

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1144

Short Title: Film Industry Jobs Incentives.

(Public)

Sponsors: Senators Boseman; Atwater, Clodfelter, Hartsell, Kerr, and Soles.

Referred to: Finance.

March 24, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ATTRACT AND RETAIN FILM INDUSTRY JOBS IN THIS STATE
3 BY PROVIDING FOR A TAX INCENTIVE FOR PRODUCTION COMPANIES
4 IN THE STATE.

5 The General Assembly of North Carolina enacts:

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

8 "**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

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

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

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

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

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

27 (c) Certification. – In order to be eligible for a credit under this section, a
28 taxpayer must submit a detailed accounting of its qualified expenses to the North
29 Carolina Film Office of the Department of Commerce. The North Carolina Film Office,

1 with the assistance of the regional film commissions, must make a written certification
2 of the amount of the qualified expenses.

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

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

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

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

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

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

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

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

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

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

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

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

42 "**§ 105-151.29. Credit for qualifying expenses of a production company.**

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

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

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

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

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

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

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

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

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

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

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

43 (h) Substantiation. – A taxpayer allowed a credit under this section must maintain
44 and make available for inspection any information or records required by the Secretary

1 of Revenue or the regional film commissions. The burden of proving eligibility for a
2 credit and the amount of the credit rest upon the taxpayer.

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

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

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

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

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

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

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

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

22 ...
23 (32) To exchange information concerning a tax credit claimed under
24 G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film
25 Office of the Department of Commerce."

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

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