

PROPOSED AMENDMENTS TO SENATE BILL NO. 2155

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to a film production tax credit; to provide an effective date; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

**Film production tax credit.**

1. A production company producing a state-certified production is allowed a tax credit against the taxes imposed under section 57-38-30 or 57-38-30.3 for qualified expenditures made in this state in connection with the production. The credit is equal to twenty percent of the total qualified expenditures incurred in connection with the state-certified production during the taxable year.
  - a. The taxpayer shall provide the tax commissioner, on a form prescribed by the tax commissioner, the amount of qualified expenditures. The taxpayer also shall provide other information required by the tax commissioner to verify the accuracy of the qualified expenditures.
  - b. The taxpayer shall provide to the tax commissioner the amount the taxpayer paid in full to each vendor in this state for all goods and services purchased by the taxpayer in connection with the state-certified production during the taxable year. A credit under this section may not be claimed unless the taxpayer has paid in full for all purchases of goods and services from vendors in this state.
  - c. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity. An individual taxpayer may take the credit passed through under this subsection against the individual's state income tax liability under section 57-38-30.3.
  - d. The credit allowed under this section may not be claimed by a taxpayer if the qualified expenditure is used to compute another deduction or credit under this chapter.
  - e. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year.

2. A production company shall apply to the department of commerce for the production to receive certification as a state-certified production. The production company shall submit the application for certification before the start of principal photography.
  - a. An application for certification must include:
    - (1) The name, primary home address, business address, telephone number, fax number, incorporation information, and federal tax identification number of the production company;
    - (2) The address, telephone number, and fax number of the production company's office in this state;
    - (3) The name of the production company's line producer, unit production manager, or production accountant;
    - (4) A statement that the applicant meets the definition of a production company under this section;
    - (5) The title of the production;
    - (6) The type of production;
    - (7) The proposed dates of production, including the proposed dates of preproduction and the start and completion of principal photography;
    - (8) A copy or synopsis of the production script; and
    - (9) A list of the production locations.
  - b. The application must be signed by the production company's manager, agent, president, vice president, or other person authorized to represent the production company.
  - c. The department of commerce shall notify the applicant within thirty days of the receipt of the application as to whether the production qualifies as a state-certified production. The department of commerce shall provide the tax commissioner and the approved applicant notice of approval and a certification number.
  - d. The department of commerce may revoke the state-certification of a production if the department of commerce finds the production company has violated any of the provisions in this section. The department of commerce shall notify the tax commissioner of the revocation of state-certification.
  - e. The department of commerce shall prescribe rules necessary to carry out the provisions of this section, including the procedures for reviewing a denial or revocation of certification.
3. Within sixty days of the completion of principal photography, the production company shall submit to the tax commissioner, in the form and manner prescribed by the tax commissioner, a statement of all expenditures and compensation paid to residents of this state.

4. A taxpayer whose certification has been revoked may not claim the credits allowed under this section. If the department of commerce revokes the state certification of a production company after the production company has taken a credit under this section, the production company shall refund the amount of any credit claimed and pay penalty and interest as provided in section 57-38-45.
5. The tax commissioner shall adopt rules necessary to implement and administer this section. The tax commissioner, in consultation with the department of commerce, shall develop procedures for determining compensation paid to residents and qualified expenditures for the credits allowed under this section and for taxpayer compliance with the provisions of this section.
6. As used in this section, unless the context requires otherwise:
  - a. "Compensation" means salary, wages, or other compensation reported on the federal form W-2 or 1099, including related benefits paid to a resident of this state.
  - b. "Production" means a nationally or regionally distributed feature-length film, short film, documentary, television series or segment, or television pilot.
  - c. "Production company" means a company engaged in the business of producing nationally or regionally distributed productions. The term does not include a company owned, affiliated, or controlled by, in whole or in part, a company or person that is in default on a loan made by this state or a loan guaranteed by this state or a company or person that has filed for bankruptcy.
  - d. "Qualified expenditures" means expenditures in this state made by a production company that are directly related to a state-certified production. The term includes expenditures for lodging expenses, restaurant and food expenses, location fees, lumber and construction material, rental or production equipment, vehicles, and supplies and materials that will be used in the production. The term does not include expenditures made for goods and services obtained out of state.
  - e. "State-certified production" means a production certified by the department of commerce and produced by a production company that has a national or regional distribution plan, including a major theatrical exhibition, film festival, television network, cable television programming, magazine advertising, or video or internet distribution.
7. Except as provided in section 57-38-59.3, a production company is subject to the income tax withholding requirements under sections 57-38-59 and 57-38-60.

**SECTION 2.** A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Film production tax credit under section 1 of this Act.



**SECTION 3. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the first four taxable years beginning after December 31, 2020, and is thereafter ineffective."

Renumber accordingly