, “resident”, “spending threshold”, “state certified production”, and “total aggregate payroll” shall have the same meaning as in O.C.G.A. § 48-7-40.33.

(b) The term “Certification Letter” means that letter issued by the Department of Economic Development certifying that a musical or theatrical performance or recorded musical performance qualifies as a state certified production.

(c) The term “Music Composition” means a single, uninterrupted, continuous song, instrumental, or musical score. The term “Music Composition” shall not include a series of songs compiled into an album.

(d) The term “Musical Tax Credit” shall refer to O.C.G.A. § 48-7-40.33.

(e) The terms “Originates” and “Developed” mean that for a musical or theatrical performance, substantially all of the qualified production activities and qualified production expenditures incurred to prepare a musical or theatrical performance seeking certification under the Musical Tax Credit to make a public performance or a series of performances before a paying live audience were undertaken in this State.

(f) The term “Pre-Certification Letter” means that letter issued by the Department of Economic Development providing a pre-certification that a musical or theatrical performance or recorded musical performance has satisfied the criteria and may apply for preapproval with the Department of Revenue.

(g) The term “Production Site” means as follows:

1. With respect to a musical or theatrical performance, the site or sites where the production is developed, prepared, planned, rehearsed, or performed.
2. With respect to a recorded musical performance, the site or sites where the production is prepared, planned, or recorded.

(h) The term “Project” means a musical or theatrical performance or recorded musical performance seeking to qualify as a state certified production.

(i) The term “Series of Performances” shall mean and refer to a musical or theatrical performance which has a minimum of twelve repeat performances at different locations or venues by the same artist or artists over the course of a 12 month or longer period. Such artist or artists shall undertake at least one performance per month during the 12 month or longer period.

(5) **Qualified Production Expenditures.** A production company may only claim qualified production expenditures on direct account of a qualified production activity. In determining whether a production expenditure is on direct account of a qualified production activity, the Department of Economic Development will consider these regulations and Rule 560-7-8-.61 adopted by the Department of Revenue, as well as the proximity of the expenditure to the activity and the causal relationship between the expenditure and the activity. Production expenditures that do not occur at the production site must satisfy the requirements of Rule 560-7-8-.61 adopted by the Department of Revenue in order to be qualified production expenditures. Any qualified production expenditures for which a production company claims the tax credit under O.C.G.A. § 48-7-40.26 are not eligible for the musical tax credit under O.C.G.A. § 48-7-40.33 and this regulation.

(6) **Credit Amount.** A production company that meets or exceeds \$500,000 in qualified production expenditures in a taxable year for a musical or theatrical performance; or \$250,000 in qualified production expenditures in a taxable year for a recorded musical performance which is incorporated into or synchronized with a movie, television, or interactive entertainment production; or \$100,000 in qualified production expenditures in a taxable year for any other recorded musical performance, as provided in O.C.G.A. § 48-7-40.33 and this regulation, shall be allowed a tax credit of 15 percent of the qualified production expenditures; and an additional 5 percent shall be allowed for qualified production expenditures incurred in a tier 1 or tier 2 county as designated by the Commissioner of Community Affairs under O.C.G.A. § 48-7-40.

(7) **Credit Cap for Production Companies and Affiliates.** In no event shall the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies and their affiliates which are production companies exceed the following amounts:

(a) For taxable years beginning on or after January 1, 2018 and before January 1, 2019, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies shall not exceed \$5 million. The maximum credit amount allowed for any production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable year;

(b) For taxable years beginning on or after January 1, 2019 and before January 1, 2020, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies shall not exceed \$10 million. The maximum credit amount allowed for any production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable year;

(c) For taxable years beginning on or after January 1, 2020 and before January 1, 2023, the aggregate amount of tax credits allowed under O.C.G.A. § 48-7-40.33 for production companies shall not exceed \$15 million per taxable year. The maximum credit amount allowed for any production company and its affiliates which are production companies shall not exceed 20 percent of the aggregate amount of tax credits available for such taxable years; and

(d) The musical tax credit shall not be available for taxable years beginning on or after January 1, 2023.

