

spotlight

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N.C.'s FILM TAX INCENTIVES

Good Old-Fashioned Corporate Welfare

KEY FACTS: • Before states began film tax incentives programs, North Carolina was a popular off-Hollywood destination for film crews.

• A right-to-work state with a pleasant climate and a range of natural features, North Carolina held significant advantages for movie makers.

• The incentives changed the industry, especially from 2002 to 2009, when the number of states with film incentives programs grew from four to 44.

• North Carolina's original film incentive program was greatly increased after 2009 when the governor and state officials were embarrassed to be outbid by Georgia for the Miley Cyrus feature "The Last Song."



CAROLINA CRONYISM

• The incentives' biggest beneficiaries are film production companies. Film offices benefit from having more chips at the bargaining table. Local studios, film crew workers, restaurants, hotels, hairdressers, etc., and pro-incentives politicians getting positive press benefit when productions come to town.

• Tourism is also said to be positively affected by filming. Tourism effects are fickle, unpredictable, and not very powerful, however.

• Many states are beginning to question their film incentives programs, and some have suspended or even ended them. Several studies have found film incentives return to state coffers mere pennies per dollar revenue spent.

• North Carolina's film tax credits are refundable, so when a film production company's tax liability is less than its credited amount, the state pays the difference directly to the company — a classic example of corporate welfare that was decried as "Choosing Movie Stars Over Teachers."

• Film incentives show that lower taxes and regulations attract industry.

• Recent research on North Carolina shows that cutting taxes and regulation across the board — rather than for just a favored industry — would be a powerful stimulus for the state's economy.

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In the years before state film incentives, North Carolina was a popular off-Hollywood destination for film crews. A right-to-work state with a pleasant climate and a range of features — beaches to mountains, rural vistas to urban cityscapes — North Carolina held significant advantages for movie makers, including comparatively low wages and rental rates. For example, in the dozen years from 1983 to 1994, North Carolina was the site of such major features as “Brainstorm,” “Firestarter,” “A Breed Apart,” “The Color Purple,” “Maximum Overdrive,” “Dirty Dancing,” “Weekend at Bernie’s,” “Bull Durham,” “The Handmaid’s Tale,” “Teenage Mutant Ninja Turtles,” “Billy Bathgate,” “Sleeping with the Enemy,” “The Last of the Mohicans,” “The Fugitive,” and “Forrest Gump,” among others.

In 1992, Louisiana became the first U.S. state to offer incentives to movie productions.¹ In 1997, the federal government of Canada as well as several Canadian provinces began offering film production tax incentive programs.² That same year Minnesota and Hawaii began offering them, and they were joined in 1999 by Missouri and Puerto Rico.³

The incentives changed the industry. What followed was a massive increase in states offering incentives: from 2002 to 2009, the number of U.S. states offering film incentives increased elevenfold, from four to 44.⁴ In a textbook race to the bottom, states’ interests in film incentives went from enticing film producers to choose to work inside their borders to trying to keep the other states from enticing them away. Even California added film incentives in 2009 in order to preserve its historical industry.⁵

Now North Carolina, which once relied successfully on a wealth of geographic features and a competitive economic environment to attract filmmakers, is one of the most generous states in nation in giving tax incentives to film production companies. How did we get here?

‘The Last Song,’ the last straw

When N.C. couldn’t sweeten deal, the Mouse walked. That was the pithy headline affixed to *The News & Observer’s* report of the embarrassment to the governor and state officials when Walt Disney Pictures decided in the final minutes to film “The Last Song” in Savannah, Georgia, instead of Wilmington.⁶

“The Last Song” was written by North Carolina author Nicholas Sparks. It was set in Wrightsville Beach, outside of Wilmington. And the film would star Miley Cyrus, a popular teenage star of the Disney Channel hit series “Hannah Montana.”⁷

Gov. Beverly Perdue had traveled to Wilmington for a press conference to announce that “The Last Song” would be filmed there. The day before, the N.C. Department of Revenue had ruled that Disney’s payment to Sparks for story rights failed to qualify for the state’s film incentives. The decision prevented Disney from obtaining an additional \$125,000 to \$250,000 refund from North Carolina. The governor’s office learned minutes before beginning the press conference that Disney executives were rethinking filming in N.C. The press conference was canceled.⁸

Not long after “The Last Song” went to Georgia, the N.C. General Assembly passed and Perdue signed legislation greatly increasing the state’s tax breaks and other incentives to film productions (see Figure 1, following page).

