GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S **D**

SENATE DRS35581-MC-242 (5/12)

Short Title:	Expand Film Industry Credits.	(Public)
Sponsors:	Senator Boseman.	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE CREDIT FOR QUALIFYING EXPENSES OF A PRODUCTION COMPANY.

The General Assembly of North Carolina enacts:

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

"**§ 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 directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.

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

<u>(2a)</u> <u>Principal photography. – The time frame that is outlined in the intent-to-film form when the main shooting of the film is taking place.</u>

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

(4) Qualifying expenses. – The sum of the following amounts spent in this State by a production company in connection with a production, less

the amount in excess of one million dollars ($1,000,000) paid to a highly compensated individual:

a. Goods and services leased or purchased. 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 on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.

c. The cost of insurance coverage for production-related insurance that is obtained on the production and that is purchased from an unrelated entity.

(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~~meets the requirements listed in this subsection is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses. 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) The taxpayer is a production company.

(2) The taxpayer has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production.

(3) For productions that have production credits, the taxpayer acknowledges in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming for the production occurred.

(4) The taxpayer files an intent-to-film form with the North Carolina Film Office prior to the time principal photography for the production begins.

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

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

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

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

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

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

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

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

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

(j) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, ~~2010.~~<u>2015.</u>"

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

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

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

(1) Highly compensated individual. – An individual who directly or indirectly receives compensation in excess of one million dollars ($1,000,000) for personal services with respect to a single production. An individual receives compensation indirectly when a production company pays a personal service company or an employee leasing company that pays the individual.
(2) Live sporting event. – A scheduled sporting competition, game, or race that is not originated by a production company, but originated solely

by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed television or satellite broadcast. A live sporting event does not include commercial advertising, an episodic television series, a television pilot, a music video, a motion picture, or a documentary production in which sporting events are presented through archived historical footage or similar footage taken at least 30 days before it is used.

(2a) Principal photography. – The time frame that is outlined in the intent-to-film form when the main shooting of the film is taking place.

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

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

a. Goods and services leased or purchased. 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 on which withholding payments are remitted to the Department of Revenue under Article 4A of this Chapter.

c. The cost of insurance coverage for production-related insurance that is obtained on the production and that is purchased from an unrelated entity.

(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~~meets the requirements listed in this subsection is allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the production company's qualifying expenses. 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) The taxpayer is a production company.

(2) The taxpayer has qualifying expenses of at least two hundred fifty thousand dollars ($250,000) with respect to a production.

(3) For productions that have production credits, the taxpayer acknowledges in the production credits both the North Carolina Film Office and the regional film office responsible for the geographic area in which the filming for the production occurred.

(4) The taxpayer files an intent-to-film form with the North Carolina Film Office prior to the time principal photography for the production begins.

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

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

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

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

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

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

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

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

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

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

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