

HB 540-FN-A – AS INTRODUCED

2013 SESSION

13-0830
10/01

HOUSE BILL **540-FN-A**

AN ACT establishing a credit against business profits taxes for motion picture production expenditures in New Hampshire.

SPONSORS: Rep. Goley, Hills 8

COMMITTEE: Ways and Means

ANALYSIS

This bill establishes a credit against business profits taxes for motion picture production expenditures made in New Hampshire.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT establishing a credit against business profits taxes for motion picture production expenditures in New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Paragraph; Business Profits Tax; Credit for Motion Picture Production Expenditures.
2 Amend RSA 77-A:5 by inserting after paragraph XV the following new paragraph:

3 XVI.(a) A taxpayer engaged in the making of a motion picture shall be allowed a credit
4 against the taxes imposed by this chapter for the employment of persons within the state of New
5 Hampshire in connection with the filming or production of one or more motion pictures in the state
6 within any consecutive 12-month period. The credit shall be equal to 25 percent of the total
7 aggregate payroll paid by a motion picture production company that constitutes New Hampshire
8 source income, when total production costs incurred in the state of New Hampshire equal or exceed
9 \$50,000 during the taxable year.

10 (b) A taxpayer shall be allowed an additional credit against the taxes imposed by this
11 chapter equal to 25 percent of all New Hampshire production expenses and qualified non-
12 New Hampshire expenses, not including the payroll expenses used to claim a credit pursuant to
13 subparagraph (a), where the motion picture is also eligible for a credit pursuant to subparagraph (a)
14 and either New Hampshire production expenses exceed 50 percent of the total production expenses
15 for a motion picture or at a least 50 percent of the total photography days of the film take place in
16 the state of New Hampshire or in excess of \$500,000 in eligible New Hampshire production expenses
17 are incurred.

18 (c) The tax credit shall be taken against the taxes imposed under this chapter and shall,
19 at the election of the taxpayer, be refundable. Any amount of the tax credit that exceeds the tax due
20 for a taxable year may be carried forward by the taxpayer to any of the 5 subsequent taxable years.

21 (d)(1) All or any portion of tax credits issued in accordance with the provisions of this
22 paragraph may be transferred, sold, or assigned to other taxpayers with tax liabilities under this
23 chapter. Any tax credit that is transferred, sold, or assigned and taken against taxes imposed by this
24 chapter shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable
25 year may be carried forward by the transferee, buyer, or assignee to any of the 5 subsequent taxable
26 years from which a certificate is initially issued by the department of revenue administration.

27 (2) An owner, transferee, or assignee desiring to make a transfer, sale, or assignment
28 shall submit to the commissioner a statement which describes the amount of tax credit for which
29 such transfer, sale, or assignment of tax credit is eligible. The owner, transferee, or assignee shall
30 provide to the commissioner such information as he or she may require for the proper allocation of

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1 the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell,
2 or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an
3 outstanding tax obligation with the state of New Hampshire in connection with any motion picture
4 for any prior taxable year. No tax credit may be transferred, sold, or assigned without a certificate.

5 (e) The commissioner, in consultation with the director of the film office and the
6 commissioner of the New Hampshire department of resources and economic development, shall
7 adopt rules under RSA 541-A as necessary for the administration of the provisions of this paragraph.

8 (f) Notwithstanding any other provision of this paragraph, aggregate salary and
9 compensation amounts including all per diems, housing and other allowances, paid to, or for the
10 services of, an individual shall not qualify for the credit under this paragraph to the extent such
11 amounts exceed \$2,000,000.

12 (g) In this paragraph:

13 (1) "Agreement" means an agreement between a motion picture production company
14 and the film office. To enter an agreement, a motion picture production company shall submit an
15 application complete with a \$100 non-refundable application fee on a form prescribed by the film
16 office, to the film office, along with all the information and records requested by the film office. The
17 film office shall not process the application until it is complete. As part of the application, the motion
18 picture production company shall estimate production expenses for the motion picture. If the film
19 office, with the concurrence of the state treasurer, determines to enter into an agreement under this
20 paragraph, the agreement shall provide for all of the following:

21 (A) A requirement that the eligible motion picture production company
22 commence work in the state of New Hampshire on the identified motion picture within 90 days of the
23 date of the agreement or else the agreement will expire. However, upon request submitted by the
24 company based on good cause, the film office may extend the period for commencement of work in
25 this state for up to an additional 90 days.

26 (B) A statement identifying the motion picture production company and the
27 motion picture that the motion picture production company intends to produce in whole or in part in
28 the state of New Hampshire.

29 (C) A unique number assigned to the motion picture by the film office.

30 (D) A requirement that the motion picture not depict any content for which
31 records are required to be kept under 18 U.S.C. section 2257.

32 (E) A requirement that the qualified production include an acknowledgement
33 that the motion picture was filmed in the state of New Hampshire and a logo prescribed by the film
34 office.

35 (F) A requirement that the motion picture production company provide the film
36 office with the information and independent certification the film office and the department deem
37 necessary to verify production expenses and eligibility for the credits provided under this paragraph.