Georgia, winner of the Miley Cyrus bidding war, had also changed its film incentives in 2008 — after losing out on some film production.⁹ And while North Carolina had lost out on “The Last Song” despite its Wrightsville Beach setting, the state hosted production for the 2008 film “Leatherheads,” featuring Renee Zellweger and George Clooney, which was set in Duluth, Minnesota. Losing “Leatherheads” and other movies set in Minnesota was a major factor behind that state’s return to film incentives.¹⁰ Minnesota’s “Snowbate” program of cash rebates for movie productions, launched in 1997 as one of the earliest state film incentives programs, had been cut in 2003, but it was restored in 2006.¹¹ Since then it has been alternatively on the budgetary chopping block or on the increase, with Gov. Tim Pawlenty trying (unsuccessfully) to shut it down¹² and his successor, Gov. Mark Dayton, seeking to fund it more.¹³

‘Get Your Slice of the Pie!’

In June, at the Association of Film Commissioners International’s trade show Locations Show 2012, a featured speaker for the panel entitled “Production Incentive Experience – Get Your Slice of the Pie!” was Aaron Syrett, the director of the North Carolina Film Office.¹⁴ The implication is, of course, that the states are serving out production incentives to all comers — help yourselves!

The first and greatest beneficiaries of North Carolina’s film production incentives are, obviously, film productions. They benefit from them even when they don’t film in North Carolina. As illustrated above, the shrewdest among them can pit states against each other in negotiating the best giveaways, in turn causing politicians in “losing” states (Georgia, North Carolina, Minnesota, etc.) to up their incentives so as not to be outbid the next time.

The N.C. Film Office and regional film offices also benefit by having more chips at the bargaining table. Local studios, film crew workers, restaurants, hotels, hairdressers, and so forth benefit from having productions in town. Politicians who support the incentives benefit from positive press when productions come to town.

Tourism is also said to be positively affected by filming. Perhaps no clearer example of this is the heightened interest in Chimney Rock Park and Hickory Nut Falls area following the release of “The Last of the Mohicans,” in which the lush scenery was such a prominent feature. The park recently held a 20th anniversary celebration of the movie. “Bull Durham” is credited with helping spark interest in revitalizing downtown Durham.¹⁵

Nevertheless, tourism effects seem to be as fickle as public taste, not reliable and not predictable. The Tax Foundation study of film tax incentives noted that tourism from film productions could boost local economic activity, but “there is no reason — or evidence — that this correlation [between film production and tourism] is very large or powerful.”¹⁶ State officials, however, seem ready to predict tourism effects beyond reason. For example, during the height of the buzz over “The Hunger Games,” state officials made risible promises about the “major dividends from tourism” that the state would reap. Commerce Secretary Keith Crisco spoke of “fans eager to come see the

Figure 1. Development of North Carolina’s Film Tax Incentives



locations and go to the restaurants, neighborhoods, and other places the stars visited. The money they spend here will be a second payoff for taxpayers.”¹⁷ WRAL reported that “The state Division of Tourism, Film and Sports Development sees the same potential for ‘The Hunger Games’ as the wave of tourism the vampire romance ‘Twilight’ generated in Washington state in 2008.”¹⁸

But the main features in “The Hunger Games” were a privately owned abandoned mill village that is visible at a distance from the road but marked with “No Trespassing” signs, a reservoir lake for drinking water to which public access is limited and which can be seen only from a hiking trail, a futuristic city unrecognizable as uptown Charlotte, and basic woodland scenery in the publicly accessible Dupont State Forest.¹⁹ Any legitimate hopes for a tourism wave like that of “Twilight” (a movie series set in present-day Forks, Washington, not a distant, dystopian future) were likely dashed when the sequel to “The Hunger Games” was announced to film in Georgia.²⁰

‘Oh my gosh, I’m the happiest girl in the world!’

