

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 764

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

Sponsors: Senators Brock; and Daniel.

Referred to: Finance.

April 20, 2011

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 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~~ company, has qualifying  
10 expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a ~~production~~  
11 production, has satisfied the notification requirements of subsections (j) and (j1) of this section,  
12 and, if the production is a feature film, has received a rating from the MPAA for the production  
13 is allowed a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of  
14 the production company's qualifying expenses. For the purposes of this section, in the case of  
15 an episodic television series, an entire season of episodes is one production. The credit is  
16 computed based on all of the taxpayer's qualifying expenses incurred with respect to the  
17 production, not just the qualifying expenses incurred during the taxable year.

18 ...

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

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

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

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

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

44 ...

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

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

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

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

40 ...."

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

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

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

- 44 (1) **Highly compensated individual.** – An individual who directly or indirectly  
45 receives compensation in excess of ~~one million dollars (\$1,000,000)~~ five  
46 hundred thousand dollars (\$500,000) for personal services with respect to a  
47 single production. An individual receives compensation indirectly when a  
48 production company pays a personal service company or an employee  
49 leasing company that pays the individual.
- 50 (2) **Live sporting event.** – A scheduled sporting competition, game, or race that  
51 is not originated by a production company, but originated solely by an

1 amateur, collegiate, or professional organization, institution, or association  
2 for live or tape-delayed television or satellite broadcast. A live sporting  
3 event does not include commercial advertising, an episodic television series,  
4 a television pilot, a music video, a motion picture, or a documentary  
5 production in which sporting events are presented through archived  
6 historical footage or similar footage taken at least 30 days before it is used.

7 (2a) MPAA. – The Motion Picture Association of America, Inc.

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

9 (4) Qualifying expenses. – The sum of the following amounts spent in this State  
10 by a production company in connection with a production, less the amount  
11 paid in excess of ~~one million dollars (\$1,000,000)~~ five hundred thousand  
12 dollars (\$500,000) to a highly compensated individual:

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

17 b. Compensation and wages on which withholding payments are  
18 remitted to the Department of Revenue under Article 4A of this  
19 Chapter.

20 c. The cost of production-related insurance coverage obtained on the  
21 production. Expenses for insurance coverage purchased from a  
22 related member are not qualifying expenses.

23 d. Employee fringe contributions, including health, pension, and  
24 welfare contributions.

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

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

28 (b) Credit. – A taxpayer that is a production ~~company and company~~, has qualifying  
29 expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a ~~production~~  
30 production, has satisfied the notification requirements of subsections (j) and (j1) of this section,  
31 and, if the production is a feature film, has received a rating from the MPAA for the production  
32 is allowed a credit against the taxes imposed by this Part equal to twenty-five percent (25%) of  
33 the production company's qualifying expenses. For the purposes of this section, in the case of  
34 an episodic television series, an entire season of episodes is one production. The credit is  
35 computed based on all of the taxpayer's qualifying expenses incurred with respect to the  
36 production, not just the qualifying expenses incurred during the taxable year.

37 ...

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

42 (1) It is political advertising.

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

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

45 (4) It is a radio production.

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

47 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and  
48 make available for inspection any information or records required by the Secretary of Revenue.  
49 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The  
50 Secretary ~~may~~ shall consult with the North Carolina Film Office of the Department of

1 Commerce and the regional film commissions in order to determine the amount of qualifying  
2 expenses.

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

- 5 (1) The location of sites used in a production for which a credit was taken.
- 6 (2) The qualifying expenses for which a credit was taken, classified by whether  
7 the expenses were for goods, services, or compensation paid by the  
8 production company.
- 9 (3) The number of people employed in the State with respect to credits taken.
- 10 (4) The total cost to the General Fund of the credits taken.
- 11 (5) The identity of the production company claiming the credit.
- 12 (6) The title of the production at the time the credit is claimed.

13 ...

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

- 34 (1) The title of the production.
- 35 (2) The name of the production company.
- 36 (3) A financial contact for the production company.
- 37 (4) The proposed dates on which the production company plans to begin filming  
38 the production.
- 39 (5) The total budget for the production.
- 40 (6) The amount of the budget to be spent in the State, including a description of  
41 the amount to be spent in the State on crew, equipment, and location rentals  
42 that are based in the State.
- 43 (7) The number of crew to be involved in the production that is based in the  
44 State.
- 45 (8) The days to be spent on production in this State and at other locations.
- 46 (9) A copy of the preproduction script or a synopsis of the script.
- 47 (10) A statement that the production, in its current proposed form, has not been  
48 denied a tax credit in this State or any other jurisdiction for any reason other  
49 than failing to meet an expenditure threshold.
- 50 (11) Any other information required by the Division.

1       (j1) Postproduction Review of Notification. – After a production has been completed,  
2 the Department of Revenue must review the notification required under subsection (j) of this  
3 section, preapproval certificate, the final budget, and the postproduction script. The Department  
4 must make a determination as to whether the final production differs substantially from the  
5 production described in the notification and as to whether it has serious artistic merit, taking  
6 into consideration general standards of decency and respect for the diverse beliefs and values of  
7 the citizens of North Carolina. The Department of Revenue must make a final determination as  
8 to the eligibility of the production for a credit under this section and as to the amount of the  
9 credit.

10       ...."

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

12 2011.