

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 918\*

Short Title: Film Industry Jobs Incentives. (Public)

Sponsors: Representatives McComas, Harrell (Primary Sponsors); Faison and Steen.

Referred to: Finance.

March 28, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO ATTRACT AND RETAIN FILM INDUSTRY JOBS IN THIS STATE  
3 BY PROVIDING FOR A TAX INCENTIVE FOR PRODUCTION COMPANIES  
4 IN THE STATE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Part 1 of Article 4 of Chapter 105 of the General Statutes is  
7 amended by adding a new section to read:

8 "**§ 105-130.47. Credit for qualifying expenses of a production company.**

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

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

13 a. Goods and services purchased by the production company.

14 b. Compensation paid by the production company on which it  
15 must withhold estimated personal income tax payments under  
16 Article 4A of Chapter 105 of the General Statutes.

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

18 (b) Credit. – A taxpayer that is a production company and has qualifying  
19 expenses with respect to a single film or television production of at least two hundred  
20 fifty thousand dollars (\$250,000) is allowed a credit against the taxes imposed by this  
21 Part equal to fifteen percent (15%) of the production company's qualifying expenses  
22 that have been certified as required in subsection (c) of this section. For the purposes of  
23 this section, in the case of an episodic television series, an entire season of episodes is  
24 one production. The credit is computed based on all of the taxpayer's qualifying  
25 expenses incurred with respect to the production, not just the qualifying expenses  
26 incurred during the taxable year.

27 (c) Certification. – In order to be eligible for a credit under this section, a  
28 taxpayer must submit a detailed accounting of its qualified expenses to the North  
29 Carolina Film Office of the Department of Commerce. The North Carolina Film Office,

1 with the assistance of the regional film commissions, must make a written certification  
2 of the amount of the qualified expenses.

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

10 (e) Return. – A taxpayer may claim the credit allowed by this section on a return  
11 filed for the taxable year in which the production activities are completed. The return  
12 must state the name of the production, a description of the production, and the  
13 certification from the North Carolina Film Office of the qualified expenses for which  
14 the credit is claimed.

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

21 (g) Limitation. – No credit is allowed under this section for any production that  
22 contains material that is obscene, as defined in G.S. 14-190.1.

23 (h) Substantiation. – A taxpayer allowed a credit under this section must maintain  
24 and make available for inspection any information or records required by the Secretary  
25 of Revenue or the regional film commissions. The burden of proving eligibility for a  
26 credit and the amount of the credit rest upon the taxpayer.

27 (i) Report. – The Department of Revenue must publish by May 1 of each year  
28 the following information, itemized by taxpayer for the 12-month period ending the  
29 preceding April 1:

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

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

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

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

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

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

42 "**§ 105-151.29. Credit for qualifying expenses of a production company.**

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

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

4           a. Goods and services purchased by the production company.

5           b. Compensation paid by the production company on which it  
6           must withhold estimated personal income tax payments under  
7           Article 4A of Chapter 105 of the General Statutes.

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

9           (b) Credit. – A taxpayer that is a production company and has qualifying  
10          expenses with respect to a single film or television production of at least two hundred  
11          fifty thousand dollars (\$250,000) is allowed a credit against the taxes imposed by this  
12          Part equal to fifteen percent (15%) of the production company's qualifying expenses  
13          that have been certified as required in subsection (c) of this section. For the purposes of  
14          this section, in the case of an episodic television series, an entire season of episodes is  
15          one production. The credit is computed based on all of the taxpayer's qualifying  
16          expenses incurred with respect to the production, not just the qualifying expenses  
17          incurred during the taxable year.

18          (c) Certification. – In order to be eligible for a credit under this section, a  
19          taxpayer must submit a detailed accounting of its qualified expenses to the North  
20          Carolina Film Office of the Department of Commerce. The North Carolina Film Office,  
21          with the assistance of the regional film commissions, must make a written certification  
22          of the amount of the qualified expenses.

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

30          (e) Return. – A taxpayer may claim the credit allowed by this section on a return  
31          filed for the taxable year in which the production activities are completed. The return  
32          must state the name of the production, a description of the production, and the  
33          certification from the North Carolina Film Office of the qualified expenses for which  
34          the credit is claimed.

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

41          (g) Limitation. – No credit is allowed under this section for any production that  
42          contains material that is obscene, as defined in G.S. 14-190.1.

43          (h) Substantiation. – A taxpayer allowed a credit under this section must maintain  
44          and make available for inspection any information or records required by the Secretary

1 of Revenue or the regional film commissions. The burden of proving eligibility for a  
2 credit and the amount of the credit rest upon the taxpayer.

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

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

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

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

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

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

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

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

22 ...  
23 (32) To exchange information concerning a tax credit claimed under  
24 G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film  
25 Office of the Department of Commerce."

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

27 **SECTION 5.** This act is effective for taxable years beginning on or after  
28 January 1, 2005.