

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 981

Short Title: NC Film Industry Incentive.

(Public)

Sponsors: Senators Ballantine, McDaniel, and Carpenter.

Referred to: Finance

May 4, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFIED INVESTMENT TAX CREDIT TO PROVIDE AN INCENTIVE FOR INVESTMENT IN SMALL NORTH CAROLINA FILM PRODUCTION BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.014 is amended by adding a new subsection to read:

"(d1) Certain Redemptions Allowed. – Forfeiture of a credit does not occur under this section if a qualified business venture that engages primarily in motion picture film production makes a redemption with respect to securities received in an investment and the following conditions are met:

(1) The redemption occurred because the qualified business venture completed production of a film, sold the film, and was liquidated.

(2) Neither the qualified business venture nor a related person continues to engage in business with respect to the film produced by the qualified business venture."

Sec. 2. G.S. 105-163.014(d)(2) reads as rewritten:

"(2) ~~Within~~ Except as provided in subsection (d1) of this section, within five years after the investment was made, the North Carolina Enterprise Corporation, qualified business venture, or qualified grantee business in

1 which the investment was made makes a redemption with respect to the
2 securities received in the investment."

3 Sec. 3. G.S. 105-163.010 is amended by renumbering subdivision (9a) as (8c)
4 and adding a new subdivision to read:

5 "(9a) Related person. – A person described in one of the relationships set
6 forth in section 267(b) or 707(b) of the Code."

7 Sec. 4. G.S. 105-163.010(11) reads as rewritten:

8 "(11) Subordinated debt. – Indebtedness that ~~(i) by its terms matures five or~~
9 ~~more years after its issuance, (ii) is not secured, and (iii) is not secured~~
10 and is subordinated to all other indebtedness of the issuer issued or
11 to be issued to a financial institution other than a financial institution
12 described in subdivisions (5)(ii) through (5)(v) of this section. ~~Any~~
13 Except as provided in G.S. 105-163.014(d1), any portion of
14 indebtedness that matures earlier than five years after its issuance is
15 not subordinated debt."

16 Sec. 5. G.S. 105-163.013(b) reads as rewritten:

17 "(b) Qualified Business Ventures. – In order to qualify as a qualified business
18 venture under this Division, a business must be registered with the Securities Division of
19 the Department of the Secretary of State. To register, the business must file with the
20 Secretary of State an application and any supporting documents the Secretary of State
21 may require from time to time to determine that the business meets the requirements for
22 registration as a qualified business venture. A business meets the requirements for
23 registration as a qualified business venture if all of the following are true as of the date
24 the business files the required application:

25 (1) Its headquarters and principal business operations are in North
26 Carolina or it has, as a condition to approval of the registration,
27 agreed to establish its headquarters and principal business operations
28 in North Carolina within three months after the date the first
29 investment eligible for a credit under this Division is made.

30 (1b) Either (i) it was organized after January 1 of the calendar year in
31 which its application is filed or (ii) during its most recent fiscal year
32 before filing the application, it had gross revenues, as determined in
33 accordance with generally accepted accounting principles, of five
34 million dollars (\$5,000,000) or less on a consolidated basis.

35 (2) It has, as a condition to approval of the registration, agreed to retain
36 its headquarters and principal business operations in North Carolina
37 for at least three years after the date the last investment eligible for
38 credit under this Division is made.

39 (3) It is organized to engage primarily in manufacturing, processing,
40 warehousing, wholesaling, research and development, or a service-
41 related industry.

42 (4) It does not engage as a substantial part of its business in any of the
43 following:

- 1 a. Providing a professional service as defined in Chapter 55B of the
2 General Statutes.
- 3 b. Construction or contracting.
- 4 c. Selling or leasing at retail.
- 5 d. The purchase, sale, or development, or purchasing, selling, or
6 holding for investment of commercial paper, notes, other
7 indebtedness, financial instruments, securities, or real property,
8 or otherwise make investments.
- 9 e. Providing personal grooming or cosmetics services.
- 10 f. Offering any form of entertainment, amusement, recreation, or
11 athletic or fitness activity for which an admission or a
12 membership is charged.

13 (5) It was not formed for the primary purpose of acquiring all or part of
14 the stock or assets of one or more existing businesses.

15 (6) It is not a real estate-related business.

16 The effective date of registration for a qualified business venture whose application is
17 accepted for registration is ~~the filing date of its application.~~ 60 days before the date its
18 application was filed. No credit is allowed under this Division for an investment made
19 before the effective date of the registration or after the registration is revoked. For the
20 purpose of this Article, if a taxpayer's investment is placed initially in escrow conditioned
21 upon other investors' commitment of additional funds, the date of the investment is the
22 date escrowed funds are transferred to the qualified business venture free of the
23 condition.

24 To remain qualified as a qualified business venture, the business must renew its
25 registration annually as prescribed by rule by filing a financial statement for the most
26 recent fiscal year showing gross revenues, as determined in accordance with generally
27 accepted accounting principles, of five million dollars (\$5,000,000) or less on a
28 consolidated basis and an application for renewal in which the business certifies the facts
29 required in the original application and that it has not moved its headquarters or principal
30 business operations out of North Carolina.

31 Failure of a qualified business venture to renew its registration by the applicable
32 deadline shall result in revocation of its registration effective as of the next day after the
33 renewal deadline, but shall not result in forfeiture of tax credits previously allowed to
34 taxpayers who invested in the business except as provided in G.S. 105-163.014. The
35 Secretary of State shall send the qualified business venture notice of revocation within 60
36 days after the renewal deadline. A qualified business venture may apply to have its
37 registration reinstated by the Secretary of State by filing an application for reinstatement,
38 accompanied by the reinstatement application fee and a late filing penalty of one
39 thousand dollars (\$1,000), within 30 days after receipt of the revocation notice from the
40 Secretary of State. A business that seeks approval of a new application for registration
41 after its registration has been revoked must also pay a penalty of one thousand dollars
42 (\$1,000). A registration that has been reinstated is treated as if it had not been revoked.

1 If the gross revenues of a qualified business venture exceed five million dollars
2 (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of
3 this fact by filing a financial statement showing the revenues of the business for that
4 year."

5 Sec. 6. This act is effective for taxable years beginning on or after January 1,
6 1995.