So said a Wake Forest woman, a fan of Oscar winner Colin Firth, after meeting the actor at a photo and autograph session in Raleigh on a set of “Arthur Newman, Golf Pro.”²¹

“I want to see Robert Downey Jr. walking by, with a cup of coffee in his hand,” a Raleigh native told a reporter outside the Epic Games studios in Raleigh as “Iron Man 3” began production. “That’s about it. That’s as much as I can hope for, really.”²²

Those two anecdotes highlight another strength of the film incentives — big Hollywood celebrities coming to our little neck of the woods. Call it the Glamour Factor. A chance to meet a movie star, catch a glimpse of one, tell others about how they were nearby, or point out a local spot featured on the big screen — those are positive benefits that North Carolinians receive from the film incentives (assuming the production would have gone elsewhere).

Table 1. N.C. Film Tax Incentives Per Year: A Snapshot
Total Spending, Total Tax Credits, and Top Productions

	<i>Total Spending</i>	<i>Cost of Credits</i>
2007 Grand Total	\$117,028,643	\$17,554,297
<i>Top Five Productions, 2007</i>		
One Tree Hill	\$27,001,745	\$4,050,262
Talladega Nights	\$25,349,625	\$3,802,444
The Great Observer	\$14,935,509	\$2,240,326
Leatherheads	\$11,237,812	\$1,685,672
Nights in Rodanthe	\$10,265,727	\$1,539,859
2008 Grand Total	\$76,935,681	\$11,234,458
<i>Top Five Productions, 2008</i>		
One Tree Hill	\$28,043,354	\$3,916,254
Blood Done Sign My Name	\$9,756,204	\$1,463,431
The Secret Life of Bees	\$6,474,500	\$971,175
Eastbound and Down	\$4,889,843	\$733,476
A Good Old Fashioned Orgy	\$4,754,028	\$713,104
2009 Grand Total	\$47,688,278	\$7,153,242
<i>Top Five Productions, 2009</i>		
One Tree Hill	\$33,356,477	\$5,003,472
Main Street	\$6,567,947	\$985,192
Provinces of Night	\$4,769,215	\$715,382
MadHouse	\$1,741,615	\$261,242
Red Dirt Racing	\$585,414	\$87,812
2010 Grand Total	\$10,225,875	\$2,389,178
<i>Top Five Productions, 2010</i>		
Bonanza Productions Inc	\$4,463,460	\$1,069,770
Eastbound and Down-Season 2	\$1,392,112	\$348,028
Playing With Guns	\$1,088,030	\$267,739
The Trial	\$990,004	\$156,501
Petty Blue	\$926,041	\$138,906
2011 Grand Total	\$121,379,192	\$30,344,798
<i>Top Five Productions, 2011</i>		
One Tree Hill	\$36,107,380	\$9,026,845
Journey 2: The Mysterious Island	\$20,285,289	\$5,071,322
Eastbound & Down	\$14,963,538	\$3,740,884
Piranha 3DD	\$7,107,478	\$1,776,870
Arthur Newman, Golf Pro	\$6,835,506	\$1,708,877

Source: N.C. Department of Revenue

Glamour plays well with civic pride and also makes for good headlines. Not every film production is glamorous, however, as state officials well know. The North Carolina Department of Revenue’s report on film production tax credits received in 2008 lists one production as “A Good Old Fashioned.”²³ The full name of the production is “A Good Old Fashioned Orgy.” The movie grossed \$154,604 across the U.S.²⁴ It received \$713,104 in credits from North Carolina — nearly five times the amount that people across the country gave it voluntarily.

