



## GEORGIA DEPARTMENT OF ECONOMIC DEVELOPMENT

December 4, 2019

PAT WILSON  
COMMISSIONER

Department of Audits and Accounts  
Performance Audit Division  
270 Washington St., S.W., Suite 1-156  
Atlanta, Georgia 30334-8400

Dear Ms. McGuire,

As Commissioner of the Georgia Department of Economic Development ("GDEcD"), I appreciate and respect the role that the Georgia Department of Audits and Accounts ("DOAA") plays in ensuring that State Agencies, including GDEcD and the Georgia Department of Revenue ("GDOR"), are following state law and properly administering tax credit programs. GDEcD appreciates the hard work of the DOAA team in reviewing thousands of Film Tax Credit files and tax returns and compiling a report on ways in which the Film Tax Credit can be strengthened.

This letter contains GDEcD's responses to the specific findings and recommendations contained within DOAA's performance audit concerning the administration of the Georgia Film Tax Credit. Before providing our responses to the individual findings, GDEcD feels the need to respond to the executive summary section titled "what we found" which appears on pages 1-2.

GDEcD believes that the executive summary section will be widely read and distributed and therefore should paint an accurate picture of the entire report. The executive summary's language is unnecessarily inflammatory and tends to overstate some of the actual findings identified later in the report, while also failing to mention mitigating circumstances as to why these findings exist. For example, while noted later in the report, the executive summary fails to mention some of the agency specific limitations that exist within GDEcD – namely limited resources and the inability to access confidential taxpayer information due to state law. As identified by the DOAA team, these issues limit GDEcD's ability to administer the Film Tax Credit and should be referenced in the executive summary.

As this section of the report will likely be the most read and publicized, GDEcD respectfully requests that the executive summary be updated to include noting of these mitigating circumstances in context with the specific findings referred to in this initial section of the report. We strongly believe that this small but important additional detail will most correctly summarize the findings and help the reader understand—especially those readers who only read the executive summary. Furthermore, we also respectfully request that DOAA also note that as GDEcD points out in greater detail later in this letter, GDEcD's interpretation of state law in the Film Tax Credit Rules was reviewed by the legislature as part of the administrative procedures act ("APA"). Again, this brief but critical note helps the reader understand context.

Our finding specific responses are below.

**Finding 1-Administration of the film tax credit must be strengthened to ensure that companies only receive the credits to which they are entitled**

Finding 1 states that the film tax credit must be strengthened to ensure that companies only receive the credits to which they are entitled. As an initial matter, and as noted throughout this letter, GDEcD agrees that the administration of the Film Tax Credit should and can be strengthened by requiring among other measures, mandatory audits. GDEcD believes that mandating audits will resolve the vast majority of issues identified in this report and will ensure that companies only receive the credits to which they are entitled.

GDEcD also responds that staffing limitations and the inability to access confidential taxpayer information drive the amount of verification that GDEcD is able to perform while certifying productions. As DOAA notes, GDEcD's certification takes place on the front end, at or near the time of pre-production. GDEcD has to rely on what an applicant indicates it intends to do after certification. In verifying applications, GDEcD freely admits that it is more inclined to trust experienced applicants who have demonstrated a history of successful projects in Georgia over applicants who have never applied for the credit or filmed in Georgia. This approach is necessary in light of the fact that GDEcD has limited staff to perform verification and because due to state law, GDEcD cannot access confidential taxpayer information.

**Finding 2- Current audit coverage does not ensure only eligible expenses earn the credit.**

While this finding is directed at GDOR and not GDEcD, GDEcD concurs with the recommendation that every production company seeking to claim the film tax credit undergo a mandatory audit. GDEcD believes that this requirement would help ensure that only eligible expenses earn the credit. GDEcD further agrees that the mandatory audits should be conducted by GDOR (resources permitting), or alternatively, by third-party CPAs who have undergone significant GDOR training and are subject to GDOR oversight.

**Finding 3- DOR's current audit procedures do not provide assurance that ineligible expenditures will be identified and disallowed.**

GDEcD is not submitting a response as this finding is directed solely at GDOR.

**Finding 4- Due to weaknesses in DOR's controls, companies could receive credits they are not eligible for or credits higher than earned.**

GDEcD is not submitting a response as this finding is directed solely at GDOR.

