north carolina
film incentives

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NORTH CAROLINA FILM OFFICE

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I. Summary of North Carolina Film Incentive

Incentive	25% refundable tax credit
Per project cap	$20 million (Television series are not subject to per project cap)
Minimum spend	$250,000
Annual cap	No cap
Qualified labor	First $1 million of each resident & nonresident qualify
Loan out withholding	Yes. 4%
Audit	North Carolina pays for the audit
Screen credit required	Yes
Qualifying expenses	Goods / Services / Compensation & Wages / Production-Related Insurance / Fringes / Per Diems / Living Expenses & Stipends
Qualifying productions	Feature Films / Direct-to-Video / Episodic Television Series / Movies of the Week / Television Mini-Series / Reality Television / Commercials / Documentaties / Animation Productions / Webisodes
Application	File "intent to film" online form prior to start of production
State owned property	Fee free usage
Sunset date	January 1, 2014
Enacted bill number	H 1973; H 713

II. FAQ's

Frequently Asked Questions about Tax Credits for Qualifying Expenses of a Production Company

Unless specifically noted, all references to the "Department" mean the North Carolina Department of Revenue.

1. What is the audit process? What can the production company expect?

After receiving the completed Form NC-415, Tax Credit for Qualifying Expenses of a Production Company, the Department will contact the taxpayer to set up an audit appointment to review the taxpayer's information. An appointment letter is sent to the taxpayer confirming the date of the audit along with an Information Document Request (IDR) outlining the information needed to conduct the audit upon arrival.

2. Approximately when will the audit begin in relation to submitting the Form NC-415?

The Department will set up an audit appointment within three to four weeks after receiving the request for refund (Form NC-415). The audit will begin based on an agreed upon time by the taxpayer and the Department.

3. What are typical questions during the audit*?

Typical questions and document requests include but are not limited to the following:

a. Power of Attorney (Form NC Gen. 58, Power of Attorney and Declaration of Representative)
b. A detailed explanation of the corporation's business activity in North Carolina, which includes all locations and business functions of each location.
c. Copies of W-2s and 1099s for all activities in North Carolina.
d. Detailed list of all people employed in North Carolina with respect to the production including social security numbers for each employee. This includes all individuals who received a W-2 or 1099.
e. Detailed list of all qualifying expenses for goods leased or purchased in North Carolina, production-related insurance purchased in North Carolina from an unrelated entity and qualifying expenses spent for compensation and wages paid in North Carolina. Total wages and

compensation for the entire production of the film are also requested.

f. Copy of all receipts.

g. Copy of the North Carolina and federal income tax returns for the periods covering the expenses.

h. Detailed description of the film and copy of the production (rough-cut or finished copy "DVD").

*All of the above information is requested in an electronic format (Excel) in order to expedite the audit.

4. What is the duration of a typical audit?

The duration of the audit depends on the volume of the documents to review (usually four or five days at the taxpayer's office). The Department will send the preliminary audit papers to the taxpayer to review within a couple of weeks of the office visit (assuming all documentation is provided in a timely manner).

5. Knowing that production companies contract with payroll service companies, is the payroll service company required to withhold taxes on loan-out corporations? Or is it the responsibility of the loan-out corporation to take care of its own taxes?

Withholding law requires the payroll company to withhold taxes on compensation paid to an out-of-state loan-out corporation unless the out-of-state loan-out corporation registers to do business in North Carolina. However, to be eligible for the film credit, tax must be withheld on the payment to the loan-out for the compensation to be considered a qualified expense. The production company or the payroll company can do the withholding.

6. Please explain the law changes from Session Law 2010-31 (House Bill 1973).

G.S. 105-130.47(a)(4) was amended to add employee fringe contributions, including health, pension, and welfare contributions, as well as per diems, stipends, and living allowances paid for work being performed in North Carolina to the list of expenses that qualify for the production credit. This section is effective for taxable years beginning on or after January 1, 2011 and applies to expenses incurred for productions ending on or after that date. In addition, G.S. 105-130.47(b) was amended to increase the credit percentage from 15% of the production company's qualifying expenses to 25%. Finally, G.S. 105-130.47(f) was amended to increase the ceiling of the production credit from $7.5 million to $20 million.

