

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

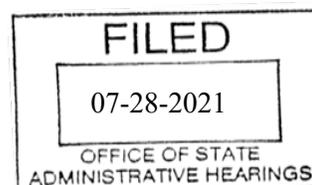
**TAD 3 PRODUCTIONS and  
FNL PRODUCTIONS, LLC,  
Petitioners,**

v.

**GEORGIA DEPT. OF ECONOMIC  
DEVELOPMENT,  
Respondent.**

**Docket No.: 2123699  
2123699-OSAH-GDED-DENX-67-Malihi**

**Agency Reference No.: 2123699**



**ORDER**

This matter concerns the Respondent’s denial of the Petitioners’ applications to receive tax credits under the Georgia Entertainment Industry Investment Act (hereinafter “the Act”).<sup>1</sup> The Respondent has moved to place the burden of proof on the Petitioner. The Petitioners object.

Neither the Act nor the implementing regulations prescribe the burden of proof for this proceeding.<sup>2</sup> Further, the Court’s rules of procedure do not list applicants for tax credits among the types of parties who shall bear the burden of proof in administrative hearings.<sup>3</sup> But the Court can set a different burden of proof prior to commencement of the hearing if law or justice requires.<sup>4</sup>

It is this Court’s determination that the Petitioners bear the burden of proof. Pursuant to the Georgia Evidence Code, “[t]he burden of proof generally lies upon the party who is asserting or affirming a fact and to the existence of whose case or defense the proof of such fact is essential.”<sup>5</sup> Moreover, in administrative proceedings, the burden generally lies with the party seeking relief from the Court unless otherwise provided by law.<sup>6</sup> The Petitioners initiated this case

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<sup>1</sup> See O.C.G.A. § 48-7-40.26; GA. COMP. R. & REGS. 159-1-1-.03.

<sup>2</sup> O.C.G.A. § 48-7-40.26; GA. COMP. R. & REGS. 159-1-1-.03, -.08.

<sup>3</sup> GA. COMP. R. & REGS. 616-1-2-.07(2).

<sup>4</sup> *Id.*

<sup>5</sup> O.C.G.A. § 24-14-1; see, e.g., *Smith v. Sweeper Stores*, 247 Ga. App. 726, 728 (2001).

<sup>6</sup> 2 AM. JUR. 2D ADMINISTRATIVE LAW § 342 (“In an administrative proceeding, unless otherwise provided by statute, the burden of proof is on the moving party or the proponent of an order or position. The failure to sustain the burden

by requesting a hearing and they seek relief; namely, the acceptance of their tax credit applications.<sup>7</sup> Whether to grant such relief turns on the existence of facts; Petitioners must show they met all statutory and/or regulatory prerequisites for the tax credits.<sup>8</sup> Therefore, Petitioners shall bear the burden of proof in this matter.

**SO ORDERED**, this the 28<sup>th</sup> day of July, 2021.

*Michael Malihi*

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**Michael Malihi, Judge**



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of proof means that relief will be denied.”).

<sup>7</sup> OSAH Form 1 and Attachments.

<sup>8</sup> See O.C.G.A. § 48-7-40.26; GA. COMP. R. & REGS. 159-1-1-.03.