**Finding 5- DOR allows companies to receive the credit without submitting required documentation.**

GDEcD is not submitting a response as this finding is directed solely at GDOR.

**Finding 6- Due to weaknesses in DOR's controls, companies could claim credits outside of the eligible carryforward period.**

GDEcD is not submitting a response as this finding is directed solely at GDOR.

**Finding 7- Weaknesses in DOR's overall processes allow QIEPCs to exceed statutory caps.**

GDEcD is not submitting a response as this finding is directed solely at GDOR.

**Finding 8- DOR's processes allow QIEPCs to receive credits without ever submitting the required GDEcD certification.**

GDEcD is not submitting a response as this finding is directed solely at GDOR.

**Finding 9- Companies in default on state taxes or loans are not eligible for the credit, but neither GDEcD nor DOR verifies compliance.**

GDEcD agrees that the Film Tax Credit statute excludes companies that are "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." Subject to the additional context below, GDEcD agrees with the recommendation that GDOR use its existing information to verify that companies in default on taxes and state guaranteed loans are not receiving the film tax credit.

GDEcD states that its application requires an applicant to identify the production company and parent company, if applicable. However, it does not require an applicant to identify every owner or affiliate. To require an applicant to identify every owner or affiliate as part of the application process would prove onerous and burdensome.

Moreover, even if GDEcD imposed this requirement upon applicants, the information would not likely help GDEcD comply with the aforementioned exclusion. Due to state law, GDEcD does not have access to confidential taxpayer information to make a determination of whether an individual or company owner or affiliate is in default on any state tax obligation or state guaranteed loan. The only tax lien information GDEcD can access is the public lien index maintained by the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA). This index identifies liens imposed upon Georgia taxpayers. It does not identify taxpayers in default where no lien exists. Additionally, this index does not provide sufficiently detailed information for GDEcD to make a determination as to whether an individual with a common name is the same individual who is submitting an application for the Film Tax Credit or is an owner or affiliate of the applicant. Similarly, due to state law, GDEcD does not currently have access to view default information concerning loans guaranteed by the State (such as individuals in default of student loans).

Moreover, since the vast majority of productions involve the creation of single purpose entities, GDEcD questions the legality of precluding an applicant from pursuing the Film Tax Credit due to a tax lien or default on a state guaranteed loan imposed on a wholly separate individual or legal entity. This limitation may violate an applicant's substantive and procedural due process rights.

**Finding 10- GDEcD has approved productions that may not be eligible under statute, though the General Assembly will likely need to clarify the statute for certain types of productions.**

**Recommendations 1-4**

Recommendations 1-4 of Finding 10 recommend that the General Assembly clarify the definitions of certain terms that appear within the film tax credit statute. As explained below, GDEcD disagrees with these recommendations. The General Assembly tasked GDEcD with administering the Film Tax Credit, not DOAA. GDEcD further states that it worked directly with members of the General Assembly when it promulgated the Film Tax Credit Rules and as explained in greater detail below, the General Assembly had opportunities to object and overrule GDEcD's interpretation of undefined statutory terms that appear within GDEcD's Film Tax Credit Rules.

"The cardinal rule of statutory construction is to ascertain the legislative intent and purpose in enacting the law and to construe the statute to effectuate that intent. . . where statutory provisions are ambiguous, courts should give great weight to the interpretation adopted by the administrative agency charged with enforcing the statute." Hicks v. Florida State Bd. of Administration, 265 Ga. App. 545, 547, 594 S.E.2d 745 (2004).

The definition of "qualified production activities" in O.C.G.A. § 48-7-40.26(b)(11) expressly excludes "the coverage of news and athletic events, local interest programming, instructional videos, corporate videos, or projects not shot, recorded, or originally created in Georgia." "[N]ews and athletic events," "local interest programming," "instructional videos," and "corporate videos" are not defined terms within the statute. However, the legislature tasked GDEcD with administering certification of the Film Tax Credit, and it gave GDEcD the ability to promulgate rules in such administration under O.C.G.A. § 48-7-40.26(b) (13). In light of that provision, GDEcD promulgated rules that served to provide additional clarification regarding these undefined terms as well as the procedures which govern GDEcD's administration of the Film Tax Credit.

