

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1957

Short Title: Enhance Competitiveness of Film Credit. (Public)

Sponsors: Representatives Gibson, Owens, K. Alexander, McComas (Primary Sponsors);
Faison, Hughes, Iler, Lucas, Wainwright, and Wray.

Referred to: Commerce, Small Business, and Entrepreneurship, if favorable, Finance.

May 25, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE THE COMPETITIVENESS OF THE CREDIT FOR PRODUCTION
3 COMPANIES.

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

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

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

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

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

30 b. Compensation and wages ~~on which withholding payments are~~
31 ~~remitted to the Department of Revenue under Article 4A of this~~
32 ~~Chapter for services performed in this State.~~

33 c. The cost of production-related insurance coverage obtained on the
34 production. Expenses for insurance coverage purchased from a
35 related member are not qualifying expenses.



- 1 d. Employee fringe contributions, including health, pension, and
2 welfare contributions.
3 e. Per diems, stipends, and living allowances paid for work being
4 performed in this State.

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

6 (b) Credit. – A taxpayer that is a production company and has qualifying expenses of at
7 least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a
8 credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~ twenty-five percent
9 (25%) of the production company's qualifying expenses. For the purposes of this section, in the
10 case of an episodic television series, an entire season of episodes is one production. The credit
11 is computed based on all of the taxpayer's qualifying expenses incurred with respect to the
12 production, not just the qualifying expenses incurred during the taxable year.

13 ~~(b1) Alternative Credit. — In lieu of the credit allowed under subsection (b) of this~~
14 ~~section, a taxpayer that is a production company and has qualifying expenses of at least two~~
15 ~~hundred fifty thousand dollars (\$250,000) with respect to a production may elect to take a~~
16 ~~credit against the taxes imposed by this Part equal to twenty five percent (25%) of the~~
17 ~~production company's qualifying expenses less the difference between the amount of tax paid~~
18 ~~on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that~~
19 ~~would have been due had the purchases been subject to the sales or use tax at the combined~~
20 ~~general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's~~
21 ~~qualifying expenses incurred with respect to the production, not just the qualifying expenses~~
22 ~~incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed~~
23 ~~under this subsection or the one allowed under subsection (b) of this section at the time the~~
24 ~~taxpayer files the return on which the credit is claimed. This election is binding.~~

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

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

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

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 ~~seven twenty million five hundred thousand~~
44 ~~dollars (\$7,500,000).~~ (\$20,000,000). No credit is allowed under this section for any production
45 that satisfies one of the following 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 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and
51 make available for inspection any information or records required by the Secretary of Revenue.

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

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

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

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

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

12 (4) The total cost to the General Fund of the credits taken.

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

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

24 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
25 January 1, ~~2014~~2015."

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

27 **"§ 105-151.29. Credit for qualifying expenses of a production company.**

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

29 ~~(1) Highly compensated individual. — An individual who directly or indirectly~~
30 ~~receives compensation in excess of one million dollars (\$1,000,000) for~~
31 ~~personal services with respect to a single production. An individual receives~~
32 ~~compensation indirectly when a production company pays a personal service~~
33 ~~company or an employee leasing company that pays the individual.~~

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

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

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

47 a. Goods and services leased or purchased. For goods with a purchase
48 price of twenty-five thousand dollars (\$25,000) or more, the amount
49 included in qualifying expenses is the purchase price less the fair
50 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 for services performed in this State.~~
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 has qualifying expenses of at
13 least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a
14 credit against the taxes imposed by this Part equal to ~~fifteen percent (15%)~~twenty-five percent
15 (25%) of the production company's qualifying expenses. For the purposes of this section, in the
16 case of an episodic television series, an entire season of episodes is one production. The credit
17 is computed based on all of the taxpayer's qualifying expenses incurred with respect to the
18 production, not just the qualifying expenses incurred during the taxable year.

19 ~~(b1) Alternative Credit. — In lieu of the credit allowed under subsection (b) of this~~
20 ~~section, a taxpayer that is a production company and has qualifying expenses of at least two~~
21 ~~hundred fifty thousand dollars (\$250,000) with respect to a production may elect to take a~~
22 ~~credit against the taxes imposed by this Part equal to twenty five percent (25%) of the~~
23 ~~production company's qualifying expenses less the difference between the amount of tax paid~~
24 ~~on purchases subject to the tax under G.S. 105-187.51 and the amount of sales or use tax that~~
25 ~~would have been due had the purchases been subject to the sales or use tax at the combined~~
26 ~~general rate, as defined in G.S. 105-164.3. The credit is computed based on all of the taxpayer's~~
27 ~~qualifying expenses incurred with respect to the production, not just the qualifying expenses~~
28 ~~incurred during the taxable year. The taxpayer shall elect whether to claim the credit allowed~~
29 ~~under this subsection or the one allowed under subsection (b) of this section at the time the~~
30 ~~taxpayer files the return on which the credit is claimed. This election is binding.~~

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

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

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

48 (f) Limitations. – The amount of credit allowed under this section with respect to a
49 production that is a feature film may not exceed ~~seven~~twenty million ~~five hundred thousand~~
50 dollars ~~(\$7,500,000)~~(\$20,000,000). No credit is allowed under this section for any production
51 that satisfies one of the following conditions:

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

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

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

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

19 (i) Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on
20 and after January 1, 2007.

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

30 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
31 January 1, ~~2014,2015.~~"

32 **SECTION 3.** This act is effective for taxable years beginning on or after January 1,
33 2010.