

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 1324**

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

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Sponsors: Senators Berger of Rockingham; Apodaca, Bingham, Blake, Brock, Brown, East, Forrester, Goodall, Hunt, Jacumin, Preston, and Tillman.

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Referred to: Finance.

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March 26, 2007

A BILL TO BE ENTITLED  
AN ACT TO REQUIRE ADDITIONAL OVERSIGHT OF THE 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.

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

(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 paid to a highly compensated individual:

- 1 a. Goods and services leased or purchased. For goods with a  
2 purchase price of twenty-five thousand dollars (\$25,000) or  
3 more, the amount included in qualifying expenses is the  
4 purchase price less the fair market value of the good at the time  
5 the production is completed.
- 6 b. Compensation and wages on which withholding payments are  
7 remitted to the Department of Revenue under Article 4A of this  
8 Chapter.

9 (a1) Application for Credit. – Before a credit may be claimed under this section,  
10 the production company must file an application with the North Carolina Film Office of  
11 the Department of Commerce. The North Carolina Film Office shall evaluate the  
12 application to determine whether the production satisfies the requirements of this  
13 section and that it has serious artistic merit taking into consideration general standards  
14 of decency and respect for the diverse beliefs and values of the citizens of North  
15 Carolina. If the North Carolina Film Office determines that the production satisfies the  
16 requirements of this section, the Office shall issue a preapproval certificate to the  
17 production company. A preapproval certificate expresses the opinion of the North  
18 Carolina Film Office as to the eligibility of the production for the credit and is not  
19 binding upon the Department of Revenue. The application must be under oath and must  
20 include the following information:

- 21 (1) The total budget for the production.  
22 (2) The amount of the budget to be spent in the State, including a  
23 description of the amount to be spent in the State on crew, equipment,  
24 and location rentals that are based in the State.  
25 (3) The number of crew to be involved in the production that is based in  
26 the State.  
27 (4) The days to be spent on production in this State and at other locations.  
28 (5) A copy of the pre-production script or a synopsis of the script.  
29 (6) A statement that the production, in its current proposed form, has not  
30 been denied a tax credit in this State or any other jurisdiction for any  
31 reason other than failing to meet an expenditure threshold.

32 (a2) Postproduction Review of Application. – After a production has been  
33 completed, the Department of Revenue must review the application, preapproval  
34 certificate, the final budget, and the postproduction script. The Department must make a  
35 determination as to whether the final production differs substantially from the  
36 production described in the application and that it has serious artistic merit taking into  
37 consideration general standards of decency and respect for the diverse beliefs and values  
38 of the citizens of North Carolina. The Department of Revenue must make a final  
39 determination as to the eligibility of the production for a credit under this section and as  
40 to the amount of the credit.

41 (b) Credit. – A taxpayer that is a production ~~company~~ and company, has  
42 qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with  
43 respect to a ~~production~~ production, has satisfied the application requirements of  
44 subsections (a1) and (a2) of this section, and, if the production is a feature film, has

1 received a rating from the MPAA for a production is allowed a credit against the taxes  
2 imposed by this Part equal to fifteen percent (15%) of the production company's  
3 qualifying expenses. For the purposes of this section, in the case of an episodic  
4 television series, an entire season of episodes is one production. The credit is computed  
5 based on all of the taxpayer's qualifying expenses incurred with respect to the  
6 production, not just the qualifying expenses incurred during the taxable year.

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

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

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

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

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

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

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

- 42 (1) The location of sites used in a production for which a credit was  
43 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
- 3 by the production company.
- 4 (3) The number of people employed in the State with respect to credits
- 5 claimed.
- 6 (4) The total cost to the General Fund of the credits claimed.
- 7 (5) The identity of the production company claiming the credit.
- 8 (6) The title of the production at the time the credit is claimed.

9 (i) **(Repealed effective for taxable years beginning on and after January 1,**  
10 **2007) No Double Benefit.** – A taxpayer may not claim a credit under this section for  
11 qualifying expenses for which it claimed a deduction under the Code. A taxpayer that  
12 claims a credit provided under this section must adjust taxable income as provided in  
13 G.S. 105-130.5(a)(18).

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

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

17 **"§ 105-151.29. Credit for qualifying expenses of a production company.**

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

- 19 (1) Highly compensated individual. – An individual who directly or
- 20 indirectly receives compensation in excess of one million dollars
- 21 (\$1,000,000) for personal services with respect to a single production.
- 22 An individual receives compensation indirectly when a production
- 23 company pays a personal service company or an employee leasing
- 24 company that pays the individual.
- 25 (2) Live sporting event. – A scheduled sporting competition, game, or race
- 26 that is not originated by a production company, but originated solely
- 27 by an amateur, collegiate, or professional organization, institution, or
- 28 association for live or tape-delayed television or satellite broadcast. A
- 29 live sporting event does not include commercial advertising, an
- 30 episodic television series, a television pilot, a music video, a motion
- 31 picture, or a documentary production in which sporting events are
- 32 presented through archived historical footage or similar footage taken
- 33 at least 30 days before it is used.