In promulgating these rules, GDEcD adhered to the Administrative Procedures Act at O.C.G.A. § 50-13-3 et seq. (the "APA"). One of the APA's requirements is that at least thirty days prior to the proposed action of implementing a rule, an agency must provide legislative counsel a copy of the notice of proposed rulemaking ("NPRM"), along with a copy of the proposed rules that the agency intends to adopt. Legislative counsel is then required to:

**"furnish the presiding officers of each house with a copy of the notice, and the presiding officers shall assign the notice to the chairperson of the appropriate standing committee in each house for review and any member thereof who makes a standing written request. In the event a presiding officer is unavailable for the purpose of making the assignment within the time limitations, the legislative counsel shall assign the notice to the chairperson of the appropriate standing committee. The legislative counsel**

shall also transmit within the time limitations provided in this subsection a notice of the assignment to the chairperson of the appropriate standing committee. Each standing committee of the Senate and the House of Representatives is granted all the rights provided for interested persons and governmental subdivisions in paragraph (2) of subsection (a) of this Code section.”

O.C.G.A. § 50-13-4(e) (emphasis added).

The APA further provides any such standing committees an opportunity to file an objection and potentially override the rule during the next legislative session. See id. at (f). Prior to implementing or revising the Film Tax Credit Rules, GDEcD provided members of the house and senate, the Governor’s office, and the film and gaming industries with opportunities to review and provide feedback on the proposed rules. Additionally, GDEcD adhered to the APA in every instance it promulgated or amended the film tax credit rules.

GDEcD never received an objection from any members of the legislature on any of the Film Tax Credit Rules. In light of the fact that the presiding officers for each house and chairperson of the appropriate standing committees had an opportunity to review, comment, and object to the proposed rules prior to implementation, GDEcD does not believe that DOAA’s interpretation of undefined statutory terms should supplant the unified interpretation of the legislature and GDEcD. In light of the foregoing, GDEcD states that it is not DOAA’s place to make a determination that “GDEcD has approved productions that may not be eligible under statute.”

Nonetheless, to the extent that upon reading this report the General Assembly wishes to add additional clarification by passing legislation that clarifies the types of excluded productions, GDEcD will certainly follow and adhere to any such legislation upon being signed into law.

GDEcD addresses each of the specific categories of productions identified in the audit as follows:

## **Film**

### News Coverage (42 Projects)

GDEcD agrees that the statute excludes “coverage of the news.” Generally speaking, GDEcD has always interpreted the legislative intent to exclude “coverage of the news” to not allow live or prerecorded news coverage. GDEcD, through rule, further clarified how it interprets “coverage of the news”. Originally, GDEcD excluded “Live or prerecorded news.” This exclusion was revised in 2017 to exclude “live or prerecorded news or current affairs programs” and again in 2018 to exclude “live or prerecorded news or current affairs programming covering news that has recently occurred or is ongoing at the time of the broadcast.” See Rules and Regulations of the State of Georgia 159-1-1-.03(1)(b).

In every iteration of this exclusion, GDEcD worked with and solicited feedback from members of the general assembly and the industry. Moreover, the APA provides a process for the legislature to object to GDEcD’s rules. As a result, GDEcD does not believe that DOAA’s interpretation should supplant the unified interpretation of the legislature and GDEcD.

DOAA takes issue with some of the productions GDEcD certified because “news shows in general are likely to include significant out-of-state footage,” which is an ineligible expense. However, the statute does not authorize GDEcD to deny productions which contain merely significant out-of-state footage. As DOAA knows, the statute only requires that the project occur in “whole or part” to be eligible for the credit. Nevertheless, GDEcD believes that requiring mandatory audits would quell the concern about out-of-state footage qualifying for the credit.

Regarding the specific productions reviewed by DOAA, GDEcD indicates that a large number of them are from the same applicant. GDEcD had initial concerns about certifying projects submitted by this applicant. However, GDEcD visited this applicant’s operations to review and make sure that applicant wasn’t seeking to qualify out-of-state footage. Applicant had a sophisticated program to track in-state footage and qualified expenditures as compared with out-of-state footage and unqualified expenditures. Accordingly, GDEcD does not believe it is legally authorized to deny certifications for projects that merely contain a large amount of out-of-state footage. To do so would violate the statute.

