

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

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SENATE BILL 711

Short Title: Eliminate Film Industry Production Credit. (Public)

Sponsors: Senators Mansfield; and Hise.

Referred to: Finance.

April 20, 2011

A BILL TO BE ENTITLED
AN ACT TO ELIMINATE THE INCOME TAX 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.

(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 production-related insurance coverage obtained on the production. Expenses for insurance coverage purchased from a related member are not qualifying expenses.
- d. Employee fringe contributions, including health, pension, and welfare contributions.



1 e. Per diems, stipends, and living allowances paid for work being
2 performed in this State.

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

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

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

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

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

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

33 (1) It is political advertising.

34 (2) It is a television production of a news program or live sporting event.

35 (3) It contains material that is obscene, as defined in G.S. 14-190.1.

36 (4) It is a radio production.

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

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

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

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

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

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

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

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

10 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
11 January 1, ~~2014~~2011."

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

13 "**§ 105-151.29. Credit for qualifying expenses of a production company.**

14 ...

15 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
16 January 1, ~~2014~~2011."

17 **SECTION 3.** G.S. 105-130.5(a)(10) reads as rewritten:

18 "(a) The following additions to federal taxable income shall be made in determining
19 State net income:

20 ...

21 (10) The total amounts allowed under this Chapter during the taxable year as a
22 credit against the taxpayer's income tax. ~~This subdivision does not apply to a~~
23 ~~credit allowed under G.S. 105-130.47.~~ A corporation that apportions part of
24 its income to this State shall make the addition required by this subdivision
25 after it determines the amount of its income that is apportioned and allocated
26 to this State and shall not apply to a credit taken under this Chapter the
27 apportionment factor used by it in determining the amount of its apportioned
28 income."

29 **SECTION 4.** G.S. 105-259(b) reads as rewritten:

30 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has
31 access to tax information in the course of service to or employment by the State may not
32 disclose the information to any other person except as provided in this subsection. Standards
33 used or to be used for the selection of returns for examination and data used or to be used for
34 determining the standards may not be disclosed for any purpose. All other tax information may
35 be disclosed only if the disclosure is made for one of the following purposes:

36 ...

37 (34) ~~To exchange information concerning a tax credit claimed under~~
38 ~~G.S. 105-130.47 or G.S. 105-151.29 with the North Carolina Film Office of~~
39 ~~the Department of Commerce and with the regional film commissions.~~

40 (35) Repealed by Session Laws 2010-166, s. 3.7, effective July 1, 2010.

41 (36) ~~To furnish to a taxpayer claiming a credit under G.S. 105-130.47 or~~
42 ~~G.S. 105-151.29 information used by the Secretary to adjust the amount of~~
43 ~~the credit claimed by the taxpayer.~~

44"

45 **SECTION 5.** This act is effective for taxable years beginning on or after January 1,
46 2011.