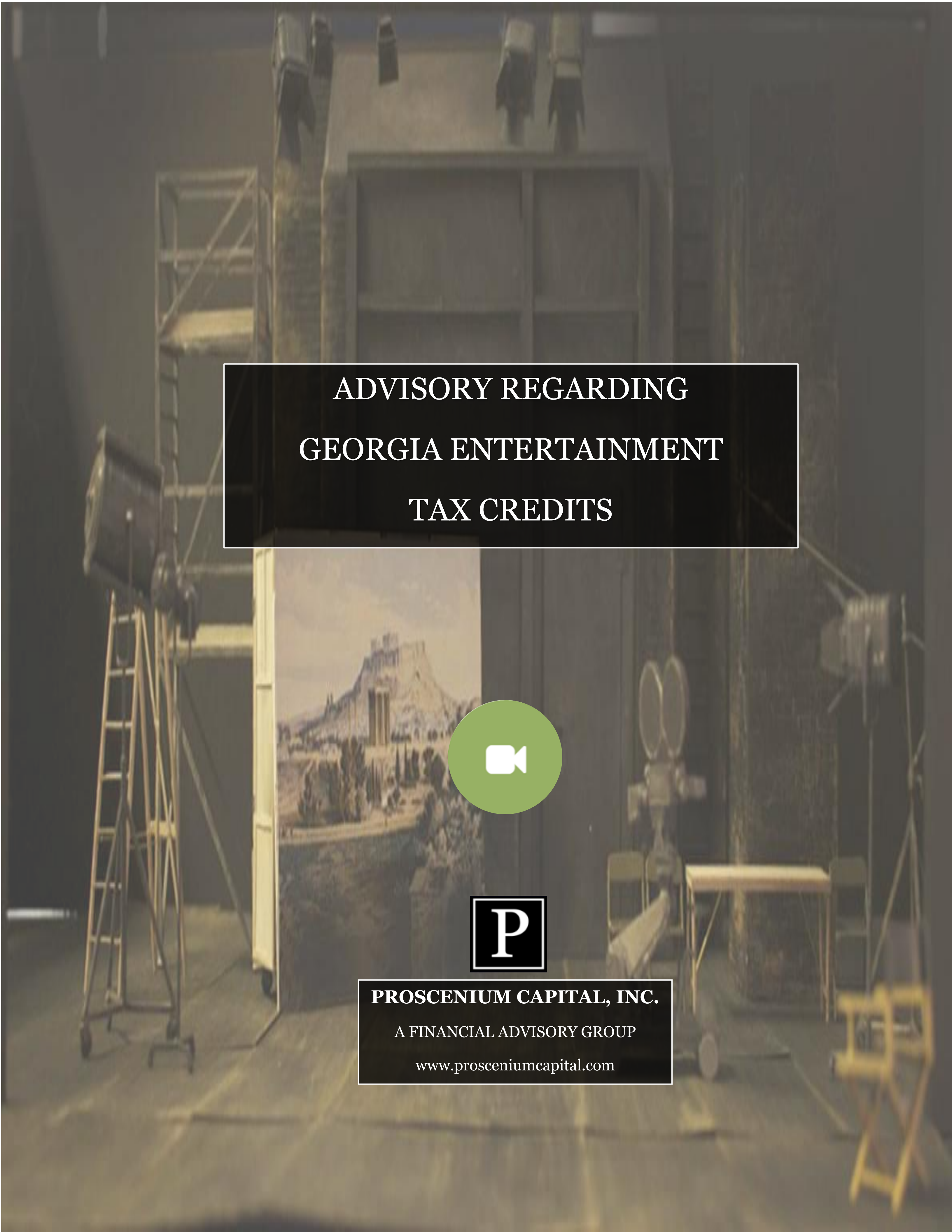

ADVISORY REGARDING GEORGIA ENTERTAINMENT TAX CREDITS

PROSCENIUM CAPITAL, INC.

A FINANCIAL ADVISORY GROUP

www.prosceniumcapital.com

From: Proscenium Capital

Re: Advisory regarding Georgia Entertainment Tax Credits

I. <u>Executive Summary: Why purchase Georgia Entertainment Tax Credits?</u>

Georgia entertainment tax credits provide:

1) Georgia income tax savings of approximately 10% to corporations and individuals purchasing credits; and

2) a very low level of short-term risk to the buyer.

Enactment of The Georgia Entertainment Industry Investment Act in 2008 implemented an up to 30% tax credit incentive to entertainment content production companies with the purpose of expanding entertainment production expenditures in the state. Since 2008 entertainment production expenditures in Georgia have grown to over $1.4 billion. Moreover, the 600% growth in expenditures has been accompanied by significant investment in entertainment production infrastructure, further signaling the long-term importance of the entertainment production industry in Georgia.

