DOAA
Georgia Department
of Audits & Accounts

Greg S. Griffin
State Auditor

March 30, 2022

Honorable Chuck Hufstetler
Chairman, Senate Finance
121-C State Capitol
Atlanta, GA 30334

SUBJECT: Fiscal Note
House Bill 1437 (LC 43 2421S)

Dear Chairman Hufstetler:

The subject bill amends, effective January 1, 2024, the state personal income tax as follows:

- The 5-bracket graduated tax rate structure is replaced by a 2-bracket structure with rates of 4.99 percent up to taxable income amounts that vary by filing status and 5.70 percent on taxable income above those amounts.
- Thresholds for the 5.7 percent bracket for tax year (TY) 2024 would be $13,000 for single filers, $20,000 for head of household and married joint filers, and $10,000 married filers filing separately.
- Subject to revenue-related conditions, the upper-bracket thresholds are scheduled to be increased annually in seven subsequent steps beginning in TY 2025.
- Personal exemption amounts are increased by $2,000 per taxpayer (e.g., for married joint filers by $4,000 in total).
- A state earned income tax credit (EITC) is created in an amount equal to 10 percent of the federal EITC. The state EITC would be nonrefundable and cannot be carried forward.
- The current-law $10,000 cap on itemized deductions for state and local taxes paid, resulting from conformity to the Tax Cut and Jobs Act of 2017, is made permanent.

In addition, the bill would amend, effective January 1, 2023, the state film tax credit under O.C.G.A. §48-7-40.26 as follows:

- Tax credits under this code section may no longer be sold, transferred, or assigned.
- The aggregate amount of credits earned in any year is capped at $900 million. The bill establishes for a process for preapproval of credits, in the order in which completed applications are received, up to the amount of the cap each year.
- The total amount of credits earned by any one production company in any year is capped at $150 million.

Impact on State Revenue

Georgia State University's Fiscal Research Center (FRC) estimated the bill's income tax provisions would decrease state revenue by $641.6 million in FY 2025, the first complete fiscal year affected by the bill. However, the film tax credit provisions would increase state revenue by an unknown amount. The aggregate cap would result in a $386.5 million gain in FY 2025. Eliminating the transfer or assignment of film tax credits is likely to reduce the use of the credit, thereby resulting in additional state revenue.

Table 1. Estimated Revenue Effects of LC 43 2421S

($ *millions*)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Personal Income Tax Changes	-	($220.8)	($641.6)	($918.6)	($1,185.3)
Film Tax Credit – Aggregate Cap	$105.7	$277.9	$386.5	$454.9	$499.9
Film Tax Credit – No Transfer			Unknown		

Impact on State Expenditures

We were unable to obtain cost information from the Department of Revenue (DOR) in the timeframe required for this fiscal note.

Respectfully,

Greg S. Griffin
State Auditor

Kelly Farr
Kelly Farr, Director
Office of Planning and Budget

GSG/KF/mt

Analysis by the GSU Fiscal Research Center

Part II of LC 43 2421S amends O.C.G.A. Chapter 7 of Title 48, relating to personal income taxes in several respects. Section 2-1 amends the 5-bracket graduated tax rate structure to replace it with a 2-bracket structure with rates of 4.99 percent up to taxable income amounts that vary by filing status and 5.70 percent on taxable income above those amounts.

Effective for tax year (TY) 2024, the 4.99 percent rate would apply to the first $13,000 of taxable income for single filers, the first $20,000 for head of household (HoH) and married joint filers (MFJ), and the first $10,000 for married filers filing separately (MFS).

Section 2-1 also establishes a schedule of annual increases in the threshold for the upper, 5.70 percent bracket as well as conditions under which such increases would occur or, failing the conditions, be delayed until such time as the conditions are met. The scheduled bracket adjustments are as shown in Table 2 below. The conditions under which they would be delayed, determined as of December 1 of each year, are as follows:

- The Governor's revenue estimate for the succeeding fiscal year is not at least 3 percent above the Governor's revised revenue estimate for the present fiscal year;
- The prior fiscal year's net revenue collection was not higher than each of the preceding five fiscal years' net tax revenue collection; or
- The Revenue Shortfall Reserve provided for in Code Section 45-12-93 does not contain a sum that exceeds the amount of the decrease in state revenue projected to occur as a result of the prospective reduction in the tax rates set to occur the following year.

