

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1968
Finance Committee Substitute Adopted 6/24/08

Short Title: Expand Film Industry Credits.

(Public)

Sponsors:

Referred to:

May 28, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO EXPAND THE CREDIT FOR QUALIFYING EXPENSES OF A
3 PRODUCTION COMPANY.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 105-130.47 reads as rewritten:

6 **"§ 105-130.47. Credit for qualifying expenses of a production company.**

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

8 (1) Highly compensated individual. – An individual who directly or
9 indirectly receives compensation in excess of one million dollars
10 (\$1,000,000) for personal services with respect to a single production.
11 An individual receives compensation indirectly when a production
12 company pays a personal service company or an employee leasing
13 company that pays the individual.

14 (2) Live sporting event. – A scheduled sporting competition, game, or race
15 that is not originated by a production company, but originated solely
16 by an amateur, collegiate, or professional organization, institution, or
17 association for live or tape-delayed television or satellite broadcast. A
18 live sporting event does not include commercial advertising, an
19 episodic television series, a television pilot, a music video, a motion
20 picture, or a documentary production in which sporting events are
21 presented through archived historical footage or similar footage taken
22 at least 30 days before it is used.

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

24 (4) Qualifying expenses. – The sum of the following amounts spent in this
25 State by a production company in connection with a production, less
26 the amount in excess of one million dollars (\$1,000,000) paid to a
27 highly compensated individual:

28 a. Goods and services leased or purchased. For goods with a
29 purchase price of twenty-five thousand dollars (\$25,000) or

1 more, the amount included in qualifying expenses is the
2 purchase price less the fair market value of the good at the time
3 the production is completed.

4 b. Compensation and wages on which withholding payments are
5 remitted to the Department of Revenue under Article 4A of this
6 Chapter.

7 c. The cost of insurance coverage for production-related insurance
8 that is obtained on the production. Expenses for insurance
9 coverage purchased from a related member are not qualifying
10 expenses.

11 (5) Related member. – Defined in G.S. 105-130.7A.

12 (b) Credit. – A taxpayer that is a production company and has qualifying
13 expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a
14 production is allowed a credit against the taxes imposed by this Part equal to fifteen
15 percent (15%) of the production company's qualifying expenses. 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) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
21 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this
22 section does not distribute the credit among any of its owners. The pass-through entity
23 is considered the taxpayer for purposes of claiming the credit allowed by this section. If
24 a return filed by a pass-through entity indicates that the entity is paying tax on behalf of
25 the owners of the entity, the credit allowed under this section does not affect the entity's
26 payment of tax on behalf of its owners.

27 (d) Return. – A taxpayer may claim the credit allowed by this section on a return
28 filed for the taxable year in which the production activities are completed. The return
29 must state the name of the production, a description of the production, and a detailed
30 accounting of the qualifying expenses with respect to which a credit is claimed.

31 (e) Credit Refundable. – If the credit allowed by this section exceeds the amount
32 of tax imposed by this Part for the taxable year reduced by the sum of all credits
33 allowable, the Secretary must refund the excess to the taxpayer. The refundable excess
34 is governed by the provisions governing a refund of an overpayment by the taxpayer of
35 the tax imposed in this Part. In computing the amount of tax against which multiple
36 credits are allowed, nonrefundable credits are subtracted before refundable credits.

37 (f) Limitations. – The amount of credit allowed under this section with respect to
38 a production that is a feature film may not exceed seven million five hundred thousand
39 dollars (\$7,500,000). No credit is allowed under this section for any production that
40 satisfies one of the following conditions:

- 41 (1) It is political advertising.
- 42 (2) It is a television production of a news program or live sporting event.
- 43 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 44 (4) It is a radio production.

1 (g) 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. The taxpayer has the burden of proving eligibility for a credit and the
4 amount of the credit. The Secretary may consult with the North Carolina Film Office of
5 the Department of Commerce and the regional film commissions in order to determine
6 the amount of qualifying expenses.

7 (h) Report. – The Department of Revenue must publish by May 1 of each year
8 the following information, itemized by taxpayer for the 12-month period ending the
9 preceding December 31:

- 10 (1) The location of sites used in a production for which a credit was
11 claimed.
- 12 (2) The qualifying expenses for which a credit was claimed, classified by
13 whether the expenses were for goods, services, or compensation paid
14 by the production company.
- 15 (3) The number of people employed in the State with respect to credits
16 claimed.
- 17 (4) The total cost to the General Fund of the credits claimed.

18 (i) Repealed by Session Laws 2006-220, s. 2, effective for taxable years
19 beginning on or after January 1, 2007.

20 (j) Sunset.—NC Film Office. – To claim a credit under this section, a taxpayer
21 must notify the Division of Tourism, Film and Sports Development, in the Department
22 of Commerce of the taxpayer's intent to claim the production tax credit. The notification
23 must include the title of the production, the name of the production company, a financial
24 contact for the production company, the proposed dates on which the production
25 company plans to begin filming the production, and any other information required by
26 the Division. For productions that have production credits, a taxpayer claiming a credit
27 under this section must acknowledge in the production credits both the North Carolina
28 Film Office and the regional film office responsible for the geographic area in which the
29 filming of the production occurred.