As a result, a $300 to $400 million entertainment tax credit market has been created in Georgia. These credits may be sold by entertainment production companies to corporate `and individual Georgia taxpayers pursuant to the same advantageous terms afforded to them by the state's economic incentives policy:

- Credits may be claimed against 100% of the buyer's Georgia corporate or personal income tax liability in any given year.
- Credits are typically sold at a discount (typically 90% of face value), thereby allowing buyers to pay their Georgia income tax liability at a discount and generating a return on investment ("ROI") for the buyer.
- Buyers may purchase credits for any open tax year.
- If credits are purchased for a prior tax year, the buyer must file an amended Georgia income tax return to claim the credits.
- Unused credits may be carried forward for up to five years.

The market for Georgia Entertainment Tax Credits presently offers discounts in the 10% range. <u>Thus, purchase of these tax credits offers the opportunity to attain a return on investment of approximately 10%. Straight to the bottom line. Immediately.</u>

Georgia is currently among the top three states in the country in terms of entertainment production expenditures. Entertainment production has become a stable and enduring aspect of Georgia's economy. For example, in 2012 23 feature films, 8 television movies, and 57 television specials and series (including cable's most watched series *The Walking Dead*) along with numerous television commercials, music videos, and video game projects were produced in Georgia.

Purchasing Georgia entertainment tax credits provides a significant long-term strategy for reducing Georgia corporate and personal income tax liability.

II. Economics

The sellers of Georgia entertainment tax credits are those entertainment production companies who have made qualified expenditures totaling at least $500,000 on an annual or cumulative basis. These include major motion picture studios, independent film productions, television studios, advertising companies, music video producers[1], and video game developers. To date, major credit sellers include Sony Entertainment, Disney, Warner Brothers, Universal Pictures, Lions Gate, Viacom, Tyler Perry Studios and Alcon Entertainment.

a) Benefits to purchasers.

Purchase of these tax credits offers the opportunity to attain Georgia tax savings of approximately 10%.

Credits are typically sold at a discount (typically 90% of face value), thereby allowing buyers to pay their Georgia income tax liability at a discount. Risks of recapture can be mitigated by having the seller indemnify the buyer for any recaptured credits and related costs or by the production company's participation in the State of Georgia's voluntary audit program resulting in credits certified by the State and not subject to further review.

b) Entertainment Tax Credits v. Other Purchased Tax Credits.

- No "pass through" entity is needed.
- No need to assume risk by purchasing an interest in the developer or film production entity.

[1] For example, music video production is a qualifying activity although music production, on its own, does not qualify for the entertainment incentives. However, if a piece of music is licensed, composed, and/or scored to be included in a qualifying film, TV, or video game production produced in Georgia, then the activity would qualify. The same would be true for editing, film transfer, dailies work, ADR work, voiceover and other post production activities for a qualified Georgia made film, TV or video game production.

- Unlike a Low Income Housing Tax Credit (LIHTC), no capital contribution to the partnership is required.
- Only a 3 year recapture risk v. 15 years.
- Buy only 1 year credit stream v. 10 years.
- No favoring Alternative Minimum Tax ("AMT") investors.

III. <u>How the Transaction works</u>

Purchasers of credits benefit from paying their Georgia income tax liability on a discounted basis, generating a very competitive return on investment at relatively low risk to the buyer depending on the creditworthiness of the seller. Although non-qualifying credits can be recaptured from buyers, risks of recapture can be mitigated by having the seller indemnify the buyer for any recaptured credits and related costs. Additionally, third party accounting firms may be retained by the seller to perform due diligence procedures on the seller's expenditures in verification of seller's credits or the production company may participate in the State of Georgia's voluntary audit program resulting in credits certified by the State and not subject to further review.

Entertainment Tax Credits may be purchased on an annual, quarterly or ongoing basis according to the buyer's preference. Quarterly purchase of credits may be determined to be advantageous as:

- the time value of money is recovered against quarterly corporate estimated payments;
- a premium is likely to be paid for credits purchased on an annual basis due to increased demand for credits at the end of the tax year; and
- higher quality/lower risk credits are more likely to be available on a quarterly rather than annual basis.

IV. <u>FAQs</u>

How can buyers use the credits?

Buyers may only purchase credits for use against their corporate or individual Georgia income tax liability for any tax year open to amendment (typically three years).

Can the credits be resold by the buyer?

No, the credit may only be sold once. However, the credits may be freely transferred between a parent and subsidiary company. The buyer may also carry forward unused credits for up to five years (depending on the time of sale).

