The entertainment industry has long had a foothold in Georgia with some of us old enough to remember when films like “Deliverance,” “Sharky’s Machine” and “Smokey & The Bandit” were filmed in Georgia in the late 1970s and early 1980s. In addition, there was a strong cable presence through Turner Broadcasting System (TBS) and CNN being headquartered in Atlanta. Nonetheless, feature film production in Georgia declined through the 1980s and 1990s.

All of that changed in 2008, when the Georgia Entertainment Industry Investment Act (the “Act”) was passed by the General Assembly. The Act provides for a transferrable tax credit for film, television, television commercial, and digital interactive entertainment productions in Georgia. The amount of the credit is up to 30 percent of the qualified expenditures incurred by the production company in Georgia. The credit may be used by the production company against Georgia income tax, Georgia employer withholding taxes, or sold to a third party for cash (to be claimed by the purchaser as a credit against the purchaser’s Georgia income tax liability).

According to past president of the Georgia Production Partnership, long-time actor and industry advocate, Ric Reitz, the Act was intended to make Georgia competitive with other state film tax incentives around the country (e.g., Louisiana and Michigan) that ranged from 25 percent to 40 percent of production costs. The idea was that if Georgia was at least competitive with other state incentive programs, Georgia had significant other advantages that would allow Georgia to win productions. Some of these other advantages were:

1. Hartsfield Jackson International Airport (easy direct flights to and from Atlanta).
2. Already-existing production infrastructure, vendors, and experienced crew base due to local production companies like Tyler Perry Studios, TBS and Weather Channel
3. Broad geographic diversity of shooting locations (mountains, beach, urban and rural – everything except a desert)
4. Having a strong individual and corporate tax base to ensure that the entertainment industry could sell its tax credits.

In short - it worked. In 2008 when the Act was passed, the entertainment industry had less than a $250 million direct investment in the state. In fiscal year 2013, according to data provided by the Georgia Office of Film, Television & Digital Entertainment, the entertainment industry had a direct investment in the state exceeding $1 billion, with a resulting economic impact of $3.1 billion to the state. The entertainment industry employed more than 25,000 people in Georgia in 2013, with over 1,000 production suppliers and vendors located in the state.

Over 700 entertainment productions were filmed in the state. Only a tiny sampling includes:

- Feature films like “Contagion” and “Trouble With The Curve” (Warner Bros.); “Fast Five” and Fast & Furious 7” (NBC); “Hunger Games: Catching Fire” (Lionsgate); “X-Men” and “Three Stooges” (Fox); “Flight” and “Anchorman 2” (Paramount); and “Zombieland” (Sony).

1 Need I mention the World Wrestling Federation and famous wrestlers like Dusty Rhodes (The American Dream)? Probably not.
Peter Stathopoulos

- Hit television dramas that are here year after year like “The Vampire Diaries” and its spinoff, “The Originals” (Warner Bros.) and “The Walking Dead” and “Red Road” (AMC); “Royal Pains” (NBC Universal); “Meet The Browns” and “House of Payne” (Tyler Perry Studios).
- Reality television shows like “Single Ladies” (VH1); “The Mo’Nique Show,” “Love & Hip Hop Atlanta,” “T.I. & Tiny: The Family Hustle” (BET); “Drop Dead Divas” (Sony); “Real Housewives of Atlanta” (Bravo); “Married To Medicine” (NBC); and “Property Virgins” (Cineflix).
- Game shows like “Family Feud” (Fremantle).

As a result of the Act, Georgia has become one of the top three or four production destinations in the United States. According to Adam Morra, senior director and tax counsel for Viacom (which includes Paramount, MTV, VH1 and BET), “the film incentive is a major factor for choosing Georgia as a preferred production destination. We have moved many of our features, scripted television series, reality and documentary programming, and awards shows to the state and will continue to have a presence in Georgia.”

