

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

1

SENATE BILL 723

Short Title: No Credit for Obscene Films. (Public)

Sponsors: Senators Berger of Rockingham; Brock, Hunt, and Tillman.

Referred to: Finance.

March 24, 2009

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.

34 b. Compensation and wages on which withholding payments are
35 remitted to the Department of Revenue under Article 4A of this
36 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 (5) Related member. – Defined in G.S. 105-130.7A.

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

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

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

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

31 (f) Limitations. – The amount of credit allowed under this section with respect to a
32 production that is a feature film may not exceed seven million five hundred thousand dollars
33 (\$7,500,000). No credit is allowed under this section for any production that satisfies one of the
34 following conditions:

35 (1) It is political advertising.

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

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

38 (4) It is a radio production.

39 (5) It has received a rating of 'NC-17' by the MPAA.

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

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

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

1 (2) The qualifying expenses for which a credit was claimed, classified by
2 whether 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 claimed.

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

6 (5) The identity of the production company claiming the credit.

7 (6) The title of the production at the time the credit is claimed.

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

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

30 (1) The title of the production.

31 (2) The name of the production company.

32 (3) A financial contact for the production company.

33 (4) The proposed dates on which the production company plans to begin filming
34 the production.

35 (5) The total budget for the production.

36 (6) The amount of the budget to be spent in the State, including a description of
37 the amount to be spent in the State on crew, equipment, and location rentals
38 that are based in the State.

39 (7) The number of crew to be involved in the production that is based in the
40 State.

41 (8) The days to be spent on production in this State and at other locations.

42 (9) A copy of the preproduction script or a synopsis of the script.

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

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

47 (j1) Postproduction Review of Notification. – After a production has been completed,
48 the Department of Revenue must review the notification required under subsection (j) of this
49 section, preapproval certificate, the final budget, and the postproduction script. The Department
50 must make a determination as to whether the final production differs substantially from the
51 production described in the notification and as to whether it has serious artistic merit taking

1 into consideration general standards of decency and respect for the diverse beliefs and values of
2 the citizens of North Carolina. The Department of Revenue must make a final determination as
3 to the eligibility of the production for a credit under this section and as to the amount of the
4 credit.

5 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
6 January 1, 2014."

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

8 "**§ 105-151.29. 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 paid in excess of ~~one million dollars (\$1,000,000)~~five hundred thousand
29 dollars (\$500,000) 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.

34 b. Compensation and wages on which withholding payments are
35 remitted to the Department of Revenue under Article 4A of this
36 Chapter.

37 c. The cost of production-related insurance coverage obtained on the
38 production. Expenses for insurance coverage purchased from a
39 related member are not qualifying expenses.

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

41 (b) Credit. – A taxpayer that is a production ~~company and~~company, has qualifying
42 expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a ~~production~~
43 production, has satisfied the notification requirements of subsections (j) and (j1) of this section,
44 and, if the production is a feature film, has received a rating from the MPAA for a production is
45 allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the
46 production company's qualifying expenses. For the purposes of this section, in the case of an
47 episodic television series, an entire season of episodes is one production. The credit is
48 computed based on all of the taxpayer's qualifying expenses incurred with respect to the
49 production, not just the qualifying expenses incurred during the taxable year.

50 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and
51 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does

1 not distribute the credit among any of its owners. The pass-through entity is considered the
2 taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a
3 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity,
4 the credit allowed under this section does not affect the entity's payment of tax on behalf of its
5 owners.

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

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

16 (f) Limitations. – The amount of credit allowed under this section with respect to a
17 production that is a feature film may not exceed seven million five hundred thousand dollars
18 (\$7,500,000). No credit is allowed under this section for any production that satisfies one of the
19 following conditions:

- 20 (1) It is political advertising.
- 21 (2) It is a television production of a news program or live sporting event.
- 22 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 23 (4) It is a radio production.
- 24 (5) It has received a rating of 'NC-17' by the MPAA.

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

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

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

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

44 (j) NC Film Office. – To claim a credit under this section, a taxpayer (i) must notify the
45 Division of Tourism, Film, and Sports Development in the Department of Commerce of the
46 taxpayer's intent to claim the production tax credit. ~~The notification must include the title of the~~
47 ~~production, the name of the production company, a financial contact for the production~~
48 ~~company, the proposed dates on which the production company plans to begin filming the~~
49 ~~production, and any other information required by the Division. For productions that have~~
50 ~~production credits, a taxpayer claiming a credit under this section must acknowledge in the~~
51 ~~production credits both the North Carolina Film Office and the regional film office responsible~~

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

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

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

39 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after
40 January 1, 2014."

41 **SECTION 3.** This act is effective for taxable years beginning on or after January 1,
42 2009.