

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

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SENATE BILL 204

Short Title: Reenact Film Credit. (Public)

Sponsors: Senators Lowe (Primary Sponsor); Foushee, J. Jackson, Smith, Van Duyn, Waddell, and Woodard.

Referred to: Rules and Operations of the Senate.

March 10, 2015

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-151.29 is reenacted as it existed immediately before its repeal and 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.

(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.



- 1 c. The cost of production-related insurance coverage obtained on the  
2 production. Expenses for insurance coverage purchased from a  
3 related member are not qualifying expenses.
- 4 d. Employee fringe contributions, including health, pension, and  
5 welfare contributions.
- 6 e. Per diems, stipends, and living allowances paid for work being  
7 performed in this State.
- 8 (5) Related member. – Defined in G.S. 105-130.7A.
- 9 (b) Credit. – A taxpayer that is a production company and has qualifying expenses of at  
10 least two hundred fifty thousand dollars (\$250,000) with respect to a production is allowed a  
11 credit against the taxes imposed by this Part equal to twenty-five percent (25%) of the  
12 production company's qualifying expenses. For the purposes of this section, in the case of an  
13 episodic television series, an entire season of episodes is one production. The credit is  
14 computed based on all of the taxpayer's qualifying expenses incurred with respect to the  
15 production, not just the qualifying expenses incurred during the taxable year.
- 16 (b1) Repealed by Session Laws 2009-529, s. 2, effective January 1, 2011.
- 17 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and  
18 G.S. 105-269.15, a pass-through entity that qualifies for a credit provided in this section does  
19 not distribute the credit among any of its owners. The pass-through entity is considered the  
20 taxpayer for purposes of claiming a credit allowed by this section. If a return filed by a  
21 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, a  
22 credit allowed under this section does not affect the entity's payment of tax on behalf of its  
23 owners.
- 24 (d) Return. – A taxpayer may claim a credit allowed by this section on a return filed for  
25 the taxable year in which the production activities are completed. The return must state the  
26 name of the production, a description of the production, and a detailed accounting of the  
27 qualifying expenses with respect to which a credit is claimed. The qualifying expenses are  
28 subject to audit by the Secretary before the credit is allowed.
- 29 (e) Credit Refundable. – If a credit allowed by this section exceeds the amount of tax  
30 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the  
31 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the  
32 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this  
33 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable  
34 credits are subtracted before refundable credits.
- 35 (f) Limitations. – The amount of credit allowed under this section with respect to a  
36 production that is a feature film may not exceed twenty million dollars (\$20,000,000). No  
37 credit is allowed under this section for any production that satisfies one of the following  
38 conditions:
- 39 (1) It is political advertising.
- 40 (2) It is a television production of a news program or live sporting event.
- 41 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 42 (4) It is a radio production.
- 43 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and  
44 make available for inspection any information or records required by the Secretary of Revenue.  
45 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The  
46 Secretary may consult with the North Carolina Film Office of the Department of Commerce  
47 and the regional film commissions in order to determine the amount of qualifying expenses.
- 48 (h) Report. – The Department must include in the economic incentives report required  
49 by G.S. 105-256 the following information itemized by taxpayer:
- 50 (1) The location of sites used in a production for which a credit was taken.

- 1           (2)    The qualifying expenses for which a credit was taken, classified by whether
- 2                    the expenses were for goods, services, or compensation paid by the
- 3                    production company.
- 4           (3)    The number of people employed in the State with respect to credits taken.
- 5           (4)    The total cost to the General Fund of the credits taken.
- 6       (i)    Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on
- 7   and after January 1, 2007.
- 8       (j)    NC Film Office. – To claim a credit under this section, a taxpayer must notify the
- 9   Division of Tourism, Film, and Sports Development in the Department of Commerce of the
- 10   taxpayer's intent to claim the production tax credit. The notification must include the title of the
- 11   production, the name of the production company, a financial contact for the production
- 12   company, the proposed dates on which the production company plans to begin filming the
- 13   production, and any other information required by the Division. For productions that have
- 14   production credits, a taxpayer claiming a credit under this section must acknowledge in the
- 15   production credits both the North Carolina Film Office and the regional film office responsible
- 16   for the geographic area in which the filming of the production occurred.
- 17       (k)    Sunset. – This section is repealed for qualifying expenses occurring on or after
- 18   January 1, ~~2015-2021~~."
- 19       **SECTION 2.** G.S. 105-130.47 is reenacted as it existed immediately before its
- 20   repeal and reads as rewritten:
- 21   "**§ 105-130.47. Credit for qualifying expenses of a production company.**
- 22    ...
- 23       (k)    Sunset. – This section is repealed for qualifying expenses occurring on or after
- 24   January 1, ~~2015-2021~~."
- 25       **SECTION 3.** This act is effective for taxable years beginning on or after January 1,
- 26   2015, and applies to qualifying expenses occurring on or after that date.