1 (G) A requirement that not later than 90 days after the end of the annual period,
2 or after the last production expenses or costs are incurred in the production of a qualified production,
3 an eligible motion picture production company shall apply to the department for a production tax
4 credit voucher, and shall provide with such application such information and independent
5 certification as the department may require pertaining to the amount of such company's production
6 expenses or costs. Such independent certification shall be provided by an audit professional chosen
7 from a list compiled by the department. If the department determines that such company is eligible
8 to be issued a production tax credit voucher, the department shall enter on the voucher the amount
9 of production expenses or costs that has been established to the satisfaction of the department and
10 the amount of such company's credit under this paragraph. Notwithstanding anything in
11 subparagraph (g)(1) to the contrary, a motion picture production company shall be eligible to submit
12 an application to and enter an agreement with the film office for a motion picture, if principal
13 photography began after December 31, 2012 but prior to the enactment of this paragraph, if all other
14 requirements of subparagraph (g)(1) are satisfied.

15 (H) If determined to be necessary by the film office and the state treasurer, a
16 provision for addressing expenses in excess of those identified in the agreement.

17 (2) "Motion picture" means a feature-length film, video, digital media project,
18 television series defined as a season not to exceed 27 episodes, or a commercial made in the state of
19 New Hampshire, in whole or in part, for theatrical or television viewing or as a television pilot. The
20 term "motion picture" shall not include a production featuring news, current events, weather and
21 financial market reports, talk show, game show, sporting events, awards show or other gala event, a
22 production whose sole purpose is fundraising, a long-form production that primarily markets a
23 product or service, a production containing obscene material or performances as defined by law.

24 (3) "Motion picture production company" means a business organization engaged in
25 the business of producing motion pictures, videos, television series, or commercials intended for a
26 theatrical release or for television viewing.

27 (4) "New Hampshire production expense" means a production expense for the motion
28 picture clearly and demonstrably incurred in the state of New Hampshire.

29 (5) "Principal photography" means the phase of production during which the motion
30 picture is actually filmed. The term shall not include preproduction or postproduction.

31 (6) "Production expense" means preproduction, production, and postproduction
32 expenditures directly incurred in the production of a motion picture. Said term includes wages and
33 salaries paid to individuals employed in the production of the motion picture; the costs of set
34 construction and operation, editing and related services, photography, sound synchronization,
35 lighting, wardrobe, make-up and accessories; film processing, transfer, sound mixing, special and
36 visual effects; music; location fees and the cost of purchase or rental of facilities; the cost of purchase
37 or rental of equipment; vehicles rented; hotels or other lodging obtained; production insurance; or

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1 any other production expense as may be determined by the department of revenue administration to
2 be an eligible production expense. The term shall not include costs incurred in marketing or
3 advertising a motion picture, any costs related to the transfer of tax credits or any amounts paid to
4 persons or businesses as a result of their participation in profits from the exploitation of the
5 production.

6 (7) “Qualified non-New Hampshire expenses” means the cost of purchase or rental of
7 equipment or the procurement of production insurance from outside the state of New Hampshire
8 that may not be otherwise obtained from within the state of New Hampshire.

9 (8) “Taxpayer” means an entity engaged in the making of the film, including a
10 person, firm, partnership, or other entity subject to the income tax imposed by the provisions of this
11 chapter, that has entered an agreement as that term is defined in this paragraph.

12 (9) “Film office” means the New Hampshire film and television commission.

13 2 Effective Date. This act shall take effect July 1, 2013.

HB 540 FISCAL NOTE

AN ACT establishing a credit against business profits taxes for motion picture production expenditures in New Hampshire.

FISCAL IMPACT:

The Department of Revenue Administrative states this bill, **as introduced**, may decrease state revenue by an indeterminable amount in FY 2014 and each year thereafter. This bill will have no fiscal impact on state, county, and local expenditures, or county and local revenue.

METHODOLOGY:

The Department of Revenue Administration states this bill establishes a tax credit against the Business Profits Tax (BPT) for motion picture expenditures made in New Hampshire. The tax credit is equal 25% of the total aggregate payroll paid by the production company that constitutes NH source of income when total production expenses incurred in NH is equal to or exceeds \$50,000 during a taxable year. An additional credit is also available against the BPT. The additional credit is equal to 25% of all NH production expenses, and qualified non-NH expenses, not including expenses used to claim the first credit, where the production company is eligible for the first credit and either: (1) NH production expenses exceed 50% of the total production expenses; or (2) at least 50% of the total photography days of the film take place in NH; or (3) in excess of \$500,000 in eligible NH production expenses are incurred. The tax credit shall be used against BPT and may be carried forward to any of the 5 subsequent taxable years. In addition, the credit may be refunded. All or any portion of the credit may also be transferred, sold, or assigned to other taxpayers with BPT liabilities. The tax credit may be carried forward to any of the 5 subsequent taxable years by the transferee, buyer, or assignee. The Department, upon request from an owner, transferee, or assignee, will issue a certificate of eligibility to transfer, sell, or assign the tax credits. Aggregate salary and compensation amounts for an individual in excess of \$2,000,000 shall not qualify for either of the tax credits against the BPT under this bill. In order to be eligible for one or both of the tax credits, the taxpayer must enter into an agreement with the state's Film Office. The Film Office, with the concurrence of the State Treasurer, will determine whether or not to enter into agreements with taxpayers. There is no cap on the amount of tax credits that can be issued.

The Department states it is unable to determine the exact fiscal impact at this time since it does not have any data on the number of motion picture production companies or the number of motion pictures filmed in the state, and cannot determine how many agreements would be

entered into with concurrence of the Film Office and State Treasurer. Any fiscal impact would begin in the second half of FY 2014.