

FREQUENTLY ASKED QUESTIONS – GEORGIA ENTERTAINMENT INDUSTRY INVESTMENT ACT

HOW DOES THE PRODUCTION COMPANY APPLY FOR THE 30% TAX CREDIT?

The applicant (the production company), must submit an application package to GDEcD for certification of the project when the project starts preproduction in Georgia. The application package is submitted electronically when complete to taxcredit@georgia.org. Production companies submit the 20% and 10% applications for the full 30% tax credit; and if applying for a commercial project the 20% application only.

WHAT IS A COMPLETED APPLICATION PACKAGE?

For feature, television movies, pilots, series, TV specials and music videos, if applying for the full 30% tax credit, the application package consists of the 20% and 10% applications, proof of funding and script. If the production company chooses the Alternative Marketing Opportunities in lieu of using the Georgia logo as legislated, the Alternative Marketing Opportunities form must be submitted with the application package. For commercials, the application package consists of the 20% application, proof of funding and the script/creative and, if applicable, storyboards.

WHEN DOES THE PRODUCTION COMPANY SUBMIT THE APPLICATION(S)?

For feature and television projects, applications must not be submitted earlier than 90 days prior to the start of Georgia principal photography but must be submitted before Georgia principal photography wrap. Commercial and music video projects applications must not be submitted earlier than 30 days prior to the start of principal photography but must be submitted before principal photography wrap. Typically, the application package is submitted when opening the Georgia production office, which signals the start of preproduction.

HOW DOES THE COMPANY APPLY FOR THE ADDITIONAL 10% GEORGIA ENTERTAINMENT PROMOTION (GEP UPLIFT TAX CREDIT)?

Feature films and television projects must submit the script along with a completed GEP Uplift application to GDEcD. Music videos must submit the song lyrics and storyboards, along with a completed GEP Uplift application. TV commercials do not qualify for the GEP Uplift.

WHAT IF A PRODUCTION COMPANY CANNOT OR DOES NOT WANT TO INCLUDE THE LOGO IN THEIR PROJECT?

Projects can apply for the 20% tax credit only, or in lieu of the inclusion of the GEP Uplift logo, the production company may offer alternative marketing promotion opportunities (form GDEcD-A or GDEcD-B) acceptable to GDEcD. The Alternative Marketing Opportunities form must be submitted with the application package. The initial options chosen on the form can be changed up until distribution. The decision whether to include the GEP Logo or pursue the Alternative Marketing Opportunity must be made at the time the project submits an application to pursue the GEP Tax Credit, and the decision is final.

IS THE 10% TAX CREDIT AWARDED AT THE SAME TIME AS THE 20% TAX CREDIT?

The 10% GEP Uplift will not be awarded until proof of multimarket distribution is provided within 5 years of awarding the Base (20%) Certification Letter. Prior to submitting the Distribution form, verification is provided to confirm that the GEP logo has been included in the project as legislated or Alternative Marketing Opportunities have been met. Additionally, all supporting materials (crew, vendor and locations lists, signed call sheet from first day of principal photography, final shooting schedule, promotional photographs, and a completed Georgia Expenditures Breakdown form) have been provided to the Georgia Film Office. The supporting materials due dates are listed on the 20% application. The decision whether to include the GEP Logo or pursue the Alternative Marketing Opportunity must be made at the time the project submits an application to pursue the GEP Tax Credit, and the decision is final.

WHAT DOCUMENTS CAN BE PROVIDED FOR PROOF OF FUNDING?

GDEcD will require proof of funding that the project has assets that equal or exceed 75% of the total budgeted cost of the project at the time the applicant

applies for certification. These assets can be owned by the applicant, be provided by a third party pursuant to a financing or funding agreement, or combination of the two. Such proof may include, but is not limited to, completion or SAG or IATSE bonds, payroll statements, bank statements, and financing or funding agreements, including in-studio financing letters or agreements.

HOW DOES A COMPANY GET THE GEORGIA ENTERTAINMENT LOGO TO INCLUDE IN THEIR PROJECTS?

After approval for the GEP Uplift, GDEcD will provide electronic versions of the promotional logo options.

WHAT IF A COMPANY APPLIES FOR THE GEORGIA ENTERTAINMENT PROMOTION (GEP) UPLIFT BUT DOES NOT SATISFY THE REQUIREMENTS FOR THE ADDITIONAL 10%?

A production company that applies for the full 30% tax credit must include the GEP Uplift logo as defined or complete the alternative marketing opportunities and have a multimarket distribution to avoid a denial of the GEP Uplift.

DOES THE COMPANY APPLY AND BECOME CERTIFIED ON A PER - PROJECT BASIS?

Yes. An application must be submitted for each specific project for each year that credits will be claimed.

HOW DO YOU DEFINE WHAT IS A PROJECT?

A project is defined as: live-action or animated, may be a single televised commercial, a music video, studio feature film, indie feature film, TV movie, MOW, TV pilot or episode, TV Miniseries or an entire TV series season produced in Georgia.

DO TELEVISED COMMERCIALS AND MUSIC VIDEO COMPANIES QUALIFY? IF SO, HOW?