Table 2. Section 2-1 Scheduled Bracket Changes
5.70% tax rate applies to taxable income above the following amounts by filing status and year effective, if not delayed:

	Single	MFJ/HoH	MFS
TY 2025	$23,000	$35,000	$17,500
TY 2026	$37,000	$55,000	$27,500
TY 2027	$51,000	$75,000	$37,500
TY 2028	$67,000	$99,000	$49,500
TY 2029	$102,000	$149,000	$74,500
TY 2030	$155,000	$225,000	$112,500
TY 2031	$350,000	$500,000	$250,000

Section 2-2 increases personal exemption amounts as follows (dependent exemption amounts are unchanged):

- For single and HoH filers, from $2,700 to $4,700
- For MFJ filers, from $7,400 to $11,400
- For MFS filers, from $3,700 to $5,700

Section 2-3 makes permanent the $10,000 limit on itemized deductions for state and local taxes (SALT) paid. This limit was created by federal enactment of the Tax Cut and Jobs Act of 2017 (TCJA) and Georgia’s conformity to that law. Under TCJA, this limit is scheduled to expire December 31, 2025, at which time, absent the proposed change, continued conformity to federal law regarding itemized deductions would mean the limit would no longer apply on state returns after TY 2025. This provision is assumed, for purposes of this note, to have no state revenue effect if the state baseline forecast of personal income tax revenues assumes current federal policy (i.e., the SALT deduction limit) continues after TY 2025.

Note that, with regard to this provision, we assume regulations would account for the fact that, under current law, non-Georgia income taxes are already added back to taxable income (as an adjustment that reduces federal itemized deductions allowed on the Georgia return). A literal reading of lines 262-3 of the bill would have the full amount of any federal SALT deduction, including that of any non-Georgia income taxes paid, over $10,000 added back to Georgia taxable income, effectively adding the non-Georgia taxes twice.

Finally, Section 2-4 establishes a state earned income tax credit (EITC) equal to 10 percent of the federal EITC allowed for the given taxpayer. The state EITC would be nonrefundable and cannot be carried forward.

These state revenue effects of these provisions are estimated using a microsimulation model of the changes, applied to TY 2019 tax return data provided by the Department of Revenue (DOR), including approximately 4.01 million full-year resident, e-filed returns. Such data are first adjusted to account for the increase in standard deduction amounts enacted in 2021 and effective beginning TY 2022. The proposed changes are then modeled and the resulting aggregate change in tax liabilities from current to proposed law is grossed up to reflect taxpayers not included in the 2019 data (part-year and non-resident filers as well as non-e-filers) and to allow for growth in the overall tax base from 2019 to the periods projected in this note.

Given that the Office of Planning and Budget (OPB) baseline forecast of income tax revenues shows growth in the relevant years of 4.0 percent annually, we assume no delays in the effectiveness of the scheduled bracket adjustments. Projections on a fiscal year basis assume that reductions in income taxes owed impact state collections primarily through withholding and estimated tax payments. Thus, each tax year's reduction is assumed to be spread over the trailing and forward fiscal years with 5/12 of the reduction impacting the fiscal year ending June 30 of the tax year and the balance in the subsequent fiscal year. The current OPB baseline and the projected revenue effects of Part II of the bill are provided in Table 3.

Table 3. Baseline Personal Income Tax Revenues and Part II Revenue Effects

($ *millions*)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
OPB Baseline*	$14,101.9	$14,666.0	$15,252.6	$15,862.7	$16,497.2
% change		4.0%	4.0%	4.0%	4.0%
Part II Effects	$0.0	($220.8)	($641.6)	($918.6)	($1,185.3)

* Jan 2022 projections from J. Dorfman

Part III of the bill would amend the state film tax credit under O.C.G.A. §48-7-40.26. On and after January 1, 2023, tax credits under this code section would be subject to the following:

- Tax credits may no longer be sold, transferred, or assigned.
- The aggregate amount of credits allowed to production companies, as defined, is capped at $900 million per year. The bill establishes for a process for preapproval of credits, in the order in which completed applications are received, up to the amount of the cap each year.
- The total amount of credits earned by any one production company in any year is capped at $150 million.