(8) **Pre-Certification.** Before seeking preapproval from the Department of Revenue, the production company must apply for pre-certification from the Department of Economic Development to ensure that the planned project will satisfy the requirements of the Musical Tax Credit.

(a) **Pre-Certification Application.** Each new project to be a state certified production under the Musical Tax Credit must first apply for Pre-Certification with the Department of Economic Development. The production company must submit a fully completed Pre-Certification Application. Projects are pre-certified on a project-by-project basis. Production Companies may be asked to provide budget information, funding sources, production and/or touring schedules, personal information, and any other information the Department of Economic Development requires in order to ensure that the project qualifies for pre-certification. Additionally, projects seeking to qualify for the additional 5% credit on qualified expenditures incurred in a county designated as tier 1 or tier 2 by the commissioner of community affairs pursuant to O.C.G.A. § 48-7-40, must provide a budget estimate of the qualified expenditures which will be incurred in tier 1 or tier 2 counties. Only one production company may apply for a project. In the event of co-productions, both companies must provide a written and signed agreement to the Department of Economic Development as to which party will be applying for the Musical Tax Credit. Pre-Certification Applications shall not be submitted to the Department of Economic Development until such time that the project is fully funded and may not be submitted more than ninety (90) days prior to the date of the initial public performance for a musical or theatrical performance, or

the date of recording for a recorded musical performance. Pre-certification letters may not be used to secure funding. Pre-Certification Applications shall be sent to taxcredit@georgia.org and shall be reviewed in the order in which they are received.

(b) Pre-Certification Letter. Projects that meet the requirements for pre-certification will be issued a pre-certification letter which will enable the production company to apply for preapproval with the Department of Revenue for the Musical Tax Credit. A musical or theatrical performance or a recorded musical performance that meets the applicable spending threshold are eligible for pre-certification. The Department of Economic Development shall use reasonable efforts to make a pre-certification decision within thirty (30) days from the submission of the pre-certification application. In the event that the Department of Economic Development does not issue a pre-certification letter within thirty (30) days of the submission of the pre-certification application, the production company may consider its pre-certification application denied and the production company may begin the appeals process outlined in these regulations.

(c) Projects Not Eligible for Pre-Certification. Certain categories of projects do not qualify for the Musical Tax Credit. Such ineligible projects include, but are not limited to:

1. Musical or theatrical performances that are not intended for touring;
2. Musical or cultural festivals that are not intended for touring;
3. Industry seminars, trade shows, or markets;
4. Award shows;
5. Concert series occurring at the same venue with different artists or performers;
6. Musical or theatrical performances that do not have the initial public performance before a live audience in this State with ticket sales to the general public;
7. Musical or theatrical performances that do not either (i) prepare and rehearse a minimum of seven days within this State; or (ii) engage in a series of performances of a project which originates and is developed within this State.
8. Recorded musical performances which are comprised of more than a single musical composition;
9. Any projects in violation of Title 16 Chapter 12 of the State's Obscenity Statute; and
10. Any other projects that do not comply with the Musical Tax Credit, these regulations or the Georgia Department of Revenue Rule 560-7-8-.61.

(9) **Preapproval.** Upon receipt of a pre-certification letter from the Department of Economic Development, a production company may apply for preapproval with the Georgia Department of Revenue. In applying for preapproval with the Georgia Department of Revenue, a production company must adhere to Rule 560-7-8-.61, titled Musical Tax Credit. A production company must also include the pre-certification letter from the Department of Economic Development and any other forms or documents required by the Department of Revenue. Applications for preapproval are administered on a first-come, first-served basis and are subject to the annual credit cap for the corresponding taxable year. Accordingly, receipt of a pre-certification letter from the Department of Economic Development does not guarantee that the production company will qualify for preapproval of any or all of the amount of tax credit sought.

(10) **Certification.** Once the production company has obtained a pre-certification letter from the Department of Economic Development, preapproval from the Department of Revenue, and has fully completed the project, it must apply for certification from the Department of Economic Development to verify that the completed project satisfied the applicable requirements of the Musical Tax Credit. Projects that have not received both a pre-certification letter from the Department of Economic Development and preapproval from the Department of Revenue may not apply for certification. Projects that are not completed may also not apply for certification.