Can credits be transferred by the buyer?

If the buyer is a flow-through entity such as an s-corporation, limited liability company or partnership, the credits may either be claimed at the entity level or passed-through to the owners of the entity on a pro-rata basis (following each member's income interest).

What is the process of a Georgia entertainment tax credits transaction?

The seller and buyer enter into a purchase and sale agreement assigning the credits to the buyer for a negotiated purchase price. After the agreement is executed by the parties, the seller must then file a Form IT-TRANS documenting the sale with the Georgia Department of Economic Development ("GDEcD") or the Georgia Department of Revenue ("DOR") within 30 days of the sale.

How does the buyer claim the credits?

After a Form IT-TRANS is filed by the seller, the buyer merely claims the credits on its Georgia income tax return for the relevant tax year. If the credit is for a prior tax year (e.g., a buyer purchases 2013 income tax credits in 2014), the buyer must file an amended Georgia income tax return claiming the credit and any refund generated by the credit.

Are there risks associated with buying credits?

Yes. A complete discussion of risks is outside the scope of this summary discussion. In general, the DOR may seek to recapture credits erroneously claimed by the original production company either from the production company or an assignee or purchaser of the credits. Georgia has a three year statute of limitations on tax audits.

Credits may be subject to recapture for a number of reasons, including frauds on the part of the seller, erroneous record-keeping, erroneous classification of expenditures, etc. Because the Act is relatively recent, there are many issues of unsettled law regarding the credits. Recapture of the credits may result in the assessment of tax, interest and penalties against the taxpayer claiming the credits.

Can risks associated with purchases of credits be mitigated?

Yes. In the purchase agreement, sellers typically indemnify the buyer for any tax, interest and penalties that may be assessed against the buyer as a result of a recapture of credits from the buyer. In addition, many sellers retain third party accounting firms to perform due diligence procedures on the credits and issue a "comfort letter" setting out the accountant's findings regarding the calculation of the credits. Often, the firm performing the due diligence is also the firm preparing the seller's Georgia income tax return or Form IT-FC (the form upon which the credit is claimed and which must be attached to the seller's income tax return). Moreover, the State of Georgia has instituted as voluntary audit program by which the production company may submit a production's expenditures to an auditor selected by the Department of Revenue for review and certification of the resultant credits, such credits are not subject to further review.

What are factors associated with credit pricing?

Supply and demand for credits are factors in the pricing of credits as is the time of year the buyer wishes to purchase credits. Typically, buyers pay a premium for credits purchased right before major tax reporting dates like March/April 15 and/or September/October 15 (for calendar year taxpayers).

Because a seller's contractual indemnity is only as good as the seller's or guarantor's ability to recompense the buyer, a buyer must take into account the creditworthiness of the seller or guarantor. Risk factors associated with the credit-worthiness of the seller or guarantor may be a factor in the pricing or valuation of the credits. Typically, credits offered for sale by larger, more creditworthy major motion-picture studios or game developers are more expensive than credits offered for sale by independent film makers or smaller production companies unless those companies have participated in the State of Georgia's voluntary audit program with the result of their credits being certified by the State and thus not subject to further review.

What is the volume of credits available for purchase?

The GDEcD estimates that production companies incurred approximately $1.4 billion in qualifying production expenditures in 2009 resulting in the issuance of approximately $400 million in tax credits.

May credits be sold in multiple installments?

Although this issue has not been explicitly addressed in the credit statute or related regulations, the DOR has issued informal guidance that production companies may sell credits for a given tax year in multiple installments, subject to certain limitations.

V. <u>The Proscenium Capital Team</u>

<u>Proscenium Capital provides you the means to obtain these credits at the best available negotiated price with the least amount of hassle.</u>

Our team provides a blend of legal, tax/accounting, corporate finance and brokerage experience designed to:

- obtain the best available negotiated price on behalf of purchasers; and

- complete all aspects of the transaction efficiently and effectively.

a) Principals

Jim Comerford. Jim Comerford's career has focused on matters relating to finance, economic development, and the interaction between the private sector and government. He is a former partner in one of the nation's largest law firms.

His involvement with growing the entertainment production industry in Georgia began during his service on Governor Perdue's transition team in 2002.

Among his accomplishments in the areas of finance is service as underwriter's or bond counsel in transportation, housing and economic development bond issues exceeding $1 billion in value. Jim also served as outside counsel to the Georgia State Road and Tollway Authority (SRTA) in the creation of a State Infrastructure Bank.

Among his accomplishments in economic development are representations of Fortune 500 companies in economic development matters valued in excess of $600 million and obtaining public appropriations on behalf of clients in excess of $500 million.

He is a graduate of the University of Virginia and the University of Georgia's Law School.