7. Is the production company's ability to claim payments to loan-out corporations as qualifying expenses tied to the filing of the loan-out's tax forms? Or are the loan-out's taxes an issue between the State of North Carolina and the loan-out?

Taxes must be withheld on the payments to a loan-out for a production company to claim them as qualifying expenses. The production company's eligibility to claim the compensation in calculating the film credit is not contingent on the loan-out corporation filing a North Carolina income tax return.

8. To what kind of "companies" must payments be made to classify payments as "qualifying expenses"? (1) North Carolina corporations, (2) Companies that pay corporate taxes in North Carolina, (3) Companies that have a physical presence in North Carolina (Examples: Vehicle Rental Company based in Georgia that rents vehicles in North Carolina. If this company charges North Carolina sales tax on rentals, does it qualify? What if this company opens a "satellite office" in North Carolina?).

Payments for goods must be made to persons with a physical location in North Carolina. In the example, charging sales tax is not enough. The production company must rent the vehicle from a North Carolina store. Payments to persons for a service can be paid to an out-of-state person if the production company substantiates that the service was performed in North Carolina.

9. Do payments to a North Carolina production services company qualify? (Example: A production company needs a widget. Widgets are not available in North Carolina. A North Carolina production services company is contracted to locate and purchase the widget in another state and then sell the

widget at a mark-up to the production company.)

The payment to the North Carolina production services company qualifies.

10. Similar to question #9, can a production company form its own North Carolina production services company and utilize it to source and purchase goods that cannot be found in North Carolina? This avoids doing business with another entity and avoids a markup.

No. This equates to a phony transaction by a business formed with no purpose but to circumvent the tax laws. Conversely, if the affiliated production services company performs a service, charges fair compensation for the service, files a tax return and pays the income tax due, then the expense would qualify for the credit.

11. An out-of-state production company wishes to make a movie for $2.5 million. It contracts with a North Carolina production company "to make the movie." The out-of-state company pays the North Carolina company $2.5 million for the movie. Since the full $2.5 million was spent with a North Carolina company, can the out-of-state company file for an incentive using the full $2.5 million payment as a qualifying expense?

No. The North Carolina company makes the movie. Therefore, the North Carolina company qualifies for the credit.

12. Do payments to shipping companies count as qualifying expenses (FedEx, DHL, UPS)? These companies obviously have facilities and employees in North Carolina.

Yes, to the extent that the service is obtained from a North Carolina location. If goods are delivered into North Carolina from an out-of-state location, the shipping charge does not qualify.

13. An out-of-state caterer is brought to North Carolina to serve meals at a production site for 12 weeks. The caterer's employees are placed on the production company's payroll. The production company rents the caterer's mobile kitchen. The caterer then charges a per-person / per-meal price which covers the cost of supplies (food, dry goods, fuel, ice, etc.) and includes profit. The caterer then spends money locally to purchase these supplies. Do the meal prices paid to the out-of-state caterer count as qualifying expenses? Does the truck rental paid to the out-of-state caterer count as qualifying expenses?

The meal price paid to the out-of-state caterer for service performed in North Carolina qualifies if the production company substantiates that the services were performed in North Carolina. The truck rental from the out-of-state caterer does not qualify.

14. Is "North Carolina Sales Tax" a qualified expense?

No. It is not considered a good or service eligible for the tax credit.

15. A production company films for six weeks in North Carolina and then moves to South Carolina and continues filming an additional four weeks. The "filming equipment" (lights, cable, generators, cameras, grip equip, etc.) is being rented from a company based in North Carolina. Can the production company receive a credit in North Carolina for the equipment rental fees paid while working in South Carolina?

No. The credit is allowed only for the equipment rental fees paid while working in North Carolina.

16. Related to #15 above, a production company is filming completely in South Carolina. However, it has rented all of its "filming equipment" (lights, cable, generators, cameras, grip equip, etc.) from North Carolina since there are no vendors in South Carolina. Will North Carolina give a credit against expenses in North Carolina from an out-of-state production?

No. The credit is allowed only for an in-state production.

17. Some production companies are part of larger companies that have their own in-house travel departments that purchase airline tickets with their corporate discounts. If travel is booked on US Airways (for example, which has a

strong North Carolina presence) by a larger company's travel department located out of state for a film shooting in North Carolina, do those costs count as qualifying expenses?
No. The travel has to be acquired from a North Carolina vendor to be considered a qualified expense.

