

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 and a new subdivision to
2 subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to a North
3 Dakota film production tax credit; and to provide an effective 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 2 is allowed a tax credit against the taxes imposed
10 by ~~this chapter~~ under section 57-38-30 or 57-38-30.3 for the employment of residents
11 of this state in connection with a 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~~ passthrough entity entitled to the credit under this section
21 must be considered to be the taxpayer for purposes of calculating the credit. The
22 amount of the allowable credit must be determined at the passthrough entity
23 level. The total credit determined at the entity level must be passed through to the
24 partners, shareholders, or members in proportion to their respective interests in

1 the passthrough entity. An individual taxpayer may take the credit passed through
2 under this subsection against the individual's state income tax liability under
3 section 57-38-30.3. If the credit is claimed by an S corporation or a partnership,
4 the credit must be attributed to the shareholders, partners, or members in the
5 same proportion used to report income or loss for state tax purposes.

6 d. The credit allowed under this section may not be claimed by a taxpayer if the
7 taxpayer has included the amount of the compensation upon which the amount of
8 the credit paid was computed as used to compute a deduction or credit under this
9 chapter.

10 e. The credit allowed under this section may not exceed the taxpayer's tax liability.

11 2. To receive a tax credit under this section for a state-certified production, a production
12 company shall apply to the department of commerce on a form prescribed by the
13 department. The form must be accompanied by a five hundred dollar application fee.
14 The application must be made and the fee paid at the time the production company
15 files the production company's tax return. The fee must be deposited in the state
16 general fund.

17 3. A production company that has submitted an application and paid the fee as required
18 under subsection 2 is allowed a tax credit against the taxes imposed by
19 section 57-38-30 or 57-38-30.3 for qualified expenditures in this state made in
20 connection with a state-certified production in the state. The credit allowed under this
21 section is equal to nine percent of the total qualified expenditures incurred in
22 connection with the state-certified production during the tax year.

23 a. The taxpayer is required to shall provide the commissioner, on a form prescribed
24 by the commissioner, the amount of qualified expenditures. The taxpayer shall
25 also provide other information required by the tax commissioner to verify the
26 accuracy of the qualified expenditures.

27 b. The taxpayer shall certify in writing provide to the commissioner the amount that
28 the taxpayer has paid in full to each vendor in North Dakota for all goods and
29 services purchased by the taxpayer in connection with the state-certified
30 production during the tax year. A credit under this section may not be claimed

1 unless the taxpayer has paid in full for all purchases of goods and services from
2 North Dakota vendors.

3 c. The credit allowed under this section may not exceed the taxpayer's tax liability.

4 d. ~~A C corporation, an individual, an S corporation, or a partnership qualify for a~~
5 ~~credit under this section. If the credit is claimed by an S corporation or a~~
6 ~~partnership, the credit must be attributed to the shareholders, partners, or~~
7 ~~members in the same proportion used to report income or loss for state tax~~
8 ~~purposes~~ passthrough entity entitled to the credit under this section must be
9 considered to be the taxpayer for purposes of calculating the credit. The amount
10 of the allowable credit must be determined at the passthrough entity level. The
11 total credit determined at the entity level must be passed through to the partners,
12 shareholders, or members in proportion to their respective interests in the
13 passthrough entity. An individual taxpayer may take the credit passed through
14 under this subsection against the individual's state income tax liability under
15 section 57-38-30.3.

16 e. The credit allowed under this section may not be claimed by a taxpayer if the
17 ~~taxpayer has included the amount of the~~ qualified expenditure upon which the
18 ~~amount of the credit was computed as~~ ais used to compute another deduction or
19 credit under this chapter.

20 4. A production company may not receive a tax credit under this section unless the
21 production has been certified by the department of commerce, as provided in this
22 ~~section, and has applied to the tax commissioner for the tax credits.~~ The
23 department of commerce must certify an application within thirty days after
24 submission.