(a) **Certification Application.** The production company must apply for certification once the project is completed. The certification process will ensure that a finished project that was pre-certified met the applicable requirements of the Musical Tax Credit and is eligible to be a state certified production. With the fully completed certification application, the production company must submit budget information, funding sources, production and or touring schedules, personal information, and any other information the Department of Economic Development requires in order to ensure that the project is eligible to be a state certified production. Additionally, projects seeking the additional 5% credit on qualified expenditures incurred in a county designated as tier 1 or tier 2 by the commissioner of community affairs pursuant to O.C.G.A. § 48-7-40, must provide evidence demonstrating the amount of qualified expenditures which were incurred in tier 1 or tier 2 counties. Only one production company may apply for a project. In the event of co-productions, both companies must provide a written and signed agreement to the Department of Economic Development as to which party will be applying for the Musical Tax Credit. Certification Applications shall not be submitted to the Department of Economic Development until such time that the project is fully completed. Certification Applications shall be sent to taxcredit@georgia.org and shall be reviewed in the order in which they are received.

(b) **Certification Letter.** Completed projects that meet the requirements for certification will be issued a certification letter. Projects must apply for certification within sixty (60) days from the date that the project is completed. The Department of Economic Development shall use reasonable efforts to make a certification decision within thirty (30) days from the submission of the certification application. In the event that the Department of Economic Development does not issue a certification letter within thirty (30) days of the submission of the certification application, the production company may consider its certification application denied and the production company may begin the appeals process outlined in these regulations.

(11) **Appeal Process.**

(a) **Pre-Certification Appeals.** If an applicant's pre-certification application is denied by the Department of Economic Development or if the Department of Economic Development fails to provide the applicant with a pre-certification letter within the thirty (30) day period, the applicant shall have the right to appeal. In the case of a disapproval of a pre-certification application, an appeal may be made by sending a pre-certification appeal letter to the General Counsel, 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 the Department of Economic Development. In the case where the Department of Economic Development does not issue a denial letter within thirty (30) days from the submission of the pre-certification application, applicants must submit an appeal within sixty (60) days from the date of submission of the pre-certification

application. Failure to request an appeal within the applicable period will finalize the denial decision and reapplications will not be accepted. Upon receipt of a timely pre-certification appeal letter, the General Counsel will address the merits of the pre-certification appeal and the nature of the dispute with the Commissioner of the Department of Economic Development, who will make the final decision. The Department of Economic Development shall issue a final opinion and order on the appeal within sixty (60) days of a timely appeal.

(b) **Conditional Pre-Certification Letter.** In the event that an applicant timely appeals the denial of a pre-certification application, the Department of Economic Development will issue a conditional pre-certification letter to the applicant. The conditional pre-certification letter will enable the applicant to apply for preapproval with the Department of Revenue during the pre-certification appeals process. The conditional pre-certification letter will be retracted in the event that the Department of Economic Development denies the applicant's pre-certification appeal. In the event that the applicant's pre-certification appeal is granted, the Department of Economic Development will issue a non-conditional pre-certification letter.

(c) **Certification Appeals.** If an applicant's certification application is denied by the Department of Economic Development or if the Department of Economic Development fails to provide the applicant with a certification letter within the thirty (30) 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 certification appeal letter to the General Counsel, 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 the Department of Economic Development. In the case where the Department of Economic Development does not issue a denial letter within thirty (30) days from the submission of the certification application, applicants must submit an appeal within sixty (60) days from the date of submission of the certification application. Failure to request an appeal within the applicable period will finalize the denial decision and reapplications will not be accepted. Upon receipt of a timely certification appeal letter, the General Counsel will address the merits of the certification appeal and the nature of the dispute with the Commissioner of the Department of Economic Development, who will make the final decision. The Department of Economic Development shall issue a final opinion and order on the appeal within sixty (60) days of a timely appeal.

(12) **Effective Date.** This regulation shall be applicable to taxable years beginning on or after January 1, 2018.

Authority: O.C.G.A. § 48-7-40.33.