

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 1144
Finance Committee Substitute Adopted 6/15/05
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Short Title: Film Industry Jobs Incentives.

(Public)

Sponsors:

Referred to:

March 24, 2005

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) Highly compensated individual. – An individual who receives compensation in excess of one million dollars (\$1,000,000) with respect to a single production.

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

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

b. Compensation and wages paid by the production company, other than amounts paid to a highly compensated individual, on which the production company remitted withholding payments to the Department of Revenue under Article 4A of this Chapter.

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

(b) Credit. – A taxpayer that is a production company and has qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a credit against the taxes imposed by this Part equal to fifteen

1 percent (15%) of the production company's qualifying expenses. For the purposes of
2 this section, in the case of an episodic television series, an entire season of episodes is
3 one production. The credit is computed based on all of the taxpayer's qualifying
4 expenses incurred with respect to the production, not just the qualifying expenses
5 incurred during the taxable year.

6 (c) 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 (d) 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 a detailed
16 accounting of the qualifying expenses with respect to which a credit is claimed.

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

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

27 (1) It is political advertising.

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

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

30 (4) It is a radio production.

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

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

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

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

- 1 (3) The number of people employed in the State with respect to credits
2 claimed.
3 (4) The total cost to the General Fund of the credits claimed.
4 (i) Sunset. – This section is repealed for qualifying expenses occurring on or
5 after January 1, 2010."

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

8 **"§ 105-151.29. Credit for qualifying expenses of a production company.**

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

10 (1) Highly compensated individual. – An individual who receives
11 compensation in excess of one million dollars (\$1,000,000) with
12 respect to a single production.

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

16 a. Goods and services leased or purchased by the production
17 company. For goods with a purchase price of twenty-five
18 thousand dollars (\$25,000) or more, the amount included in
19 qualifying expenses is the purchase price less the fair market
20 value of the good at the time the production is completed.

21 b. Compensation and wages paid by the production company,
22 other than amounts paid to a highly compensated individual, on
23 which the production company remitted withholding payments
24 to the Department of Revenue under Article 4A of this Chapter.

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

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

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

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

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

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

11 (1) It is political advertising.

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

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

14 (4) It is a radio production.

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

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

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

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

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

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

32 (i) Sunset. – This section is repealed for qualifying expenses occurring on or
33 after January 1, 2010."

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

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

40 ...

41 (32) To exchange information concerning a tax credit claimed under
42 G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film
43 Office of the Department of Commerce and with the regional film
44 commissions and to publish the reports required under those sections."

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

2 **SECTION 5.** Section 4 of this act becomes effective July 1, 2005. The
3 remainder of this act is effective for taxable years beginning on or after January 1, 2005,
4 and applies to qualifying expenses incurred on or after July 1, 2005.