

HB 655-FN - AS INTRODUCED

2015 SESSION

15-0597  
10/05

HOUSE BILL

**655-FN**

AN ACT

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

SPONSORS:

Rep. Eastman, Hills 28; Rep. Hogan, Hills 34; Rep. Baldasaro, Rock 5; Rep. Hannon, Straff 25; Rep. Murotake, Hills 32; Rep. Abramson, Rock 20; Rep. Rideout, Coos 7; Rep. P. Brown, Hills 31; Rep. Cohen, Hills 30; Rep. Biggie, Hills 23; Sen. Cataldo, Dist 6; Sen. Lasky, Dist 13; Sen. D'Allesandro, Dist 20; Sen. Avard, Dist 12

COMMITTEE:

Ways and Means

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ANALYSIS

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

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Fifteen*

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  
5 New Hampshire in connection with the filming or production of one or more motion pictures in the  
6 state 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 \$250,000 in eligible New Hampshire production expenses  
17 are incurred.

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

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

25            (e) The aggregate of tax credits to all taxpayers claiming the credit under this paragraph  
26 shall not exceed \$10,000,000 for any fiscal year. If the commissioner determines the aggregate limit  
27 is claimed in any fiscal year the commissioner shall grant each taxpayer claiming the credit the  
28 proportional share of the maximum aggregate credit amount.

29            (f)(1) All or any portion of tax credits issued in accordance with the provisions of this  
30 paragraph may be transferred, sold, or assigned to other taxpayers with tax liabilities under this

1 chapter. Any tax credit that is transferred, sold, or assigned and taken against taxes imposed by this  
2 chapter shall not be refundable. Any amount of the tax credit that exceeds the tax due for a taxable  
3 year may be carried forward by the transferee, buyer, or assignee to any of the 5 subsequent taxable  
4 years from which a certificate is initially issued by the department of revenue administration.

5 (2) An owner, transferee, or assignee desiring to make a transfer, sale, or assignment  
6 shall submit to the commissioner a statement which describes the amount of tax credit for which  
7 such transfer, sale, or assignment of tax credit is eligible. The owner, transferee, or assignee shall  
8 provide to the commissioner such information as he or she may require for the proper allocation of  
9 the credit. The commissioner shall provide to the taxpayer a certificate of eligibility to transfer, sell,  
10 or assign the tax credits. The commissioner shall not issue a certificate to a taxpayer that has an  
11 outstanding tax obligation with the state of New Hampshire in connection with any motion picture  
12 for any prior taxable year. No tax credit may be transferred, sold, or assigned without a certificate.

13 (g) In this paragraph:

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

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

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

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

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

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

36 (F) A requirement that the motion picture production company provide the film  
37 office with the information and independent certification the film office and the department deem

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1 necessary to verify production expenses and eligibility for the credits provided under this paragraph.

2 (G) A requirement that not later than 90 days after the end of the annual period,  
3 or after the last production expenses or costs are incurred in the production of a qualified production,  
4 an eligible motion picture production company shall apply to the department for a production tax  
5 credit voucher, and shall provide with such application such information and independent  
6 certification as the department may require pertaining to the amount of such company's production  
7 expenses or costs. Such independent certification shall be provided by an audit professional chosen  
8 from a list compiled by the department. If the department determines that such company is eligible  
9 to be issued a production tax credit voucher, the department shall enter on the voucher the amount  
10 of production expenses or costs that has been established to the satisfaction of the department and  
11 the amount of such company's credit under this paragraph. Notwithstanding anything in this  
12 definition to the contrary, a motion picture production company shall be eligible to submit an  
13 application to and enter an agreement with the film office for a motion picture, if principal  
14 photography began after December 31, 2014 but prior to the enactment of this paragraph, if all other  
15 requirements of this paragraph are satisfied.

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

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

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

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

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

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

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

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

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

13 (9) "Film office" means the New Hampshire film and television commission.

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

17 2 Prospective Repeal. RSA 77-A:5, XVI, relative to the credit for motion picture production, is  
18 repealed, provided that credits may be carried forward for 5 subsequent taxable years.

19 3 Effective Date.

20 I. Section 2 of this act shall take effect July 1, 2019.

21 II. The remainder of this act shall take effect July 1, 2015.

**HB 655-FN 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 Administration and Department of Cultural Resources state this bill, as introduced, may decrease state general and education trust fund revenue by an indeterminable amount in FY 2016 and each year thereafter, and may increase state expenditures by an indeterminable amount in FY 2016 and each year thereafter. There will be no fiscal impact on county and local revenue or expenditures.

**METHODOLOGY:**

The Department of Revenue Administration (DRA) states this bill establishes a tax credit against the Business Profits Tax (BPT) for motion picture expenditures made in New Hampshire (NH). The tax credit is equal to 25% of the total aggregate payroll paid by the production company that constitutes NH source income when total production expenses incurred in NH is equal to or exceeds \$50,000 during the taxable year. An additional tax 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 \$250,000 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. The tax credit is capped at \$2,000,000 per individual, and the aggregate of the credit to all taxpayers claiming the credit shall not exceed \$10,000,000 for any fiscal year. The tax credit program would be repealed effective July 1, 2019 (FY 2020).

In order to be eligible for one or both of the tax credits, the taxpayer must enter into an agreement with the Film Office. The Film Office, with the concurrence of the State Treasurer, will determine whether or not to enter into agreements with taxpayers. The DRA does not have any data on the number of motion picture production companies or the number of motion pictures filmed in the state as the state does not require any general filming permits or registration. The Department states they cannot administer this bill as written. There are also

additional costs to consider. The department would incur minimal additional administrative and IT costs to get the program up and running. Included in the unknown costs would be the adoption of rules, developing a certificate process for the transferring of credit, revising BPT tax forms, creating tax credits vouchers and developing a list of audit professionals to certify taxpayer's production expenses or costs. This bill would take effect July 1, 2015; however, production may begin as early as January 1, 2015. The tax credits are first available for use in the tax year in which the expenses occurred, which would mean that credit could be used for Tax Year 2015. The tax return for Calendar Year 2015 could be filed beginning in March of 2016, which would cause the fiscal impact to begin during the second half of FY 2016. However, should the taxpayers be calendar year filers and want to file on extension, the amount of credit taken would not be known until October or November of 2016, in FY 2017.

The Department of Cultural Resources reports states that have implemented tax credit programs for motion picture and television production have seen increased activity. While the Department cannot predict how many productions will take advantage of the tax credit and film their projects in New Hampshire, they do know that the number of inquiries looking at New Hampshire as a possible film location will increase dramatically. Although this bill does not contain an appropriation or establish a position, the Department states they would require additional funding for staff (Program Assistant II, LG 15), in-state travel, and marketing and promotion, the estimated impact is as follows –

	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
Salary	\$31,551	\$32,897	\$34,223	\$35,607
Benefits	\$23,065	\$24,405	\$25,813	\$27,305
Current Expenses	\$250	\$250	\$250	\$250
Equipment	\$5,000	\$0	\$0	\$0
Travel	\$1,000	\$1,000	\$1,000	\$1,000
Marketing/Promotion	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>	<u>\$5,000</u>
Total	\$65,866	\$63,552	\$66,286	\$69,162