

HOUSE BILL NO. 1420

Introduced by

Representative Strinden

1 A BILL for an Act to create and enact a new section to chapter 57-38 of the North Dakota
2 Century Code, relating to a North Dakota film production tax credit; and to provide an effective
3 date.

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

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

7 **Film production tax credit.**

- 8 1. A production company that has submitted an application for a tax credit and paid the
9 fee as required under this section is allowed a tax credit against the taxes imposed by
10 this chapter for the employment of residents of this state in connection with a
11 state-certified production in this state.
- 12 a. The aggregate of the credit allowed under this section for a production occurring
13 in the production company's tax year is fourteen percent of the first fifty thousand
14 dollars or less of actual compensation paid to each North Dakota resident
15 employed in connection with the state-certified production during the tax year.
- 16 b. The taxpayer is required to provide to the department, on a form prescribed by
17 the department, a list of all cast and crew participating in the production and the
18 amount of compensation paid to each North Dakota resident.
- 19 c. A C corporation, an individual, an S corporation, or a partnership qualifies for the
20 credit under this section. If the credit is claimed by an S corporation or a
21 partnership, the credit must be attributed to the shareholders, partners, or
22 members in the same proportion used to report income or loss for state tax
23 purposes.

- 1 d. The credit allowed under this section may not be claimed by a taxpayer if the
2 taxpayer has included the amount of the compensation upon which the amount of
3 the credit was computed as a deduction.
- 4 2. To receive a tax credit under this section for a state-certified production, a production
5 company shall apply to the department of commerce on a form prescribed by the
6 department. The form must be accompanied by a five hundred dollar application fee.
7 The application must be made and the fee paid at the time the production company
8 files the production company's tax return. The fee must be deposited in the state
9 general fund.
- 10 3. A production company that has submitted an application and paid the fee as required
11 under subsection 2 is allowed a tax credit against the taxes imposed by
12 section 57-38-30 for qualified expenditures in this state made in connection with a
13 state-certified production in the state. The credit allowed under this section is equal to
14 nine percent of the total qualified expenditures incurred in connection with the
15 state-certified production during the tax year.
- 16 a. The taxpayer is required to provide the commissioner, on a form prescribed by
17 the commissioner, the amount of qualified expenditures. The taxpayer shall also
18 provide other information required by the commissioner to verify the accuracy of
19 the qualified expenditures.
- 20 b. The taxpayer shall certify in writing to the commissioner the amount that the
21 taxpayer has paid in full to each vendor in North Dakota for all goods and
22 services purchased by the taxpayer in connection with the state-certified
23 production during the tax year. A credit under this section may not be claimed
24 unless the taxpayer has paid in full for all purchases of goods and services from
25 North Dakota vendors.
- 26 c. The credit allowed under this section may not exceed the taxpayer's tax liability.
- 27 d. A C corporation, an individual, an S corporation, or a partnership qualify for a
28 credit under this section. If the credit is claimed by an S corporation or a
29 partnership, the credit must be attributed to the shareholders, partners, or
30 members in the same proportion used to report income or loss for state tax
31 purposes.

- 1 e. The credit allowed under this section may not be claimed by a taxpayer if the
2 taxpayer has included the amount of the qualified expenditure upon which the
3 amount of the credit was computed as a deduction.
- 4 4. A production company may not receive a tax credit under this section unless the
5 production has been certified by the department of commerce, as provided in this
6 section, and has applied to the tax commissioner for the tax credits. The
7 department of commerce must certify an application within thirty days after
8 submission.
- 9 a. An application must be submitted by the production company to the department
10 of commerce before the start of the principal photography. The application must
11 include:
- 12 (1) The production company's name, primary home address, business address,
13 telephone and fax numbers, incorporation information, and federal tax
14 identification number;
- 15 (2) The address and telephone and fax numbers of the production company's
16 North Dakota office;
- 17 (3) The name of the line producer, unit production manager, or production
18 accountant or the names of all three;
- 19 (4) A statement that the applicant meets the definition of a production company
20 under this section;
- 21 (5) The title of the production;
- 22 (6) The type of production;
- 23 (7) The proposed dates of production from preproduction to the start and
24 completion of principal photography;
- 25 (8) A copy or synopsis of the production script;
- 26 (9) A list of the production locations;
- 27 (10) A statement that the proposed production:
- 28 (a) Does not contain any material or performance that would be
29 considered obscene; and
- 30 (b) Will not receive any money for tobacco product placement,
31 advertisement, or other tobacco use in the production; and