The growth of the entertainment industry is also having a substantial impact on other industries in Georgia, like commercial real estate. The growth of the industry has led to major production studio complexes that include tens of thousands of feet of sound stages like EUE Screen Gems and Tyler Perry Studios in Atlanta and Raleigh Studios in Senoia, Ga. Pinewood Studios in the United Kingdom (where the James Bond films were shot) recently announced a multi-million dollar mixed-use investment in a new studio in Fayetteville, Ga. that was named the economic development “deal of the year” by the Georgia Economic Developers Association. According to Steve Weizenecker, an entertainment lawyer in Atlanta with the law firm of Barnes & Thornburg, LLP and chair of the Entertainment & Sports Law Section of the Georgia Bar, “Pinewood Studios Atlanta will bring some of the largest productions to Georgia. There will be large scale feature film capability as well as smaller space for television and web-based entertainment. There will be a large scale vendor area which will bring onto the lot a variety of skilled trades to support the production, including post production, props, lumber, etc.”

Details of Tax Incentive Program
Entertainment tax credits may be claimed by a “production company” (meaning a taxpayer primarily engaged in entertainment production activities) for qualified production expenditures incurred in connection with a state certified production. For most taxpayers, the base credit is equal to 20 percent of the company’s qualified production expenditures in the state. An additional credit equal to 10 percent of the company’s production expenditures may be claimed if the company engages in certain activities promoting Georgia (usually the inclusion of a Georgia film logo in the production’s credit crawl). The total credit therefore equals 30 percent of qualified production expenditures. The credit only applies to pre-production, production and post-production activities in Georgia.

The typical life cycle of an entertainment credits is as follows:

1. No more than 90 days prior to the start of principal photography, a production company must apply to the Georgia Film Office, a division of the Georgia Department of Economic Development, for certification of the production;
2. The Film Office certifies the production as qualifying for credits, but this certification does not set out the amount of tax credits that may be claimed by the company. The amount is determined by the company’s qualifying spend in Georgia;
3. The company incurs qualified production expenditures in the state, thereby generating tax credits;
4. The credits may be claimed by the production company against income taxes or employer withholding taxes. Alternatively, the company may sell the tax credits to a third party or assign the credits amongst members of an affiliated group of corporations. The minimum sales price is 60 cents but is otherwise determined by market forces in the transferrable tax credit markets. The current market price of entertainment tax credits ranges from 86 to 90 cents on the dollar. When credits are sold to a third party, the seller files a Form
IT-TRANS notifying the Georgia Departments of Economic Development and Revenue of the transfer;
5. The production company claims the credits on its Georgia income tax return. Credits can actually be sold prior to the seller claiming the credits on its tax return. If the credits were sold to a third party, the buyer will also claim the credits on its Georgia income tax return.

Although the Georgia Department of Revenue determines initial certification of projects and whether they qualify for the extra 10 percent promotional credit, the Georgia Department of Revenue determines the actual amount of credits a taxpayer has generated.

**Impact on Accounting Industry**

*Tax Incentive Consulting/Verification of Tax Credits/Preparation of Tax Returns*

The influx of entertainment companies and related vendors has created multiple opportunities for accounting firms. First, many production companies retain independent CPA firms to audit, perform agreed upon procedures, or perform other due diligence in verification of the production company’s qualified production expenditures. This aids the production company in marketing its credits to third party taxpayers and reduces audit risk associated with the purchase of such tax credits (see “Purchasing Tax Credits” below). Typically, an expenditures review takes anywhere from 60 to 90 hours, depending on the scope of procedures performed and the size of the budget.

In addition to full reviews of production expenditures, many producers seek independent CPA reviews of preliminary budgets to determine qualifying production expenditures. These reviews help the producer obtain financing for the entertainment project, including potential financing of the tax credits themselves (i.e., lending against the value of the inchoate tax credits before the production even commences).

A CPA firm may also provide advice to production companies on the setting up internal accounting controls to best capture qualified production expenditures, including allocation of overhead and executive compensation in some cases. This advice may also include how to best organize the production company and payments between related parties.

In addition, most production companies retain accountants to prepare their federal and state income tax returns and to help liaison with state agencies related to claiming entertainment tax incentives.

*Production Accounting*

Entertainment production companies typically retain accountants to prepare detailed budgets for productions and to perform on-site production accounting during the production and post-production phases of the project. The production accountant monitors expenditures, compares them to budget, and handles cash flow and payments to vendors, cast and crew.