‘Cut!’

As noted above, while it is one of the earliest state film incentives, Minnesota’s Snowbate program has been zeroed out before, and a recent governor (Pawlenty) sought to end it. Georgia’s “model” film incentives program came under question in 2011, when the state’s Special Council on Tax Reform and Fairness recommended that lawmakers end, among other things, Georgia’s film tax credits.²⁵

Many other states have gone farther than just questioning their film incentives (see below). Although 44 states, the District of Columbia, and Puerto Rico were offering film incentives in 2009, by 2011 only 36 were. Between 2009 and 2011, eight states — Arizona, Arkansas, Idaho, Indiana, Iowa, Maine, New Jersey, and South Dakota — either ended their film tax incentive programs, suspended them, or ceased appropriating funds for them. Many others (including Michigan and New Mexico, two of the other states with “model” film tax incentive programs) were either cutting back on film incentives or considering ending them. Other states have added to (Utah, Virginia) or solidified (Ohio, Pennsylvania, Wyoming) their film incentives.²⁶

Furthermore, international competitors for movie productions are also rethinking the idea. In 2012 the European Commission proposed capping film incentives in order to prevent European countries from an unsustainable spiral

Many States Are Rethinking Their Film Tax Incentives Programs

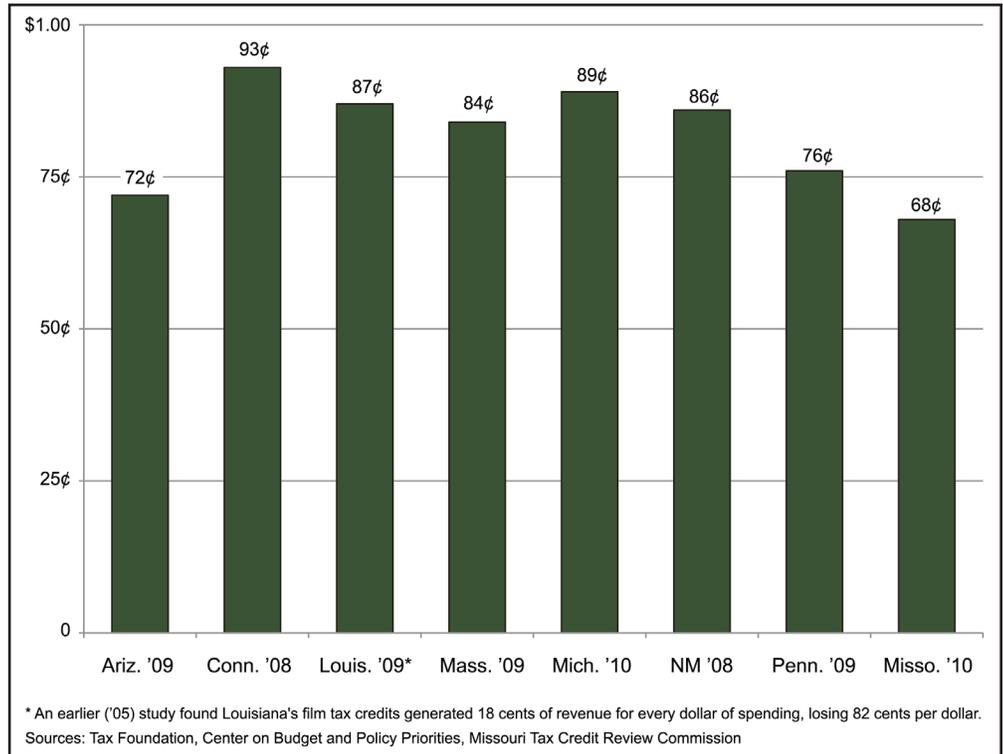
Several states have begun to question, suspend, or even eliminate their film tax incentives programs:²⁷