Don Mandrik. Don Mandrik's career has focused on providing counsel to film, television and video-game production companies with respect to financing strategies, as well as their usage and monetization of various state and federal production tax incentive programs.

He has represented a wide array of clients involved in all facets of film production and finance, as well as numerous production companies in their usage of the Georgia Entertainment Industry Investment Act, ranging from small, regionally based independent production companies to public companies such as Viacom.

Don has also served as a producer on a number of feature films, most notably on the Georgia-based productions "Get Low," "96 Minutes," and "CBGB." He is a member of the Producers Guild of America.

He is a graduate of The Ohio State University and The Georgia State University College of Law.

b) Board of Advisors

Rob Crabb. Rob Crabb is a former state tax director for a Fortune 500 company. He has over 30 years of experience in state tax compliance, audit, planning, incentives, and advocacy. He served as an active participant in COST (Council on State Taxation), president of the Western Michigan Chapter of Tax Executives Institute, chair of the Tax Policy Committee of the Michigan Chamber of Commerce, and as an a member of the advisory board of the Vanderbilt University Law School Paul J. Hartman State and Local Tax Forum. He is a graduate of Western Michigan University.

Judson Hill. Judson Hill is an attorney and member of the Georgia State Senate. As a member of the Senate since 2005, he has been active in economic development issues and serves as Chairman of the Senate Finance Committee. An experienced transactional attorney, he is a graduate of Emory University and Mercer University's Law School.

VI. The Law

The Georgia Entertainment Industry Investment Act (O.C.G.A. § 48-7-40.26 et. seq.) provides for a credit against Georgia income or withholding taxes for film, video, and digital entertainment productions undertaken within the state. In order to qualify for the credit, an entertainment production company must (i) be engaged in a "qualified production activity"[2] involving (ii) "qualified production expenditures"[3] that (iii) meet a

[2] A qualified production activity includes the production of new film, video, or digital projects produced in Georgia and approved by the Department of Economic Development, such as feature films, series, pilots, movies for television, commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series pilots, or movies for television. Such activities shall include projects recorded in Georgia, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, licensing for exhibition by individual television stations, groups of stations, networks, cable television stations, public broadcasting stations, corporations, live venues, the Internet, or any other channel of exhibition. It does not include the production of television coverage of news and athletic events.

[3] Qualified production expenditures include pre-production, production, and post-production expenditures incurred in Georgia that are directly used in a qualified production activity. Such expenditures include total aggregate payroll expenses (up to $500,000 per employee). Such expenditures include set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia based travel agency or travel company; insurance costs and bonding, if purchased through a Georgia based insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. Post-production expenditures for marketing and distribution are not included. O.C.G.A. § 48-7-40.26 (b) (5)

base investment threshold[4]. <u>The credit is equal to 20% of the company's base investment in the state and may be increased to 30% if the qualified production activity includes a qualified Georgia promotion[5].</u>

Credits may be claimed against 100% of the entertainment production company's Georgia income or withholding taxes in any given year. Unused credits may be carried forward for up to five years.

Entertainment production companies may elect to sell or transfer credits rather than using them to offset their own Georgia income or withholding taxes. Previously claimed but unused <u>income</u> tax credits may be sold to a third party by an entertainment production company or assigned to an affiliated entity of the company in whole or in part. <u>No amount of tax credits that the entertainment production company has elected to claim against withholding taxes may be sold or assigned</u>. Credits may be sold only once and may not be resold by the purchaser. However, an allocation of credits to partners or members in a flow through entity does not constitute a transfer. The sale or transfer of credits to one or more transferees may take place in multiple installments of $100,000 (except for the final installment, which may be an odd number). The sale may take place in the year the credit was earned or in any subsequent year before the expiration of the five year carry forward period (which starts from the year in which the base investment threshold of $500,000 was met).

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[4] The credit may be claimed in the year that the entertainment production company exceeds the minimum investment threshold of $500,000 either in an individual year or cumulatively. Multiple projects may be aggregated to meet the threshold. O.C.G.A. § 48-7-40.26 (5)

[5] A qualified Georgia promotion means a qualified promotion of this state approved by the Department of Economic Development consisting of a:
(A) Qualified movie production which includes an approximately five-second long animated logo that promotes Georgia within its presentation and all promotional trailers worldwide for the life of the project;
(B) Qualified TV production which includes an imbedded five-second long Georgia promotion during each broadcast half hour worldwide for the life of the project;
(C) Qualified music video which includes the Georgia logo at the end of each video and within online promotions; or
(D) Qualified interactive game which includes a 15 second long Georgia advertisement in units sold and imbedded in online promotions.

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