25 a. An application must be submitted by the production company to the department
26 of commerce before the start of the principal photography. The application must
27 include:

28 (1) The production company's name, primary home address, business address,
29 telephone and fax numbers, incorporation information, and federal tax
30 identification number;

- 1 (2) The address and telephone and fax numbers of the production company's
2 North Dakota office;
- 3 (3) The name of the line producer, unit production manager, or production
4 accountant or the names of all three;
- 5 (4) A statement that the applicant meets the definition of a production company
6 under this section;
- 7 (5) The title of the production;
- 8 (6) The type of production;
- 9 (7) The proposed dates of production from preproduction to the start and
10 completion of principal photography;
- 11 (8) A copy or synopsis of the production script;
- 12 (9) A list of the production locations;
- 13 (10) A statement that the proposed production:
 - 14 (a) Does not contain any material or performance that would be
15 considered obscene; and
 - 16 (b) Will not receive any money for tobacco product placement,
17 advertisement, or other tobacco use in the production; and
- 18 (11) If the production is a feature-length film, a statement that the production will
19 include a line in the production's film credits that the production was filmed
20 in North Dakota.
- 21 b. The application must be signed by the manager, agent, president, vice president,
22 or other person authorized to represent the production company.
- 23 c. The department of commerce shall notify the applicant within thirty days of
24 receipt as to whether the production qualifies as a state-certified production. If the
25 department of commerce approves the application, it shall provide a certification
26 number to the applicant and notify the ~~department of revenue~~tax commissioner of
27 the approval and certification number. If the production is a feature-length film,
28 the production company and the department of commerce, prior to the issuance
29 of the certification number, shall enter into an agreement that the production
30 company will comply with this section. The agreement may provide for remedies
31 if the production company violates the agreement.

- 1 d. If the department of commerce determines that the production company has
2 violated the provisions of this section, the department of commerce may revoke
3 the state certification of the production. If the department of commerce revokes
4 the state certification, the department of commerce shall notify the ~~department of~~
5 ~~revenue~~tax commissioner.
- 6 e. The department of commerce shall prescribe rules, including a procedure for
7 review of ~~that~~the department's denial or revocation of state certification,
8 necessary to carry out the provisions of this section.
- 9 5. Within sixty days of completion of principal photography, the production company shall
10 submit a statement to the department of all expenditures and compensation paid to
11 North Dakota residents.
- 12 6. A taxpayer whose certification has been revoked may not claim the credits allowed
13 under this section. If the department of commerce revokes the state certification of a
14 production company after the production company has taken a credit under this
15 section, the production company shall refund the amount of any credit ~~taken. The~~
16 ~~taxpayer is subject to the~~and pay penalty and interest ~~provisions of this section~~as
17 provided in section 57-38-45.
- 18 7. The commissioner shall adopt rules that are necessary to implement and administer
19 this section. The department shall, in consultation with the department of commerce,
20 develop procedures for determining compensation paid to residents and qualified
21 expenditures for the credits allowed under this section and for taxpayer compliance
22 with the provisions of this section.
- 23 8. As used in this section, unless the context requires otherwise:
- 24 a. "Compensation" means salary, wages, or other compensation ~~reported on the~~
25 ~~federal form W-2 or 1099~~, including related benefits paid to a North Dakota
26 resident.
- 27 b. (1) "Production" means a nationally or regionally distributed feature-length film,
28 short film, documentary, television series or segment, television pilot,
29 magazine advertising, other than advertising for tobacco products, or
30 commercial made in the state, in whole or in part, for theatrical, television,
31 video, internet, or other viewing.

1 (2) The term does not include the production of television coverage of news
2 and athletic events or a film, video, internet production, television series,
3 magazine advertising, or commercial that:

4 (a) Contains any obscene material or performance; or

5 (b) Is produced in whole or in part with money received for tobacco
6 product placement, advertisement, or other tobacco use in the
7 production.

8 c. "Production company" means a company engaged in the business of producing
9 nationally or regionally distributed productions. The term does not include a
10 company owned, affiliated, or controlled by, in whole or in part, a company or
11 person that is in default on a loan made by this state or a loan guaranteed by this
12 state or a company or person that has filed for bankruptcy.

13 d. "Qualified expenditures" means expenditures in North Dakota made by a
14 production company that are directly related to state-certified production. The
15 term includes expenditures for lodging expenses, restaurant and food expenses,
16 location fees, lumber and construction material, rental or production equipment
17 and vehicles, and supplies and materials that will be used in the production. The
18 term does not include expenditures made for goods and services obtained out of
19 state.

20 e. "State-certified production" means a production certified by the department of
21 commerce and produced by a production company that has a national or regional
22 distribution plan, including a major theatrical exhibition, film festival, television
23 network, cable television programming, magazine advertising, or video or internet
24 distribution.

25 9. Except as provided in section 57-38-59.3, a production company is subject to the
26 income tax withholding requirements under sections 57-38-59 and 57-38-60.

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

29 The film production tax credit under section 1 of this Act.

30 **SECTION 3. EFFECTIVE DATE.** This Act is effective for taxable years beginning after
31 December 31, 2014.