- **Arizona** ended its program after 2010.
- **Arkansas** appropriated no funds for its program for 2011 or 2012 but used \$1.4 million from the governor’s discretionary fund for the movie “Mud.” The state plans for an independent economic analysis of the program in 2013.²⁸
- **California’s** film tax credit continues to face debate. A report from the state’s Legislative Analyst Office said that the economic benefits from the program were overstated and not enough to compensate for the decline in tax revenues.²⁹
- **Connecticut** reduced the generosity of its credit.
- **Georgia’s** tax review commission recommended eliminating the program.
- **Hawaii** legislators have rejected efforts to expand their state’s program.
- **Idaho** appropriated no funds for its program for 2011 or 2012.
- **Indiana** allowed its program to sunset in 2012.³⁰
- **Iowa** suspended its program in 2009 after widespread fraud and abuse was discovered.
- **Kansas** suspended its program in 2009 and 2010 but reinstated it in 2011.³¹

- **Maine** appropriated no funds for its film incentives program for 2011.
- **Michigan** greatly reduced its highly generous film tax credit (a 42 percent subsidy) as part of a business tax overhaul.
- **Minnesota** Gov. Mark Dayton (DFL) restored money for the “Snowbate” program after his predecessor, Gov. Tim Pawlenty (R), sought to end it.
- **Missouri’s** tax credit review commission recommended ending the program.
- **New Jersey** suspended its program.
- **New Mexico** capped its program.
- **Pennsylvania’s** film tax credits faced budget cuts but were preserved by Gov. Tom Corbett (R).
- **Rhode Island** Gov. Lincoln Chaffee (I) is seeking to end that state’s program.
- **South Dakota** allowed its film incentives program to sunset in 2011.³²
- **Wisconsin** appropriated just \$500,000 for its program after concluding that providing tax credits to even a blockbuster production would likely have a negative fiscal impact.
- **Washington** legislators dropped their state’s program as part of a budget deal, but the governor reinstated it.³³

of increasing subsidies to compete with each other for film work.³⁴ In Canada, a September 2007 report by the Toronto Film Board found declining film work in Toronto owing in part to international competition in film credits (not just from the United States but also from, for example, New Zealand, South Africa, Poland, the Czech Republic, and Romania), but that “the most brutal competition” in film credits came from Canadian provinces such as British Columbia, Alberta, Nova Scotia, Saskatchewan, and Manitoba. The Toronto report called for a change in government policies to support specifically Toronto as a “centre of excellence” in film production.³⁵ In 2012 Saskatchewan scaled back its film incentives after culture minister Bill Hutchinson sought to end the province’s program altogether.³⁶

Figure 3. Estimated Revenue Lost Per Dollar of Revenue Spent on Film Incentives, Various Studies, Various States



North Carolina’s film incentives were set to sunset in 2014. The film industry in North Carolina had concerns that a Republican legislature would weaken the incentives in 2013, but a final-hour change to the House Finance Committee’s “technical corrections” bill extended the incentives through 2014 and got a vote switch from Rep. Susi Hamilton (D-Wilmington) to override the governor’s veto of a bill to allow shale gas exploration and hydraulic fracturing in North Carolina.³⁷

Pennies on the dollar

States began abandoning film incentives because, essentially, they are costly and ineffective ways to boost the states’ economies. Starry-eyed industry studies purport to show impressive returns in tax revenues from film tax incentives — e.g., Ernst & Young estimated New Mexico’s bringing in \$1.50 in state revenue for every dollar spent, and New York’s bringing in \$1.90³⁸ — but their methodology makes questionable assumptions, including that none of the economic activity would have happened without the incentives.³⁹ Third-party studies of state film incentives, many conducted for state agencies, have found that film incentives return to state coffers mere pennies on the dollar spent, ranging from a high of 32 cents per dollar in Missouri to just seven cents per dollar in Connecticut (see Figure 3).

