

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED 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 section 2 is allowed a tax credit against the taxes imposed
10 under section 57-38-30 or 57-38-30.3 for the employment of residents of this state in
11 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 compensation paid to each North Dakota resident employed in
15 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 passthrough entity entitled to the credit under this section must be considered
20 to be the taxpayer for purposes of calculating the credit. The amount of the
21 allowable credit must be determined at the passthrough entity level. The total
22 credit determined at the entity level must be passed through to the partners,
23 shareholders, or members in proportion to their respective interests in the
24 passthrough entity. An individual taxpayer may take the credit passed through

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

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

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

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

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

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

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

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

1 d. A passthrough entity entitled to the credit under this section must be considered
2 to be the taxpayer for purposes of calculating the credit. The amount of the
3 allowable credit must be determined at the passthrough entity level. The total
4 credit determined at the entity level must be passed through to the partners,
5 shareholders, or members in proportion to their respective interests in the
6 passthrough entity. An individual taxpayer may take the credit passed through
7 under this subsection against the individual's state income tax liability under
8 section 57-38-30.3.

9 e. The credit allowed under this section may not be claimed by a taxpayer if the
10 qualified expenditure is used to compute another deduction or credit under this
11 chapter.

12 4. A production company may not receive a tax credit under this section unless the
13 production has been certified by the department of commerce, as provided in this
14 section. The department of commerce must certify an application within thirty
15 days after submission.

16 a. An application must be submitted by the production company to the department
17 of commerce before the start of the principal photography. The application must
18 include:

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

22 (2) The address and telephone and fax numbers of the production company's
23 North Dakota office;

24 (3) The name of the line producer, unit production manager, or production
25 accountant or the names of all three;

26 (4) A statement that the applicant meets the definition of a production company
27 under this section;

28 (5) The title of the production;

29 (6) The type of production;

30 (7) The proposed dates of production from preproduction to the start and
31 completion of principal photography;

- 1 (8) A copy or synopsis of the production script;
2 (9) A list of the production locations;
3 (10) A statement that the proposed production:
4 (a) Does not contain any material or performance that would be
5 considered obscene; and
6 (b) Will not receive any money for tobacco product placement,
7 advertisement, or other tobacco use in the production; and
8 (11) If the production is a feature-length film, a statement that the production will
9 include a line in the production's film credits that the production was filmed
10 in North Dakota.
11 b. The application must be signed by the manager, agent, president, vice president,
12 or other person authorized to represent the production company.
13 c. The department of commerce shall notify the applicant within thirty days of
14 receipt as to whether the production qualifies as a state-certified production. If the
15 department of commerce approves the application, it shall provide a certification
16 number to the applicant and notify the tax commissioner of the approval and
17 certification number. If the production is a feature-length film, the production
18 company and the department of commerce, prior to the issuance of the
19 certification number, shall enter into an agreement that the production company
20 will comply with this section. The agreement may provide for remedies if the
21 production company violates the agreement.
22 d. If the department of commerce determines that the production company has
23 violated the provisions of this section, the department of commerce may revoke
24 the state certification of the production. If the department of commerce revokes
25 the state certification, the department of commerce shall notify the tax
26 commissioner.
27 e. The department of commerce shall prescribe rules, including a procedure for
28 review of the department's denial or revocation of state certification, necessary to
29 carry out the provisions of this section.

- 1 5. Within sixty days of completion of principal photography, the production company shall
2 submit a statement to the department of all expenditures and compensation paid to
3 North Dakota residents.
- 4 6. A taxpayer whose certification has been revoked may not claim the credits allowed
5 under this section. If the department of commerce revokes the state certification of a
6 production company after the production company has taken a credit under this
7 section, the production company shall refund the amount of any credit and pay
8 penalty and interest as provided in section 57-38-45.
- 9 7. The commissioner shall adopt rules that are necessary to implement and administer
10 this section. The department shall, in consultation with the department of commerce,
11 develop procedures for determining compensation paid to residents and qualified
12 expenditures for the credits allowed under this section and for taxpayer compliance
13 with the provisions of this section.
- 14 8. As used in this section, unless the context requires otherwise:
- 15 a. "Compensation" means salary, wages, or other compensation reported on the
16 federal form W-2 or 1099, including related benefits paid to a North Dakota
17 resident.
- 18 b. (1) "Production" means a nationally or regionally distributed feature-length film,
19 short film, documentary, television series or segment, television pilot,
20 magazine advertising, other than advertising for tobacco products, or
21 commercial made in the state, in whole or in part, for theatrical, television,
22 video, internet, or other viewing.
- 23 (2) The term does not include the production of television coverage of news
24 and athletic events or a film, video, internet production, television series,
25 magazine advertising, or commercial that:
- 26 (a) Contains any obscene material or performance; or
27 (b) Is produced in whole or in part with money received for tobacco
28 product placement, advertisement, or other tobacco use in the
29 production.
- 30 c. "Production company" means a company engaged in the business of producing
31 nationally or regionally distributed productions. The term does not include a

1 company owned, affiliated, or controlled by, in whole or in part, a company or
2 person that is in default on a loan made by this state or a loan guaranteed by this
3 state or a company or person that has filed for bankruptcy.

4 d. "Qualified expenditures" means expenditures in North Dakota made by a
5 production company that are directly related to state-certified production. The
6 term includes expenditures for lodging expenses, restaurant and food expenses,
7 location fees, lumber and construction material, rental or production equipment
8 and vehicles, and supplies and materials that will be used in the production. The
9 term does not include expenditures made for goods and services obtained out of
10 state.

11 e. "State-certified production" means a production certified by the department of
12 commerce and produced by a production company that has a national or regional
13 distribution plan, including a major theatrical exhibition, film festival, television
14 network, cable television programming, magazine advertising, or video or internet
15 distribution.

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

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

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

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