Yes, if the qualified in-state production expenditures on a project or multiple projects produced by the same production company is at least \$500,000 in a single tax year. Music video producers may also submit the GEP Uplift

application for consideration of the 10%. Commercials do not qualify for the GEP Uplift.

IF AN INDIVIDUAL WANTS TO INVEST IN A FILM, HOW IS THIS HANDLED? DOES THE INVESTOR QUALIFY?

There is no investor credit in Georgia for film projects. For the investor to be able to claim any of the tax credit generated by the production company, the investor must be an owner (or part owner) of the production company and the production company be a flow-through entity (i.e., S-Corp., LLC, or partnership). Otherwise, the investor would have to buy the credits to be eligible to claim them on his/her tax return.

WHO SHOULD APPLY FOR THE CREDIT TO BE CERTIFIED? THE LLC OR THE PARENT COMPANY?

The entity generating the tax credit (the production company) must have the project(s) certified – for example, the LLC. The generating entity-the LLC-not the parent, can sell or transfer the film tax credit to a Georgia taxpayer. The generating entity-the LLC-not the parent, can elect to use the credit against its withholding account. For a disregarded single member LLC, the parent may use the credit against its income tax liability. For LLCs that choose to be taxed as a corporation, the credits can be claimed at the LLC level and will not be allowed to be utilized by the parent company. However, the credit can be assigned to an affiliated entity on an original return (see next question). In an S-Corp. or partnership configuration, the credits may flow through to the shareholders or partners.

CAN THE TAX CREDIT BE ASSIGNED TO SUBSIDIARIES?

The film credit may be assigned to affiliated entities under O.C.G.A. §48-7-42. If the production company assigns the credit to an affiliated entity, the affiliated entity can only utilize the credit against their income tax liability; the affiliated entity cannot use the credit against withholding. The affiliated entity cannot sell the credit. An assignment must be done on or before the due date of the return including extensions.

WHAT IF A COMPANY RENTS OR BUYS EQUIPMENT OUTSIDE OF GEORGIA?

Expenditures made outside the State of Georgia do not qualify for the tax

credit. Rentals and purchases that count towards the credit are made with companies that meet the Georgia vendor rule requirement.

DO WAGES THAT ARE PAID ON BEHALF OF THE PRODUCTION COMPANY BY AN OUT-OF-STATE PAYROLL COMPANY TO AN INDIVIDUAL WORKING IN GEORGIA ON A CERTIFIED PRODUCTION QUALIFY?

The wages qualify if paid to an individual working in Georgia for the time worked in Georgia.

IF A DIRECTOR, ACTOR, OR OTHER PRODUCTION PERSONNEL IS EMPLOYED ON A PRODUCTION AS A “LOAN OUT”, WILL THE COSTS BE ELIGIBLE FOR THE TAX CREDIT WHILE HE/SHE IS WORKING IN GEORGIA?

Yes, provided their salaries have been reported for withholding at the Georgia Tax Center.

WOULD PAYMENTS TO A LOANOUT COMPANY, 1099 OR PERSONAL SERVICES CONTRACT INDIVIDUAL BE SUBJECT TO GEORGIA WITHHOLDING?

Yes, the production company will withhold Georgia income tax at the rate imposed by subsection (a) of O.G.C.A § 48-7-21. for services performed in Georgia to claim the costs towards the qualified expenditures. If a 1099 individual or personal services contract individual performs service in Georgia and meets the criteria of a loan out, then Georgia income tax will be withheld at the rate imposed by subsection (a) of O.G.C.A § 48-7-21.

DOES THE PRODUCTION COMPANY OR THE LOAN OUT COMPANY NEED TO REGISTER IN GEORGIA?

Yes, both the production company making payments to a loanout company and the loanout company must electronically register through the Georgia Tax Center. The registration is an online form with no fee. The production company will register to obtain a film withholding account. The loanout company will register to obtain a payroll withholding account. Many payroll services companies report the withholding on behalf of the production company as part of their service fee.

ARE FRINGES CONSIDERED QUALIFIED EXPENDITURES?

FICA, SUI, FUI, are qualified expenditures but must be attributed to Georgia as provided in Revenue Regulation 560-7-8-.45. Hotel and meal per diems if incurred in Georgia are qualified expenditures up to the amount set forth by the United States General Services Administration (any excess must be included in the loanout company's or the person's income to be qualified). Union pension and welfare are qualified expenditures if the amounts are paid to the union as part of pension, health, and welfare (these would not be required to be paid to a vendor with a Georgia location since they are part of compensation), but they must be attributed to Georgia as provided in Revenue Regulation 560-7-8-.45. Health insurance premiums are qualified expenditures if these amounts are paid to the union as part of pension, health, and welfare (these would not be required to be paid to a Georgia based insurance company since they are part of compensation) but they must be attributed to Georgia as provided in Revenue Regulation 560-7-8-.45. Service fees paid to a payroll company (this includes workers' compensation) qualify as qualified expenditures, but only if the payroll company is a Georgia vendor and only to the extent the service is rendered in Georgia.

WOULD THE PAYROLL PROCESSING FEES BE A QUALIFIED EXPENDITURE?