Other productions that DOAA takes issue with may have aired on news networks, but the production themselves are not “coverage of the news” and rather “edutainment,” and therefore should not be excluded.

#### Local Interest Programming (12 Projects)

GDEcD agrees that the statute excludes “local interest programming”. GDEcD has interpreted “local interest programming” to specifically exclude local interview or talk shows or other local interest programming that is not intended for commercial multimarket distribution. See Rules and Regulations of the State of Georgia 159-1-1-.03(1)(b). GDEcD has been consistent applying this interpretation. GDEcD worked with and solicited feedback from members of the General Assembly and the industry on how to define “local interest programming,” and the APA provided a process for the legislature to object to how GDEcD applied this exclusion. As a result, GDEcD does not believe that DOAA’s interpretation should supplant the unified interpretation of the legislature and GDEcD.

DOAA states that GDEcD certified 12 projects from 2014-2018 that appear to be local interest. DOAA concludes that these productions would have likely filmed in Georgia without the credit. As an initial matter, whether a production would have filmed in Georgia but for the credit is not a factor in determining whether a production is eligible to claim the credit. Moreover, GDEcD’s position is that productions are not “local interest” pieces if they are distributed to multiple markets outside of the state. For example, one production identified by DOAA is an annual holiday event in Georgia that is broadcast to markets across the nation. Another production that DOAA identified covers attractions and businesses within the State and promotes these attractions and businesses to markets outside of Georgia. It is important to note that these broadcast markets have a high number of tourists that visit Georgia annually.

GDEcD takes the position that because these productions are marketed outside of Georgia, they go beyond “local interest programming” and are therefore eligible to claim the credit.

### Athletic event coverage (29 Projects)

GDEcD agrees that the statute excludes “coverage of. . . athletic events.” GDEcD has interpreted this exclusion to only apply to live or prerecorded broadcasts of the athletic event itself, and not to exclude produced and edited programs covering pre, post and half-time recaps of athletic events, or sports talk shows. See Rules and Regulations of the State of Georgia 159-1-1-.03(1)(b). GDEcD worked with and solicited feedback from members of the General Assembly and the industry on how to apply the exclusion to “coverage of. . . athletic events” and the APA provided a process for the legislature to object to GDEcD’s rules. As a result, GDEcD does not believe that DOAA’s interpretation should supplant the unified interpretation of the legislature and GDEcD.

As to esports events and other events involving scripted athletic competitions, GDEcD categorizes these productions as reality television, and therefore they do not fall under the exclusion of “coverage of. . . athletic events.”

### Live Events (13 Projects)

As DOAA points out, the statute does not expressly exclude live events from qualifying for the credit. DOAA questions the benefit of providing a tax credit to events already occurring in the state. As there is no statutory basis to exclude live events, in early 2018, GDEcD revised its rules to exclude productions where “filming is merely incidental or ancillary to the primary purpose of the project.” See Rules and Regulations of the State of Georgia 159-1-1-.03(1)(b)(20). The addition of this language served to provide GDEcD with a basis to exclude events where filming is merely ancillary to the main event. Moreover, in such cases where a live event seeks to qualify expenditures, both GDEcD and GDOR are in agreement that such events may only qualify productions expenditures that pertain directly to the cost of filming. They may not qualify the cost of the underlying live event itself. GDEcD believes that the implementation of mandatory audits would serve as a safeguard to ensure that ineligible costs aren’t being claimed for these types of productions.

## **Digital Media and Interactive Entertainment**

### Recommendation 5-Postproduction for Out-of-state- footage (10 projects)

Recommendation 5 states that GDEcD should ensure that it doesn’t certify postproduction activities related to out-of-state footage unless the project complies with all requirements of the new postproduction credit passed in 2017. GDEcD believes that this statement confuses two distinct tax credits and therefore GDEcD disagrees with this recommendation.

The film tax credit allows eligible production companies to qualify post-production expenditures on footage that is shot in-state. It does not permit a company to count costs of post-production on out-of-state footage. However, the stand alone postproduction credit at O.C.G.A. § 48-7-40.26A does allow eligible postproduction companies to qualify postproduction activities on footage that is shot both inside and outside of Georgia. It should be noted that while GDEcD is involved in certifying production companies under the film tax credit seeking to qualify post-production expenditures on eligible in-state footage, it is

not involved in certifying any post-production companies seeking to claim the stand alone postproduction credit at O.C.G.A. § 48-7-40.26A.