- 1 (11) If the production is a feature-length film, a statement that the production will
2 include a line in the production's film credits that the production was filmed
3 in North Dakota.
- 4 b. The application must be signed by the manager, agent, president, vice president,
5 or other person authorized to represent the production company.
- 6 c. The department of commerce shall notify the applicant within thirty days of
7 receipt as to whether the production qualifies as a state-certified production. If the
8 department of commerce approves the application, it shall provide a certification
9 number to the applicant and notify the department of revenue of the approval and
10 certification number. If the production is a feature-length film, the production
11 company and the department of commerce, prior to the issuance of the
12 certification number, shall enter into an agreement that the production company
13 will comply with this section. The agreement may provide for remedies if the
14 production company violates the agreement.
- 15 e. If the department of commerce determines that the production company has
16 violated the provisions of this section, the department of commerce may revoke
17 the state certification of the production. If the department of commerce revokes
18 the state certification, the department of commerce shall notify the department of
19 revenue.
- 20 f. The department of commerce shall prescribe rules, including a procedure for
21 review of that department's denial or revocation of state certification, necessary
22 to carry out the provisions of this section.
- 23 5. Within sixty days of completion of principal photography, the production company shall
24 submit a statement to the department of all expenditures and compensation paid to
25 North Dakota residents.
- 26 6. A taxpayer whose certification has been revoked may not claim the credits allowed
27 under this section. If the department of commerce revokes the state certification of a
28 production company after the production company has taken a credit under this
29 section, the production company shall refund the amount of any credit taken. The
30 taxpayer is subject to the penalty and interest provisions of this section.

- 1 7. The commissioner shall adopt rules that are necessary to implement and administer
2 this section. The department shall, in consultation with the department of commerce,
3 develop procedures for determining compensation paid to residents and qualified
4 expenditures for the credits allowed under this section and for taxpayer compliance
5 with the provisions of this section.
- 6 8. As used in this section, unless the context requires otherwise:
- 7 a. "Compensation" means salary, wages, or other compensation, including related
8 benefits paid to a North Dakota resident.
- 9 b. (1) "Production" means a nationally or regionally distributed feature-length film,
10 short film, documentary, television series or segment, television pilot,
11 magazine advertising, other than advertising for tobacco products, or
12 commercial made in the state, in whole or in part, for theatrical, television,
13 video, internet, or other viewing.
- 14 (2) The term does not include the production of television coverage of news
15 and athletic events or a film, video, internet production, television series,
16 magazine advertising, or commercial that:
- 17 (a) Contains any obscene material or performance; or
- 18 (b) Is produced in whole or in part with money received for tobacco
19 product placement, advertisement, or other tobacco use in the
20 production.
- 21 c. "Production company" means a company engaged in the business of producing
22 nationally or regionally distributed productions. The term does not include a
23 company owned, affiliated, or controlled by, in whole or in part, a company or
24 person that is in default on a loan made by this state or a loan guaranteed by this
25 state or a company or person that has filed for bankruptcy.
- 26 d. "Qualified expenditures" means expenditures in North Dakota made by a
27 production company that are directly related to state-certified production. The
28 term includes expenditures for lodging expenses, restaurant and food expenses,
29 location fees, lumber and construction material, rental or production equipment
30 and vehicles, and supplies and materials that will be used in the production. The

1 term does not include expenditures made for goods and services obtained out of
2 state.

3 e. "State-certified production" means a production certified by the department of
4 commerce and produced by a production company that has a national or regional
5 distribution plan, including a major theatrical exhibition, film festival, television
6 network, cable television programming, magazine advertising, or video or internet
7 distribution.

8 **SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
9 December 31, 2014.