

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 945

Short Title: Esports Incentive Program. (Public)

Sponsors: Representative Saine.

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Appropriations, if favorable, Rules, Calendar, and Operations of the House

May 12, 2021

A BILL TO BE ENTITLED
AN ACT TO PROVIDE A PRODUCTION TAX CREDIT FOR ESPORTS EVENTS IN THE
STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-151.29 is reenacted as it existed immediately before its repeal and reads as rewritten:

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

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

(1) Esports event. – A scheduled form of multiplayer video game competition, particularly between professional players, individually or as teams, organized by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed broadcast. An Esports event does not include a live sporting event.

(1a) 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) Production. – An Esports event.

(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 in excess of one million dollars (\$1,000,000) 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



1 included in qualifying expenses is the purchase price less the fair
2 market value of the good at the time the production is completed.

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

5 c. The cost of production-related insurance coverage obtained on the
6 production. Expenses for insurance coverage purchased from a related
7 member are not qualifying expenses.

8 d. Employee fringe contributions, including health, pension, and welfare
9 contributions.

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

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

13 (6) Video game. – A game that employs electronics to create an interactive system
14 between one or more players and a user interface or input device to generate
15 visual feedback on a video display device for the player or players.

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

23 (b1) Repealed by Session Laws 2009-529, s. 2, effective January 1, 2011.

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

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

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

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

44 (1) It is political advertising.

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

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

47 (4) It is a radio production.

48 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and
49 make available for inspection any information or records required by the Secretary of Revenue.
50 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 must include in the economic incentives report required by G.S. 105-256 the following information itemized by taxpayer:

- (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. 4, effective for taxable years beginning on and 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, ~~2015-2025.~~"

SECTION 2. G.S. 105-130.47 is reenacted as it existed immediately before its repeal and reads as rewritten:

"§ 105-130.47. Credit for qualifying expenses of a production company.

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

(1) Esports event. – A scheduled form of multiplayer video game competition, particularly between professional players, individually or as teams, organized by an amateur, collegiate, or professional organization, institution, or association for live or tape-delayed broadcast. An Esports event does not include a live sporting event.

(1a) 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) Production. – An Esports event.

(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.

(6) Video game. – A game that employs electronics to create an interactive system between one or more players and a user interface or input device to generate visual feedback on a video display device for the player or players.

(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 Esports event 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.

...

(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.

...

(k) Sunset. – This section is repealed for qualifying expenses occurring on or after January 1, ~~2015-2025.~~"

SECTION 3.(a) There is transferred from the General Fund to the State Capital and Infrastructure Fund the sum of five million dollars (\$5,000,000) in nonrecurring funds for the 2021-2022 fiscal year.

SECTION 3.(b) There is appropriated from the State Capital and Infrastructure Fund to the Board of Governors of The University of North Carolina the sum of five million dollars (\$5,000,000) in nonrecurring funds for the 2021-2022 fiscal year to provide funds for the planning, development, and construction of an Esports Training and Education Center at North Carolina State University.

SECTION 4.(a) There is transferred from the General Fund to the State Capital and Infrastructure Fund the sum of two million five hundred thousand dollars (\$2,500,000) in nonrecurring funds for the 2021-2022 fiscal year.

SECTION 4.(b) There is appropriated from the State Capital and Infrastructure Fund to the Board of Governors of The University of North Carolina the sum of two million five hundred thousand dollars (\$2,500,000) in nonrecurring funds for the 2021-2022 fiscal year to provide funds for the purchase of a mobile Esports Training and Education Center.

1 **SECTION 5.** Sections 3 and 4 of this act become effective July 1, 2021. The
2 remainder of this act is effective for taxable years beginning on or after January 1, 2021, and
3 applies to qualifying expenses occurring on or after that date.