Accordingly, GDEcD disagrees with recommendation 5 to the extent that DOAA is suggesting that a film tax credit applicant seeking to qualify post-production expenditures on out-of-state footage under the film tax credit is also required to comply with the stand-alone post-production credit at O.C.G.A. § 48-7-40.26A. Notwithstanding this statement, GDEcD states that additional measures<sup>1</sup> could be implemented to ensure that companies are not seeking to double qualify post production costs under both the film tax credit and the stand alone post credit. For example, GDEcD does not know who is applying for and receiving the stand alone post-production credit. If this information were shared with GDEcD, it would help uncover potential fraud and companies that were submitting identical expenditures under both credits.

With respect to the specific projects that DOAA identifies, GDEcD states that these projects include expenditures for developing and creating animations or graphics which are then overlaid onto film footage. GDEcD states that “computer graphics services, special effects services, and animation services” are all qualified production expenditures under the statute and these productions are therefore eligible to claim the costs associated with the creation and development of the animations and graphics. Only the post-production costs of overlaying the animation and graphics onto film footage would be excluded to the extent that the underlying footage itself was shot out-of-state.

#### Corporate Training Videos

GDEcD agrees that the statute excludes corporate videos. However, GDEcD disagrees that it improperly certified corporate training videos. As to the specific productions in question, GDEcD states that these productions are not corporate videos but rather interactive “edutainment” productions. These productions are not corporate because they can be used by the general public and can be tailored to fit a wide variety of training/educational needs outside of the corporate world. Moreover, GDEcD states that these productions also satisfied enough elements of the interactive matrix used to qualify interactive entertainment projects.

#### Multi-year interactive entertainment (42 projects)

Unlike film, where there is a two-year limit for projects, GDEcD has intentionally avoided limiting the number of years a qualified interactive entertainment production company can claim the credit for a single project. First, these projects frequently take many years to complete and GDEcD does not believe that there is any risk with allowing a company to claim the credit for multiple years for the same project. These production companies are required to submit a new application for each year that they intend to qualify a project and receive a separate certification letter for each year. Second, any concern about a continued project preventing a new project from obtaining the credit is misplaced because in the event that the cap is reached, all applicants receive the credit on a pro-rata basis. Since many of these projects

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<sup>1</sup> GDEcD notes that the stand-alone postproduction credit expressly excludes a post-production company from claiming any expenditures for which a production company claims a tax credit under the film tax credit. See O.C.G.A. § 48-7-40.26A(g)(1).



entail very large budgets and years to complete, GDEcD does not believe that limiting the number of years a single project can receive the credit is warranted.

**Recommendation 6- Not intended for distribution (3 projects).**

Recommendation 6 states that GDEcD should ensure that all projects are distributed or intended for distribution, as required by state law, prior to certification. GDEcD agrees with this statement and further indicates that its processes require confirmation that all projects be distributed or at least have an intent to distribute in order to be certified. However, because GDEcD requires that application for a project occur prior to the start of principal photography, most projects have not secured a distribution deal at the time of application because no footage has been shot. Accordingly, GDEcD has to rely on the applicant's intent to distribute as represented in the application (which now requires that an applicant sign under penalty of perjury). To the extent that the production is not actually distributed outside of Georgia, then any 10% uplift certification would be retracted.

**Untelevised commercials (7 projects).**

DOAA notes that a total of 7 commercial projects were awarded the credit where the commercial was not televised. GDEcD states that this error was the result of a discrepancy in its processes as animation/computer graphic projects fall under digital media and interactive entertainment and therefore use a separate application which failed to verify and require that commercial projects air on television. As DOAA likely noted during its review, the film division has a process in place to review and ensure that commercial projects are televised. Due to the different application, global commerce did not review these animation/computer graphic commercial projects to require that they air on television and not some other platform. GDEcD will review and revise the digital media and interactive application to ensure that this requirement is addressed. GDEcD will make this change in the near future.