The fees would qualify if the payroll company is a Georgia vendor and if and only to the extent the service is rendered in Georgia.

IF I SET UP A POST OFFICE BOX IN GEORGIA, WOULD THAT QUALIFY ME AS A GEORGIA VENDOR?

No.

- 1) Sells or rents a type of property, with an inventory of the same type of goods in Georgia, or provides a service not performed at the filming site, which is the subject of the production expenditure, in their ordinary course of business;
- 2) Has a physical location in Georgia with at least one individual working at such location on a regular basis, including home-based businesses that otherwise meet the requirements of a Georgia vendor. Registering with the Georgia Secretary of State or appointing a registered agent in Georgia does not establish a physical location in Georgia.

- 3) Is registered with the Department of Revenue for collection of sales and use tax when required by Chapter 8 of Title 48;
- 4) Has a local Georgia business license. The production company is required to obtain a copy of the license from any Georgia vendor where the total amount of purchases exceed \$10,000 for such vendor during the taxable year on the Department of Economic Development's certificate for the project; and
- 5) For services rendered on set, such persons or vendors providing such services, are identified on the daily production reports.

A vendor that acts as a conduit to enable purchases and rentals to qualify (a pass through) that would not otherwise qualify shall not be considered a Georgia vendor with respect to such purchases and rentals.

IF ONE PERSON SERVES SEVERAL ROLES IN A PROJECT, I.E., WRITER, DIRECTOR, ACTOR, ETC., WILL THEY BE ELIGIBLE FOR AS MANY SEPARATE SALARY CAPS?

No. No matter how many roles an individual has in the production of the project, the salary cap of \$500,000 per person per project will apply if the person is paid by W2. There is no salary cap for a loan out or 1099 labor; however, only their salary will count towards the qualified spend if the program guidelines are followed and only for the time worked in Georgia.

DOES AN INSURANCE COMPANY OR TRAVEL AGENCY HAVE TO BE BASED IN GEORGIA, OR SIMPLY HAVE A GEORGIA PRESENCE TO QUALIFY FOR THE TAX CREDIT?

The insurance company or agency and travel agency or company must meet the Georgia vendor requirement but does not have to be headquartered in Georgia.

IF WE PAY FOR OUR PRODUCTION CREW TO FLY OUT OF STATE, AND USE A GEORGIA COMPANY TO PURCHASE THE AIRLINE TICKETS, WILL THE TICKETS QUALIFY FOR THE FILM TAX CREDIT?

One round-trip airfare directly associated with qualified production activity in Georgia, purchased through a Georgia travel agency or travel company, will

qualify as a production expenditure for the film tax credit. To be directly associated a flight must transport someone to the qualified production activity in Georgia and will include returning them to their point of origin. If a crew member was flown out of Georgia to another location to work, and flown back to Georgia, neither leg of the flight would qualify for the film tax credit.

DOES THE PRODUCTION COMPANY TAKE THE CREDITS AT THE COMPLETION OF THE PROJECT?

The tax credit may not be claimed until the tax return is filed for the tax year in which the expenditures are incurred, and the \$500,000 minimum spend is met. If an audit is mandated on the project the audit must be completed, and the tax credits certified by GDOR to claim or transfer the credits.

DOES GEORGIA REQUIRE AN INDEPENDENT AUDIT OF EACH PRODUCTION PRIOR TO SUBMITTING ITS TAX RETURN?

Beginning January 1, 2021, and as outlined in GDOR's Regulation 560-7-8-.45, projects may be required to be audited, depending on their qualified spend. Beginning in 2023, all projects will be required to be audited.

TO WHOM CAN THE CREDITS BE TRANSFERRED?

Any Georgia taxpayer whether an individual or corporation.

WHO HANDLES THE BROKERAGE OF THESE CREDITS?

Private companies only, not state agencies.

HOW LONG DO THEY HAVE TO CARRY FORWARD THE CREDITS?

Any unused film tax credit, for the production company or any transferees, can be carried forward for three years from the close of the taxable year in which the film tax credit was issued its final certification.

HOW WOULD A COMPANY UTILIZE THEIR CREDITS AGAINST THEIR WITHHOLDING TAX?

The production company or its payroll service provider on behalf of the production company or its payroll service provider on behalf of the qualified interactive entertainment production company shall for each calendar quarter

use the Georgia Tax Center to: electronically file the Form G-7 Film; provide information regarding the loan-out company (name, identification numbers, and amount of withholding); and provide any other information required by the Commissioner. Additionally, the withholding payment required by this subparagraph (6)(d) must be electronically remitted using ACH debit or ACH credit in the same manner provided in Rule 560-3-2-.26. The due date for such filing and remittance shall be the last day of the month following the calendar quarter in which the withholding payments were required to be made.

WHAT DEPARTMENT OR OFFICE WOULD BE THE MAIN POINT OF CONTACT TO ANSWER QUESTIONS OR RESOLVE DISPUTES?

GDEcD handles the eligibility and certification of the production project and awards the GEP Uplift. GDOR manages the calculation, utilization of, and compliance with the tax credit.