

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS85185-LY-39A (1/6)

Short Title: Film Industry Jobs Incentives.

(Public)

Sponsors: Senator Boseman.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ATTRACT AND RETAIN FILM INDUSTRY JOBS IN THIS STATE
BY PROVIDING FOR A TAX INCENTIVE FOR PRODUCTION COMPANIES
IN THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.47. Credit for qualifying expenses of a production company.

(a) Definitions. – The following definitions apply in this section:

(1) Qualifying expenses. – The sum of the total amount spent in this State for the following by the production company in connection with the production:

a. Goods and services purchased by the production company.

b. Compensation paid by the production company on which it must withhold estimated personal income tax payments under Article 4A of Chapter 105 of the General Statutes.

(2) Production company. – Defined in G.S. 105-164.3.

(b) Credit. – A taxpayer that is a production company and has qualifying expenses with respect to a single film or television production of at least two hundred fifty thousand dollars (\$250,000) is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses that have been certified as required in subsection (c) of this section. For the purposes of this section, in the case of an episodic television series, an entire season of episodes is one production. The credit is computed based on all of the taxpayer's qualifying expenses incurred with respect to the production, not just the qualifying expenses incurred during the taxable year.

1 (c) Certification. – In order to be eligible for a credit under this section, a
2 taxpayer must submit a detailed accounting of its qualified expenses to the North
3 Carolina Film Office of the Department of Commerce. The North Carolina Film Office,
4 with the assistance of the regional film commissions, must make a written certification
5 of the amount of the qualified expenses.

6 (d) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
7 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this
8 section does not distribute the credit among any of its owners. The pass-through entity
9 is considered the taxpayer for purposes of claiming the credit allowed by this section. If
10 a return filed by a pass-through entity indicates that the entity is paying tax on behalf of
11 the owners of the entity, the credit allowed under this section does not affect the entity's
12 payment of tax on behalf of its owners.

13 (e) Return. – A taxpayer may claim the credit allowed by this section on a return
14 filed for the taxable year in which the production activities are completed. The return
15 must state the name of the production, a description of the production, and the
16 certification from the North Carolina Film Office of the qualified expenses for which
17 the credit is claimed.

18 (f) Credit Refundable. – If the credit allowed by this section exceeds the amount
19 of tax imposed by this Part for the taxable year reduced by the sum of all credits
20 allowable, the Secretary must refund the excess to the taxpayer. The refundable excess
21 is governed by the provisions governing a refund of an overpayment by the taxpayer of
22 the tax imposed in this Part. In computing the amount of tax against which multiple
23 credits are allowed, nonrefundable credits are subtracted before refundable credits.

24 (g) Limitation. – No credit is allowed under this section for any production that
25 contains material that is obscene, as defined in G.S. 14-190.1.

26 (h) Substantiation. – A taxpayer allowed a credit under this section must maintain
27 and make available for inspection any information or records required by the Secretary
28 of Revenue or the regional film commissions. The burden of proving eligibility for a
29 credit and the amount of the credit rest upon the taxpayer.

30 (i) Report. – The Department of Revenue must publish by May 1 of each year
31 the following information, itemized by taxpayer for the 12-month period ending the
32 preceding April 1:

33 (1) The location of sites used in a production for which a credit was
34 claimed.

35 (2) The qualifying expenses for which a credit was claimed, classified by
36 whether the expenses were for goods, services, or compensation paid
37 by the production company.

38 (3) The number of people employed in the State with respect to credits
39 claimed.

40 (4) The total cost to the General Fund of the credits claimed.

41 (j) Sunset. – This section is repealed for qualifying expenses occurring on or
42 after January 1, 2010."

43 **SECTION 2.** Part 2 of Article 4 of Chapter 105 of the General Statutes is
44 amended by adding a new section to read:

1 **§ 105-151.29. Credit for qualifying expenses of a production company.**

2 (a) Definitions. – The following definitions apply in this section:

3 (1) Qualifying expenses. – The sum of the total amount spent in this State
4 for the following by the production company in connection with the
5 production:

6 a. Goods and services purchased by the production company.