**Finding 11- Distinct risks exist for productions with significant out-of-state filming and those that are not completed.**

Finding 11 contains two recommendations. The first states that GDEcD should establish a minimum percentage of the production that must occur in-state and that GDEcD should consider California's incentive requirement that at least 75% of the principal photography occur in-state.

DOAA posits that productions that have substantial footage shot out-of-state may submit out-of-state expenditures under the credit. GDEcD disagrees with this finding. The statute does not require a certain percentage of in-state footage for a production to claim the credit. Instead, it requires that a production have a minimum \$500,000 in qualified production expenditures to be eligible.

GDEcD believes that requiring that a certain percentage of the production be shot in-state would prevent a substantial number of valuable productions from occurring in Georgia. For example, there are numerous productions who may film a majority of the footage outside of Georgia and later come to Georgia to do re-shoots. Even though principal photography may be primarily occurring out-of-state, these re-shoots often employ a substantial number of individuals in Georgia over an extended timeframe and result in

substantial in-state expenditures. Moreover, GDEcD believes that the concern that these types of productions are submitting out-of-state expenditures can be addressed by mandating audits.

The second recommendation for Finding 11 is that GDEcD should verify production by requiring the final product or sufficient documentation to show production occurred. DOAA states that GDEcD could, for example, request location contracts to ensure that the production happened. DOAA states that it identified 15 pilots and independent films where there was no evidence of completion. GDEcD agrees with this finding, but also states that requiring a mandatory audit would also serve to verify that the incomplete production's expenditures are legitimate. GDEcD currently requires supporting documentation (crew, vendor, location lists, and one-sheets) to be submitted at the wrap of principal photography to verify that the project filmed in Georgia. GDEcD will work to identify additional measures it may be able to take to further verify production. It expects to be able to implement any additional measures in the next 6 months.

In response to this recommendation, GDEcD also states that legitimate productions occasionally do not complete production. For example, GDEcD has encountered productions where the lead actor changed, funding fell through, and in some cases, a pilot was cancelled before it could finish production. As DOAA notes, the statute does not preclude an unfinished production from claiming the credit. As there is no statutory basis for GDEcD to disallow costs from unfinished productions, GDEcD does not believe that it can legally deny incomplete productions. GDEcD notes that it does try to verify that incomplete productions are in fact legitimate. However, as previously stated, GDEcD believes that in addition to its attempts to verify the legitimacy of an incomplete production, requiring a mandatory audit for all productions would ensure that not only the production is legitimate, but also that the expenditures for an incomplete production are legitimate.

**Finding 12- GDEcD does not ensure that all projects receiving the uplift complete all requirements for eligibility.**

Finding 12 contains the recommendation that GDEcD should verify all projects receiving the uplift fulfill all statutory requirements. GDEcD agrees with this finding and as an initial matter, it has made a concerted effort to do so. However, due to limited resources, it has been challenging for GDEcD to verify that every production that claimed the uplift met all requirements for eligibility. GDEcD is exploring reallocating its existing resources to comply with this recommendation. Additional allocation of budgetary resources is subject to proposal by the Governor and approval by the General Assembly. GDEcD addresses the subcategories identified in the audit below.

**Georgia logo**

DOAA notes that it did not attempt to verify logo placement due to the necessary resources and time. GDEcD states that it does attempt to verify logo placement for each and every production. GDEcD notes instances where logo placement did not meet correct timing or placement and in those instances, GDEcD requires projects to either meet the alternative marketing requirement or forego the uplift. However, GDEcD also notes that materials provided to it by the applicant may be different from how the logo looks when it actually appears publicly. For example, when a production is sold to a distributor, the placement and timing of the logo may change without GDEcD's knowledge. So a previously verified version may no

longer be compliant. GDEcD is exploring how to allocate additional resources to verify placement and timing of the logo.

### Distribution

DOAA notes that of the 20 pilots and independent films review in 2015-2017, 10 had no evidence of distribution but still received the uplift. GDEcD does its best to ensure that each and every production's distribution is verified and a 2017 change in the Film Tax Credit Rules provides the applicant with a timeframe for submitting verification of distribution to ensure that the Georgia logo or alternative marketing requirements are satisfied. However, GDEcD states that due to limited resources, it has a challenging time ensuring that each production complies with distribution. GDEcD is exploring reallocating its existing resources to comply with this recommendation. Additional allocation of budgetary resources is subject to proposal by the Governor and approval by the General Assembly.

