

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE DRS95077-MCx-166 (03/25)

Short Title: No Credit for Obscene Films.

(Public)

Sponsors: Senator Brock.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE ADDITIONAL OVERSIGHT OF THE TAX CREDIT FOR
3 QUALIFYING EXPENSES OF A PRODUCTION COMPANY AND TO LIMIT THE
4 CREDIT FOR COMPENSATION OF INDIVIDUALS RECEIVING PAYMENT TO
5 FIVE HUNDRED THOUSAND DOLLARS.

6 The General Assembly of North Carolina enacts:

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

8 "§ 105-130.47. 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 directly or indirectly
11 receives compensation in excess of ~~one million dollars (\$1,000,000)~~ five
12 hundred thousand dollars (\$500,000) for personal services with respect to a
13 single production. An individual receives compensation indirectly when a
14 production company pays a personal service company or an employee
15 leasing company that pays the individual.

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

24 (2a) MPAA. – The Motion Picture Association of America, Inc.

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

26 (4) Qualifying expenses. – The sum of the following amounts spent in this State
27 by a production company in connection with a production, less the amount
28 in excess of ~~one million dollars (\$1,000,000)~~ five hundred thousand dollars
29 (\$500,000) paid to a highly compensated individual:

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



- 1 b. Compensation and wages on which withholding payments are
2 remitted to the Department of Revenue under Article 4A of this
3 Chapter.
4 c. The cost of production-related insurance coverage obtained on the
5 production. Expenses for insurance coverage purchased from a
6 related member are not qualifying expenses.
7 d. Employee fringe contributions, including health, pension, and
8 welfare contributions.
9 e. Per diems, stipends, and living allowances paid for work being
10 performed in this State.

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

12 (b) Credit. – A taxpayer that is a production ~~company and~~ company, has qualifying
13 expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a ~~production~~
14 production, has satisfied the notification requirements of subsections (j) and (j1) of this section,
15 and, if the production is a feature film, has received a rating from the MPAA for the production
16 is allowed a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of
17 the production company's qualifying expenses. For the purposes of this section, in the case of
18 an episodic television series, an entire season of episodes is one production. The credit is
19 computed based on all of the taxpayer's qualifying expenses incurred with respect to the
20 production, not just the qualifying expenses incurred during the taxable year.

21 ...

22 (f) Limitations. – The amount of credit allowed under this section with respect to a
23 production that is a feature film may not exceed twenty million dollars (\$20,000,000). No
24 credit is allowed under this section for any production that satisfies one of the following
25 conditions:

- 26 (1) It is political advertising.
27 (2) It is a television production of a news program or live sporting event.
28 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
29 (4) It is a radio production.
30 (5) It receives a rating of 'NC-17' by the MPAA.

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

37 (h) Report. – The Department must include in the economic incentives report required
38 by G.S. 105-256 the following information, itemized by taxpayer:

- 39 (1) The location of sites used in a production for which a credit was taken.
40 (2) The qualifying expenses for which a credit was taken, classified by whether
41 the expenses were for goods, services, or compensation paid by the
42 production company.
43 (3) The number of people employed in the State with respect to credits taken.
44 (4) The total cost to the General Fund of the credits taken.
45 (5) The identity of the production company claiming the credit.
46 (6) The title of the production at the time the credit is claimed.

47 ...

48 (j) NC Film Office. – To claim a credit under this section, a taxpayer (i) must notify the
49 Division of Tourism, Film, and Sports Development in the Department of Commerce of the
50 taxpayer's intent to claim the production tax ~~credit. The notification must include the title of the~~
51 ~~production, the name of the production company, a financial contact for the production~~