34 (2a) MPAA. – The Motion Picture Association of America, Inc.

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

36 (4) Qualifying expenses. – The sum of the following amounts spent in this  
37 State by a production company in connection with a production, less  
38 the amount paid to a highly compensated individual:

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

1           b.       Compensation and wages on which withholding payments are  
2                   remitted to the Department of Revenue under Article 4A of this  
3                   Chapter.

4       (a1) Application for Credit. – Before a credit may be claimed under this section,  
5 the production company must file an application with the North Carolina Film Office of  
6 the Department of Commerce. The North Carolina Film Office shall evaluate the  
7 application to determine whether the production satisfies the requirements of this  
8 section and that it has serious artistic merit taking into consideration general standards  
9 of decency and respect for the diverse beliefs and values of the citizens of North  
10 Carolina. If the North Carolina Film Office determines that the production satisfies the  
11 requirements of this section, the Office shall issue a preapproval certificate to the  
12 production company. A preapproval certificate expresses the opinion of the North  
13 Carolina Film Office as to the eligibility of the production for the credit and is not  
14 binding upon the Department of Revenue. The application must be under oath and must  
15 include the following information:

- 16           (1)     The total budget for the production.  
17           (2)     The amount of the budget to be spent in the State, including a  
18                   description of the amount to be spent in the State on crew, equipment,  
19                   and location rentals that are based in the State.  
20           (3)     The number of crew to be involved in the production that is based in  
21                   the State.  
22           (4)     The days to be spent on production in this State and at other locations.  
23           (5)     A copy of the pre-production script or a synopsis of the script.  
24           (6)     A statement that the production, in its current proposed form, has not  
25                   been denied a tax credit in this State or any other jurisdiction for any  
26                   reason other than failing to meet an expenditure threshold.

27       (a2) Postproduction Review of Application. – After a production has been  
28 completed, the Department of Revenue must review the application, preapproval  
29 certificate, the final budget, and the postproduction script. The Department must make a  
30 determination as to whether the final production differs substantially from the  
31 production described in the application and that it has serious artistic merit taking into  
32 consideration general standards of decency and respect for the diverse beliefs and values  
33 of the citizens of North Carolina. The Department of Revenue must make a final  
34 determination as to the eligibility of the production for a credit under this section and as  
35 to the amount of the credit.

36       (b)     Credit. – A taxpayer that is a production ~~company~~ and company, has  
37           qualifying expenses of at least two hundred fifty thousand dollars (\$250,000) with  
38           respect to a ~~production~~ production, has satisfied the application requirements of  
39           subsections (a1) and (a2) of this section, and, if the production is a feature film, has  
40           received a rating from the MPAA for the production is allowed a credit against the taxes  
41           imposed by this Part equal to fifteen percent (15%) of the production company's  
42           qualifying expenses. For the purposes of this section, in the case of an episodic  
43           television series, an entire season of episodes is one production. The credit is computed

1 based on all of the taxpayer's qualifying expenses incurred with respect to the  
2 production, not just the qualifying expenses incurred during the taxable year.

3 (c) 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 (d) 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 a detailed  
13 accounting of the qualifying expenses with respect to which a credit is claimed.

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

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

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- 26 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 27 (4) It is a radio production.
- 28 (5) It has received a rating of 'NC-17' by the MPAA.

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

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

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39 claimed.
- 40 (2) The qualifying expenses for which a credit was claimed, classified by  
41 whether the expenses were for goods, services, or compensation paid  
42 by the production company.
- 43 (3) The number of people employed in the State with respect to credits  
44 claimed.

- 1           (4)    The total cost to the General Fund of the credits claimed.  
2           (5)    The identity of the production company claiming the credit.  
3           (6)    The title of the production at the time the credit is claimed.  
4        (i)    **(Repealed effective for taxable years beginning on and after January 1,**  
5 **2007)** No Double Benefit. – A taxpayer may not claim a credit under this section for  
6 qualifying expenses for which it claimed a deduction under the Code. A taxpayer that  
7 claims a credit provided under this section must adjust taxable income as provided in  
8 G.S. 105-134.6(c)(9).  
9        (j)    Sunset. – This section is repealed for qualifying expenses occurring on or  
10 after January 1, 2010."  
11           **SECTION 3.** This act is effective for taxable years beginning on or after  
12 January 1, 2008.