For North Carolina’s expanded film incentive program, however, even the industry-sponsored Ernst & Young report estimated a return on investment of only 69 cents per dollar, despite assuming all film-related economic activity would occur because of the incentives.⁴⁰

One reason why the incentives ultimately cost states more revenue than they later reap is because there is no way to differentiate among productions that would only be made in a particular state because of the incentives and “free rider” productions that would be producing there anyway. Insofar as the incentives bring in productions that would

otherwise have been made elsewhere, however, all that has been accomplished is a highly visible shifting of production from one sector from another. In that respect, film production incentives are no better than other incentives programs.⁴¹

The same goes with their positive press coverage. As Todd Gabe and David Kraybill found in a 2002 study of state economic incentives in Ohio, while the incentives had very little to even negative effect on actual job growth, they did have a substantial, positive impact on announced job growth.⁴²

Another reason is that the jobs they create are temporary and short-term, often using imported rather than in-state talent, especially at the high-paying jobs (stars, stuntmen, technical specialties, etc.)⁴³ — compensation for local extras is minimum wage plus the thrill of being in a movie.⁴⁴ Incentives backers counter that with the incentives, the state helps create a steady flow of work;⁴⁵ however, the ongoing incentives battles between the states as well as competition from Canadian provinces and other nations (what *The Economist* called “a beggar-thy-neighbor trade war”⁴⁶) mean that no particular level of state incentives could be guaranteed to sustain a stable rate of production in the state.

Pure corporate welfare

Finally, one more reason states lose more revenue than they gain on film incentives is that they exempt movie productions from ancillary taxes, such as the general sales tax.⁴⁷ Prior to 2011, film production companies in North Carolina qualified as manufacturers, so purchases and rentals by the companies were exempt from the sales and use tax and subject to a 1 percent (\$80 maximum per article) privilege tax on mill machinery.⁴⁸ Beginning in 2011, however, a movie production company no longer had to pay the 6.9 percent corporate income tax on the film incentives it claimed.⁴⁹

Furthermore, in North Carolina, the film tax credits could exceed a film production company’s total tax liability, in which case the state would issue a “refund”; i.e., the state would end up cutting a check to the production company to film in North Carolina. Such a case is far from unusual — in fact, North Carolina often ends up giving money directly to film production companies. In 2008–10, North Carolina wrote refund checks to film productions worth over \$21 million.⁵⁰

North Carolina’s film tax credit is a refundable tax credit like the Earned Income Tax Credit for the working poor, except that the EITC is to help “low-and moderate-income working families.”⁵¹ It is a classic example of corporate welfare,⁵² a wealth transfer program from state taxpayers to, in this case, film production companies. Brian Balfour of Civitas Institute called it “Choosing Movie Stars Over Teachers.”⁵³

Jeanette Doran of the North Carolina Institute for Constitutional Law found direct payments to film production companies troubling for a bigger reason: they may be unconstitutional. The state law concerning the film tax credits “clearly and unambiguously authorizes the payment of public money to private film production companies as part of a so-called ‘refund’ of taxes reduced by tax credits,” while the North Carolina Constitution is “equally clear and unambiguous: no money may be drawn from the treasury except by appropriation,” which is an act of legislature and requires a specific amount.⁵⁴

Tax incentives that work

Beyond Cinema interviewed N.C. Film Office director Syrett at the AFCEI trade show and asked him what was the “turning point” for getting big pictures in North Carolina. Syrett’s answer: “The incentive. As simple as that. Now I wish I were able to say our awesome locations and some great salesmanship, but it’s the incentives.”⁵⁵

North Carolina’s experience with film tax incentives has shown that a lower tax and regulatory burden on the film industry results in more film production within her borders. The problem with the incentives is that the lower tax burden on film productions comes with keeping tax burdens high on nonfavored businesses and industries. Currying

favor with the cool kids by paying for their low rates with high rates on others erases whatever economic gain would have accrued through more film production.

As Sen. Thom Goolsby (R-Wilmington), a supporter of the film incentives, told WRAL,

“We’re one of the top-taxed states in the country. We have to pay bribes to get people here. It’s ridiculous,” Goolsby said. North Carolina will need to keep the film tax credit until it can re-work its tax code, he said.⁵⁶

The film incentives amount to a tacit admission by state officials that lower taxes and regulations would attract more industry. So why play favorites with industries? Why not just lower taxes and regulations altogether?