GDEcD also notes that DOAA questions film screenings as a valid method of distribution. GDEcD disagrees with DOAA's position as film screenings can have massive audiences over multiple screenings, and are often times at major film festivals where prospective buyers are viewing productions to purchase for widespread distribution.

### Website link

DOAA states that for more than half of the projects it reviewed did not have the required Georgia link on the project website. GDEcD states that the requirement that a company have a Georgia link on the website is for the life of the project which means that every year GDEcD has hundreds of new additional applications that it must continue to verify into perpetuity. GDEcD currently does not have the resources to check every application that has received the uplift to ensure that each project has the Georgia link into perpetuity. GDEcD also notes that there is not a lot of value in requiring that companies link the Georgia site. GDEcD has been able to generally measure referrals and web traffic sent to the Georgia link by productions and GDEcD believes that the resources required to ensure productions are complying with the link requirement outweigh the benefit of having companies include it. GDEcD suggests that this requirement be reevaluated by the legislature.

### **Finding 13- The promotional value of the credit uplift is unknown, but certain issues reduce any value the state receives.**

Finding 13 makes a single recommendation with two parts. DOAA notes that due to the difficulty of determining the promotional value generated by the uplift, the General Assembly should consider changes to the uplift including a) eliminating the use of alternative marketing opportunities to fulfill the uplift; and or b) eliminating the uplift for undistributed projects. GDEcD disagrees with the recommendation to eliminate the use of alternative marketing opportunities to fulfill the uplift. GDEcD states that the alternative marketing opportunity is valuable for those projects where it isn't feasible or

realistic to use the Georgia logo. However, GDEcD agrees that the uplift should be eliminated for undistributed projects.

#### Value of Logo

GDEcD agrees that it is impossible to determine the promotional value of the credit uplift. It attempted to do so by commissioning a third-party study in 2009 and was unsuccessful. While it may prove impossible to place an exact monetary value on the logo, GDEcD believes that the logo's use has become synonymous with Georgia shot-productions and that there is great (albeit admittedly unquantifiable) marketing value to the state through the logo's use.

#### Value of Alternative Marketing Opportunities

GDEcD agrees that it is impossible to determine the promotional value of the alternative marketing opportunities and therefore GDEcD is unable to verify whether such alternative marketing opportunities have value that is equal to or greater than the Georgia logo. However, GDEcD notes that use of the alternative marketing opportunities has been successful. For example, props, wardrobe and other alternative marketing promotional merchandise from multiple Georgia projects were curated into a public art show.

#### Reduced Promotional Value

##### Logo skipped in streaming content

DOAA noted that streaming content vendors shrink and skip the credit which serves to minimize the change that the logo is seen. GDEcD states that this is an unforeseen technological issue. GDEcD is currently working to develop strategies to address this issue and welcomes any suggestions from the legislature.

##### Large uplift value for inexpensive merchandise

DOAA notes in one case, a company provided merchandise valued at \$40 per item and in turn received an uplift credit equivalent to \$850,000. DOAA notes that GDEcD could have purchased similar merchandise for only \$40. GDEcD disagrees with this statement. GDEcD notes that it isn't the value of the good itself that should be measured, but rather the value of the intellectual property appearing on the good.

For example, in one project, a company supplied marketing materials bearing popular characters and scenes from a movie and used these materials to fulfill the alternative marketing requirement. GDEcD was able to take these materials and display them around the state and promote them on social media platforms with great success and fanfare. While the cost of the materials themselves was nominal, GDEcD could not have recreated these materials without permission from the company because the characters and scenes from the production are protected by copyright law. Merely valuing the cost of the underlying good does not do justice to the value of marketing goodwill that the State received from these displays.

Undistributed projects offer little promotional value

GDEcD agrees with DOAA's position that there is little value in allowing undistributed projects to utilize the alternative marketing opportunities. Moving forward, GDEcD will not allow undistributed projects to use the alternative marketing opportunity.

In summary, we appreciate DOAA's hard work on the performance audit concerning the administration of the Georgia Film Tax Credit and we are thankful for the opportunity to respond. We look forward to working to strengthen the administration of the Film Tax Credit.

Sincerely,



Padgett Wilson  
Commissioner