18. If a company produces multiple productions in North Carolina in one year, does it file one corporate tax return and a separate Form NC 415 for each production?
Yes.

19. Do the amounts spent in North Carolina by a production company during the phases referred to within the film industry as "pre-production" and "post-production" count as qualified expenses? "Pre-production" encompasses expenses incurred in connection with a production before actual filming begins. "Post-production" encompasses expenses incurred in connection with a production after actual filming is concluded but does not include expenses related to distribution and marketing.
Yes.

20. Are C-Corporations required to add back to federal taxable income the amount of the film tax credit allowed against income tax per G.S. 105-130.5(a)(10)?
Effective January 1, 2011, pursuant to SL 2010-147 (HB 1973), C-Corporations are not required to add back to federal taxable income the amount of the film tax credit allowed against income tax per G.S. 105-130.5(a)(10).

21. Are purchases/rentals made by a production company subject to North Carolina sales & use tax?
Prior to January 1, 2011, production companies qualified as a manufacturer. Therefore, purchases/rentals of items directly used in the production of the film, such as cameras and set decorations, were exempt from sales and use tax and subject to a 1%, $80 max, mill machinery privilege tax. Purchases/rentals of general use items, such as office supplies and construction tools, were subject to the general rate of State and county tax.

Effective January 1, 2011, pursuant to SL 2010-147 (HB 1973) production companies no longer qualify as manufacturers. No exemption from sales and use tax exists. Purchases/rentals of production related items and general use items are subject to the general rate of State and county tax.

III. Enacted Legislation

Session Law 2010-147
House Bill 1973

Session Law 2010-89
House Bill 713

SECTION 2.1. 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.

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

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

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

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

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

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

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

(1) It is political advertising.

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

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

(4) It is a radio production.

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

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

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

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

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

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

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

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

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

SECTION 2.2. G.S. 105 151.29 reads as rewritten:

§ 105 151.29. (Omitted) = "§ 105 130.47. Credit for qualifying expenses of a production company.

SECTION 2.3. G.S. 105 187.51 is amended by adding a new subsection to read:

§ 105 187.51. Tax imposed on mill machinery.

(a) Scope. – A privilege tax is imposed on the following persons:

(1) A manufacturing industry or plant that purchases mill machinery or mill machinery parts or accessories for storage, use, or consumption in this State.
A manufacturing industry or plant does not include the following:

a. A delicatessen, cafe, cafeteria, restaurant, or another similar retailer that is principally engaged in the retail sale of foods prepared by it for consumption on or off its premises.

b. A production company.

(2) A contractor or subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a manufacturing industry or plant.

(3) A subcontractor that purchases mill machinery or mill machinery parts or accessories for use in the performance of a contract with a general contractor that has a contract with a manufacturing industry or plant.

(b) Rate. – The tax is one percent (1%) of the sales price of the machinery, part, or accessory purchased. The maximum tax is eighty dollars ($80.00) per article. As used in this section, the term "accessories" does not include electricity."

SECTION 2.4. This Part becomes effective January 1, 2011. Sections 2.1 and 2.2 of this Part apply to taxable years beginning on or after January 1, 2011. Section 2.3 of this Part applies to purchases and sales made on or after January 1, 2011.

SECTION 1. G.S. 105 130.5 (a) (10) reads as rewritten:

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

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

IV. Definitions

Feature Film - A movie that is made for initial distribution in theaters and that is over forty (40) minutes long.

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.

Production - Activities that take place during pre production, principle photography, and post production.

Production Company - A person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes. G.S. 105 164.3.

Production Service Company – A North Carolina company that is contracted to locate and purchase an item in another state and then sell the item at a mark-up to a production company.

Related Member (G.S. 105 130.7A) – A person that, with respect to the taxpayer during any part of the taxable year, is one or more of the following:

a. A related entity.

b. A component member.

c. A person to or from whom there would be attribution of stock ownership in accordance with section 1563(e) of the Code if the phrase "5 percent or more" were replaced by "twenty percent (20%) or more" each place it appears in that section.

Television Series – a single season of episodic TV series is considered one (1) production for the purposes of the tax credit.

V. Contact Information

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