In May 2011 the Beacon Hill Institute at Suffolk University (BHI) modeled the effects of tax changes on the North Carolina economy. Using their N.C. State Tax Analysis Modeling Program — NC-STAMP — BHI calculated the impact of allowing North Carolina’s temporary 1-cent state sales tax and income tax surcharges to expire, lowering the state’s corporate tax rate by 2 percentage points, and changing the way the state calculates individual income taxes.

Cutting taxes would provide “powerful stimulus to the North Carolina economy,” BHI found. By leaving more financial resources in the hands of individuals and businesses, it would increase employment, creating thousands of new jobs. It would attract more investment from local as well as out-of-state businesses, leading to well over a billion dollars in new investment in two years. Though state revenue would initially drop, it would recover through greater growth of the state’s economy. This faster rate of growth would owe to new and permanent jobs created by the catchall incentive of lower taxes across the board, which would be unlike the film tax incentives’ temporary jobs and their shifts in production from other industries.⁵⁷

If North Carolina were to drop its film incentives and lower taxes and regulations across the board, how would it affect North Carolina’s film industry? The industry would face competition for film production without targeted tax credits (or direct “rebate” payments). The other amenities that the state offers would still be active, however, and they would be heightened by the better overall business climate.

For example, the home page of the Wilmington Regional Film Council opens with the following sales pitch:

When your location is in the Wilmington, NC region, you will find exactly what you need: experienced crew, production equipment and services, competitive incentives, a great climate, and the largest soundstage east of Los Angeles!

The Wilmington region has been an active production hub since the early 1980s and has the production infrastructure and experience to support big-budget feature films, TV series, independent films, commercials, and more. The Wilmington region accommodates on-location filming, with a variety of locations available. Let us show you our bridges, barns, small-town scenes, riverfront, shopping centers, beaches, playhouses, ocean, modern and traditional schools, marshlands, downtown buildings, turn-of-the-century architecture, college campuses, Victorian houses, fields, harbors, modern architecture, farms/farmlands, and more. For almost any type of production, you will find that Wilmington will meet your location needs.⁵⁸

In the reforms discussed in this section, the only change necessary would be from “competitive incentives” to “a highly competitive tax and regulatory climate.”

On the opposite end of the state, AdvantageWest Economic Development Group for the North Carolina Mountains boasts that, “With breathtaking mountain scenery, great city and small town locations, remarkable diversity in its environment, a heritage of filmmaking since the 1920s and a strong crew base, Western North Carolina is incredibly film friendly”⁵⁹ and cites the following “Additional State Advantages” to filming in North Carolina (additional, that is, to the film incentives):

- A Right-to-Work state welcoming union, non-union and mixed productions
- A strong, industry-tested reputation
- Beautiful and diverse locations
- Experienced crews
- A growing infrastructure
- A temperate climate with four distinct seasons that generate greenery, colorful foliage and snow
- No-hassle filming. Almost no standing fees, permits, or regulations, and where there are, the WNC Film Commission will help cut the red tape.⁶⁰

If it is truly the case that the film incentive is the sole driver of film work to North Carolina, then a more competitive tax and regulatory environment for everyone added to all those other amenities (minus the incentives) wouldn't be enough to keep a Tar Heel profile in filmmaking. That could not be a strong argument for state leaders to keep the incentives, however. If an industry is so unnatural to an area that only government intervention makes it feasible, that intervention comes at a decided cost to the state's overall economic growth.

The state's history shows that filmmaking is not unnatural to North Carolina. What's unnatural are state film incentives programs, which seem to have peaked in 2009⁶¹ as more and more states realize they are net money losers. North Carolina should get out of a "beggar-thy-neighbor trade war" for just film productions and instead compete for far more industry by cutting taxes and regulations for all.

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