It should be expected that a prohibition on sale of the credits would reduce the amount of credits that are ultimately utilized to offset state tax liabilities as it is reasonable to assume that credits are sold because the taxpayer earning them does not expect to be able to utilize them immediately or in full ad can realize a greater or earlier benefit by selling them to a taxpayer who can utilize them immediately. Such a prohibition may also reduce the amount of credits generated each year from production activity in the state if production companies do not expect to realize the benefits of the credit.

However, it is not possible at this time to estimate the impact on generation or utilization of credits from this prohibition on sales of credits. According to a Department of Audits 2020 report, "Impact of the Georgia Film Tax Credit", as much as 80 percent of film tax credits earned in 2016 were transferred or sold to another taxpayer, assigned to an affiliate, or passed through to owners to be claimed on their personal returns. DOR was unable to distinguish and report how much of the 80 percent was attributable to each, so the share of credits that would likely be impacted by the prohibition cannot be determined. Furthermore, a sale to another taxpayer does not necessarily imply that the production company would receive no benefit if they cannot sell the credit, only that the benefit may be reduced or delayed absent a sale.

The limitation on credits earned by any one production company in a year is not expected to be binding and thus should not reduce the overall amount of credits earned each year. According to the Department of Audits report, the average credit earned in 2016 was only about $1.5 million. For film projects, which had the largest share of credits but the smallest number of projects, the average credit earned was only $5.0 million. Data provided by DOR on credit amounts approved for 2015 through 2021 leads to a similar conclusion. Over this period, the average credit approved was approximately $2.1 million while the maximum was $132 million. No other credit amount was over $67 million and only six were over $50 million.

Finally, the aggregate annual cap of $900 million is expected to materially reduce the amount of credits generated beginning upon its effectiveness. According to DOR data, the amount of film credits generated each year exceeded $900 million in 2017 ($970 million) and 2019 ($918 million), and the 2019 data are likely not yet complete. The Georgia Department of Economic Development (GDEcD) reported a 24 percent decline in total production activity in the state in FY 2020, presumably due to pandemic shutdowns of production projects, but GDEcD also reported a strong 82 percent surge in activity in FY 2021 to $4 billion, which at the maximum 30 percent credit rate would imply $1.2 billion of credits generated during that period.

Updating estimates from the Georgia Tax Expenditure Report for FY 2023 for DOR data received since those estimates were made, we project film credits generated in TY 2023-27 to reach $1.3 to $1.4 billion per year. Accounting for expected utilization and carryforward patterns, based on patterns in DOR back to 2015, we project baseline or current-law utilization of film credits by tax year as shown in Table 4.
To adjust for the cap, it should be noted that the new preapproval process necessitated by the cap provides a strong incentive for production companies to apply early for credit allocations for their projects to lock in the availability of credits. However, actual qualified spending may fall short of the amounts preapproved, possibly because the amounts applied for are padded to allow for uncertainty of costs or because projects were delayed or even cancelled after receiving preapproval for credits. Thus, we assume that while $900 million is preapproved each year beginning in 2023, only 90 percent of that amount is actually earned each year. Proforma projections of utilization by tax year are also provided in Table 4. The net change as a result of the cap is reported on a fiscal year basis in Table 1, assuming that revenue impacts are realized evenly over the year through estimated tax payments or offsets to withholding taxes paid.

Table 4. Baseline and Proforma Film Credit Utilization

($ *millions*)	TY 2023	TY 2024	TY 2025	TY 2026	TY 2027
Baseline	$1,184	$1,239	$1,278	$1,299	$1,318
Proforma	$972	$894	$849	$818	$800
Decrease	$211	$344	$429	$481	$519