1 company, the proposed dates on which the production company plans to begin filming the
2 production, and any other information required by the Division. For productions that have
3 production credits, a taxpayer claiming a credit under this section must acknowledge in the
4 production credits both the North Carolina Film Office and the regional film office responsible
5 for the geographic area in which the filming of the production occurred. ~~credit and (ii) must~~
6 acknowledge, in productions that have production credits, both the North Carolina Film Office
7 and the regional film office responsible for the geographic area in which the filming of the
8 production occurred. The North Carolina Film Office shall evaluate the notification to
9 determine whether the production satisfies the requirements of this section and that it has
10 serious artistic merit, taking into consideration general standards of decency and respect for the
11 diverse beliefs and values of the citizens of North Carolina. If the North Carolina Film Office
12 determines that the production satisfies the requirements of this section, the Office shall issue a
13 preapproval certificate to the production company. A preapproval certificate expresses the
14 opinion of the North Carolina Film Office as to the eligibility of the production for the credit
15 and is not binding upon the Department of Revenue. The notification must include each of the
16 following:

- 17 (1) The title of the production.
- 18 (2) The name of the production company.
- 19 (3) A financial contact for the production company.
- 20 (4) The proposed dates on which the production company plans to begin filming
21 the production.
- 22 (5) The total budget for the production.
- 23 (6) The amount of the budget to be spent in the State, including a description of
24 the amount to be spent in the State on crew, equipment, and location rentals
25 that are based in the State.
- 26 (7) The number of crew to be involved in the production that is based in the
27 State.
- 28 (8) The days to be spent on production in this State and at other locations.
- 29 (9) A copy of the preproduction script or a synopsis of the script.
- 30 (10) A statement that the production, in its current proposed form, has not been
31 denied a tax credit in this State or any other jurisdiction for any reason other
32 than failing to meet an expenditure threshold.
- 33 (11) Any other information required by the Division.

34 (j1) Postproduction Review of Notification. – After a production has been completed,
35 the Department of Revenue must review the notification required under subsection (j) of this
36 section, preapproval certificate, the final budget, and the postproduction script. The Department
37 must make a determination as to whether the final production differs substantially from the
38 production described in the notification and as to whether it has serious artistic merit, taking
39 into consideration general standards of decency and respect for the diverse beliefs and values of
40 the citizens of North Carolina. The Department of Revenue must make a final determination as
41 to the eligibility of the production for a credit under this section and as to the amount of the
42 credit.

43"

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

45 **"§ 105-151.29. Credit for qualifying expenses of a production company.**

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

- 47 (1) Highly compensated individual. – An individual who directly or indirectly
48 receives compensation in excess of ~~one million dollars (\$1,000,000)~~ five
49 hundred thousand dollars (\$500,000) for personal services with respect to a
50 single production. An individual receives compensation indirectly when a

- 1 production company pays a personal service company or an employee
2 leasing company that pays the individual.
- 3 (2) Live sporting event. – A scheduled sporting competition, game, or race that
4 is not originated by a production company, but originated solely by an
5 amateur, collegiate, or professional organization, institution, or association
6 for live or tape-delayed television or satellite broadcast. A live sporting
7 event does not include commercial advertising, an episodic television series,
8 a television pilot, a music video, a motion picture, or a documentary
9 production in which sporting events are presented through archived
10 historical footage or similar footage taken at least 30 days before it is used.
- 11 (2a) MPAA. – The Motion Picture Association of America, Inc.
- 12 (3) Production company. – Defined in G.S. 105-164.3.
- 13 (4) Qualifying expenses. – The sum of the following amounts spent in this State
14 by a production company in connection with a production, less the amount
15 paid in excess of ~~one million dollars (\$1,000,000)~~ five hundred thousand
16 dollars (\$500,000) to a highly compensated individual:
- 17 a. Goods and services leased or purchased. For goods with a purchase
18 price of twenty-five thousand dollars (\$25,000) or more, the amount
19 included in qualifying expenses is the purchase price less the fair
20 market value of the good at the time the production is completed.
- 21 b. Compensation and wages on which withholding payments are
22 remitted to the Department of Revenue under Article 4A of this
23 Chapter.
- 24 c. The cost of production-related insurance coverage obtained on the
25 production. Expenses for insurance coverage purchased from a
26 related member are not qualifying expenses.
- 27 d. Employee fringe contributions, including health, pension, and
28 welfare contributions.
- 29 e. Per diems, stipends, and living allowances paid for work being
30 performed in this State.
- 31 (5) Related member. – Defined in G.S. 105-130.7A.
- 32 (b) Credit. – A taxpayer that is a production ~~company and company~~, has qualifying
33 expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a ~~production~~
34 production, has satisfied the notification requirements of subsections (j) and (j1) of this section,
35 and, if the production is a feature film, has received a rating from the MPAA for the production
36 is allowed a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of
37 the production company's qualifying expenses. For the purposes of this section, in the case of
38 an episodic television series, an entire season of episodes is one production. The credit is
39 computed based on all of the taxpayer's qualifying expenses incurred with respect to the
40 production, not just the qualifying expenses incurred during the taxable year.
- 41 ...
- 42 (f) Limitations. – The amount of credit allowed under this section with respect to a
43 production that is a feature film may not exceed twenty million dollars (\$20,000,000). No
44 credit is allowed under this section for any production that satisfies one of the following
45 conditions:
- 46 (1) It is political advertising.
- 47 (2) It is a television production of a news program or live sporting event.
- 48 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 49 (4) It is a radio production.
- 50 (5) It has received a rating of 'NC-17' by the MPAA.