Production accountants typically work closely with producers and financiers of the production, as well as outside accountants performing other financial functions (e.g., qualified cost reviews or preparation of tax returns).

*Purchase of Entertainment Tax Credits by Firm Clients*

In addition to creating benefits for entertainment companies, the Act has also created significant benefits for CPA firm clients in the form of transferrable tax credits. Given that entertainment spending for Georgia’s fiscal year 2013 exceeded $1 billion dollars, it is likely that over $200 million in Georgia entertainment tax credits were created in 2013. A substantial portion of these tax credits were sold to third parties by the production companies.

Individuals and business entities may purchase Georgia entertainment tax credits for a variety of reasons. First, this allows buyers of tax credits to pay their Georgia income tax liability with discounted dollars. Georgia entertainment tax credits typically sell for 85 to 89 cents on the dollar. So assuming a credit can be purchased for 86 cents, this means that a $1 million Georgia income tax liability may be satisfied with an outlay of $860,000.
Another benefit is that credits may be purchased for prior tax periods, thereby giving them a retroactive tax effect. This allows for the satisfaction of prior period liabilities using discounted dollars and potentially eliminating penalties and interest associated with prior period underpayments.

Entertainment credits may be purchased for any tax year open to amendment. For example, assume a taxpayer had already paid their full Georgia income tax liability for a prior open tax year (say 2010) of $1 million. Let’s assume that taxpayer purchases $1 million of 2010 entertainment credits for 86 cents in the current year. Based on informal advice provided by the Department of Revenue, the purchase of 2010 entertainment tax credits is treated as if the taxpayer had made an extra $1 million payment of tax back in 2010. Therefore, the taxpayer would file an amended 2010 tax return and claim a $1 million refund (i.e., a payment of $860,000 would generate a $1 million refund).

As another example, let’s assume a taxpayer is audited by the IRS or the Georgia Department of Revenue and is found to have understated its income for a prior tax year (say 2010). Let’s assume the understatement of income results in an assessment of $100,000 against the taxpayer for tax year 2010. Georgia law imposes 12 percent annual interest on underpayments of taxes and 25 percent penalties. Accordingly, the total assessment may exceed $150,000 once penalties and interest have been added.

Instead of paying $150,000 to the Department of Revenue, let’s assume the taxpayer instead purchases $100,000 worth of 2010 entertainment tax credits for 86 cents on the dollar (i.e., the taxpayer pays $86,000 for the credits). The taxpayer’s purchase will be treated as if the taxpayer had made an extra payment of taxes in 2010 of $100,000, thereby eliminating the underpayment. Because the purchase of tax credits today is given a retroactive tax effect, this should also eliminate any applicable interest and penalties. This means that a $150,000 tax assessment may be settled with an $86,000 outlay (in this example).

Although the purchase of entertainment tax credits may provide substantial benefits, there are also risks. Under Georgia law, if a production company is found on audit to have overstated its qualifying production expenditures, the Department of Revenue may seek to recapture associated tax credits from either the production company or a subsequent purchaser of the tax credits. The Department of Revenue is only likely to attempt to recapture credits from a buyer when there is no recourse against the seller (e.g., the seller has no assets to satisfy the liability). This risk can be mitigated in a number of ways. One is by only purchasing credits guaranteed by the seller and making sure the seller has sufficient assets as to be able to live up to its guarantee. Another is by making sure the seller has had its qualifying expenditures verified by either an independent CPA firm or through a voluntary audit of the production company’s expenses by the Georgia Department of Revenue.

Helping clients achieve tax cost reductions through the purchase of transferrable entertainment tax credits, knowing where to find such credits, and helping client evaluate the recapture risk and fair pricing for such credits can create a significant competitive advantages for one CPA firm over another.

3 O.C.G.A. §§ 48-2-40; 48-7-57; 48-7-86; 48-7-81.
4 Production companies may voluntarily petition the Georgia Department of Revenue to audit, for a fee, their qualifying production expenditures and issue a letter setting forth the Department’s findings. The results of such an audit are binding on the Department of Revenue, generally barring fraud or de-certification of the production by the Georgia Film Office.