7 b. Compensation paid by the production company on which it
8 must withhold estimated personal income tax payments under
9 Article 4A of Chapter 105 of the General Statutes.

10 (2) Production company. – Defined in G.S. 105-164.3.

11 (b) Credit. – A taxpayer that is a production company and has qualifying
12 expenses with respect to a single film or television production of at least two hundred
13 fifty thousand dollars (\$250,000) is allowed a credit against the taxes imposed by this
14 Part equal to fifteen percent (15%) of the production company's qualifying expenses
15 that have been certified as required in subsection (c) of this section. For the purposes of
16 this section, in the case of an episodic television series, an entire season of episodes is
17 one production. The credit is computed based on all of the taxpayer's qualifying
18 expenses incurred with respect to the production, not just the qualifying expenses
19 incurred during the taxable year.

20 (c) Certification. – In order to be eligible for a credit under this section, a
21 taxpayer must submit a detailed accounting of its qualified expenses to the North
22 Carolina Film Office of the Department of Commerce. The North Carolina Film Office,
23 with the assistance of the regional film commissions, must make a written certification
24 of the amount of the qualified expenses.

25 (d) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
26 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this
27 section does not distribute the credit among any of its owners. The pass-through entity
28 is considered the taxpayer for purposes of claiming the credit allowed by this section. If
29 a return filed by a pass-through entity indicates that the entity is paying tax on behalf of
30 the owners of the entity, the credit allowed under this section does not affect the entity's
31 payment of tax on behalf of its owners.

32 (e) Return. – A taxpayer may claim the credit allowed by this section on a return
33 filed for the taxable year in which the production activities are completed. The return
34 must state the name of the production, a description of the production, and the
35 certification from the North Carolina Film Office of the qualified expenses for which
36 the credit is claimed.

37 (f) Credit Refundable. – If the credit allowed by this section exceeds the amount
38 of tax imposed by this Part for the taxable year reduced by the sum of all credits
39 allowable, the Secretary must refund the excess to the taxpayer. The refundable excess
40 is governed by the provisions governing a refund of an overpayment by the taxpayer of
41 the tax imposed in this Part. In computing the amount of tax against which multiple
42 credits are allowed, nonrefundable credits are subtracted before refundable credits.

43 (g) Limitation. – No credit is allowed under this section for any production that
44 contains material that is obscene, as defined in G.S. 14-190.1.

1 (h) Substantiation. – A taxpayer allowed a credit under this section must maintain
2 and make available for inspection any information or records required by the Secretary
3 of Revenue or the regional film commissions. The burden of proving eligibility for a
4 credit and the amount of the credit rest upon the taxpayer.

5 (i) Report. – The Department of Revenue must publish by May 1 of each year
6 the following information, itemized by taxpayer for the 12-month period ending the
7 preceding April 1:

8 (1) The location of sites used in a production for which a credit was
9 claimed.

10 (2) The qualifying expenses for which a credit was claimed, classified by
11 whether the expenses were for goods, services, or compensation paid
12 by the production company.

13 (3) The number of people employed in the State with respect to credits
14 claimed.

15 (4) The total cost to the General Fund of the credits claimed.

16 (j) Sunset. – This section is repealed for qualifying expenses occurring on or
17 after January 1, 2010."

18 **SECTION 3.** G.S. 105-259(b) is amended by adding a new subdivision to
19 read:

20 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State
21 who has access to tax information in the course of service to or employment by the State
22 may not disclose the information to any other person unless the disclosure is made for
23 one of the following purposes:

24 ...
25 (32) To exchange information concerning a tax credit claimed under
26 G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film
27 Office of the Department of Commerce."

28 **SECTION 4.** G.S. 143B-434.4 is repealed.

29 **SECTION 5.** This act is effective for taxable years beginning on or after
30 January 1, 2005.