30 (k) Sunset. – This section is repealed for qualifying expenses occurring on or
31 after January 1, 2010-2015."

32 **SECTION 2.** G.S. 105-151.29 reads as rewritten:

33 **"§ 105-151.29. Credit for qualifying expenses of a production company.**

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

- 35 (1) Highly compensated individual. – An individual who directly or
36 indirectly receives compensation in excess of one million dollars
37 (\$1,000,000) for personal services with respect to a single production.
38 An individual receives compensation indirectly when a production
39 company pays a personal service company or an employee leasing
40 company that pays the individual.
- 41 (2) Live sporting event. – A scheduled sporting competition, game, or race
42 that is not originated by a production company, but originated solely
43 by an amateur, collegiate, or professional organization, institution, or
44 association for live or tape-delayed television or satellite broadcast. A

1 live sporting event does not include commercial advertising, an
2 episodic television series, a television pilot, a music video, a motion
3 picture, or a documentary production in which sporting events are
4 presented through archived historical footage or similar footage taken
5 at least 30 days before it is used.

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

7 (4) Qualifying expenses. – The sum of the following amounts spent in this
8 State by a production company in connection with a production, less
9 the amount paid in excess of one million dollars (\$1,000,000) to a
10 highly compensated individual:

11 a. Goods and services leased or purchased. For goods with a
12 purchase price of twenty-five thousand dollars (\$25,000) or
13 more, the amount included in qualifying expenses is the
14 purchase price less the fair market value of the good at the time
15 the production is completed.

16 b. Compensation and wages on which withholding payments are
17 remitted to the Department of Revenue under Article 4A of this
18 Chapter.

19 c. The cost of insurance coverage for production-related insurance
20 that is obtained on the production. Expenses for insurance
21 coverage purchased from a related member are not qualifying
22 expenses.

23 (5) Related member. – Defined in G.S. 105-130.7A.

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

32 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
33 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this
34 section does not distribute the credit among any of its owners. The pass-through entity
35 is considered the taxpayer for purposes of claiming the credit allowed by this section. If
36 a return filed by a pass-through entity indicates that the entity is paying tax on behalf of
37 the owners of the entity, the credit allowed under this section does not affect the entity's
38 payment of tax on behalf of its owners.

39 (d) Return. – A taxpayer may claim the credit allowed by this section on a return
40 filed for the taxable year in which the production activities are completed. The return
41 must state the name of the production, a description of the production, and a detailed
42 accounting of the qualifying expenses with respect to which a credit is claimed.

43 (e) Credit Refundable. – If the credit allowed by this section exceeds the amount
44 of tax imposed by this Part for the taxable year reduced by the sum of all credits

1 allowable, the Secretary must refund the excess to the taxpayer. The refundable excess
2 is governed by the provisions governing a refund of an overpayment by the taxpayer of
3 the tax imposed in this Part. In computing the amount of tax against which multiple
4 credits are allowed, nonrefundable credits are subtracted before refundable credits.

5 (f) Limitations. – The amount of credit allowed under this section with respect to
6 a production that is a feature film may not exceed seven million five hundred thousand
7 dollars (\$7,500,000). No credit is allowed under this section for any production that
8 satisfies one of the following conditions:

9 (1) It is political advertising.

10 (2) It is a television production of a news program or live sporting event.

11 (3) It contains material that is obscene, as defined in G.S. 14-190.1.

12 (4) It is a radio production.

13 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain
14 and make available for inspection any information or records required by the Secretary
15 of Revenue. The taxpayer has the burden of proving eligibility for a credit and the
16 amount of the credit. The Secretary may consult with the North Carolina Film Office of
17 the Department of Commerce and the regional film commissions in order to determine
18 the amount of qualifying expenses.

19 (h) Report. – The Department of Revenue must publish by May 1 of each year
20 the following information, itemized by taxpayer for the 12-month period ending the
21 preceding December 31:

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

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

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

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

30 (i) **(Repealed effective for taxable years beginning on and after January 1,**
31 **2007)** No Double Benefit. – A taxpayer may not claim a credit under this section for
32 qualifying expenses for which it claimed a deduction under the Code. A taxpayer that
33 claims a credit provided under this section must adjust taxable income as provided in
34 G.S. 105-134.6(c)(9).

35 (j) ~~Sunset.~~—NC Film Office. – To claim a credit under this section, a taxpayer
36 must notify the Division of Tourism, Film and Sports Development, in the Department
37 of Commerce of the taxpayer's intent to claim the production tax credit. The notification
38 must include the title of the production, the name of the production company, a financial
39 contact for the production company, the proposed dates on which the production
40 company plans to begin filming the production, and any other information required by
41 the Division. For productions that have production credits, a taxpayer claiming a credit
42 under this section must acknowledge in the production credits both the North Carolina
43 Film Office and the regional film office responsible for the geographic area in which the
44 filming of the production occurred.

1 (k) Sunset. – This section is repealed for qualifying expenses occurring on or
2 after January 1, ~~2010~~2015."

3 **SECTION 3.** This act is effective for taxable years beginning on or after
4 January 1, 2008.