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

7 (h) Report. – The Department must include in the economic incentives report required
8 by G.S. 105-256 the following information itemized by taxpayer:

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

17 ...

18 (j) NC Film Office. – To claim a credit under this section, a taxpayer must (i) notify the
19 Division of Tourism, Film, and Sports Development in the Department of Commerce of the
20 taxpayer's intent to claim the production tax credit. ~~The notification must include the title of the
21 production, the name of the production company, a financial contact for the production
22 company, the proposed dates on which the production company plans to begin filming the
23 production, and any other information required by the Division. For productions that have
24 production credits, a taxpayer claiming a credit under this section must acknowledge in the
25 production credits both the North Carolina Film Office and the regional film office responsible
26 for the geographic area in which the filming of the production occurred. credit and (ii) must
27 acknowledge, in productions that have production credits, both the North Carolina Film Office
28 and the regional film office responsible for the geographic area in which the filming of the
29 production occurred. The North Carolina Film Office shall evaluate the notification to
30 determine whether the production satisfies the requirements of this section and that it has
31 serious artistic merit, taking into consideration general standards of decency and respect for the
32 diverse beliefs and values of the citizens of North Carolina. If the North Carolina Film Office
33 determines that the production satisfies the requirements of this section, the Office shall issue a
34 preapproval certificate to the production company. A preapproval certificate expresses the
35 opinion of the North Carolina Film Office as to the eligibility of the production for the credit
36 and is not binding upon the Department of Revenue. The notification must include each of the
37 following:~~

- 38 (1) The title of the production.
- 39 (2) The name of the production company.
- 40 (3) A financial contact for the production company.
- 41 (4) The proposed dates on which the production company plans to begin filming
42 the production.
- 43 (5) The total budget for the production.
- 44 (6) The amount of the budget to be spent in the State, including a description of
45 the amount to be spent in the State on crew, equipment, and location rentals
46 that are based in the State.
- 47 (7) The number of crew to be involved in the production that is based in the
48 State.
- 49 (8) The days to be spent on production in this State and at other locations.
- 50 (9) A copy of the preproduction script or a synopsis of the script.

1 (10) A statement that the production, in its current proposed form, has not been
2 denied a tax credit in this State or any other jurisdiction for any reason other
3 than failing to meet an expenditure threshold.

4 (11) Any other information required by the Division.

5 (j1) Postproduction Review of Notification. – After a production has been completed,
6 the Department of Revenue must review the notification required under subsection (j) of this
7 section, preapproval certificate, the final budget, and the postproduction script. The Department
8 must make a determination as to whether the final production differs substantially from the
9 production described in the notification and as to whether it has serious artistic merit, taking
10 into consideration general standards of decency and respect for the diverse beliefs and values of
11 the citizens of North Carolina. The Department of Revenue must make a final determination as
12 to the eligibility of the production for a credit under this section and as to the amount of the
13 credit.

14 "

15 **SECTION 3.** This act is effective for taxable years beginning on or after January 1,
16 2011.