

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## SENATE, No. 3275

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 26, 2024

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 3275 (1R).

As amended and reported, this bill revises certain provisions of the film and digital media content production tax credit program (program) to include eligibility for wages and salaries paid to persons who are not subject to tax under the “New Jersey Gross Income Tax Act” due to a tax reciprocity agreement with another state. The bill also makes certain changes to the availability of tax credits under the requirements of the program.

### *Availability of Certain Unused Aspire and Emerge Tax Credits*

This bill amends current law providing that certain unused tax credits authorized for award under the “New Jersey Aspire Program Act” (Aspire) and “Emerge Program Act” (Emerge) are to be made available for the provision of tax credits allowed under the program. Under current law, the unused tax credits are to be made available for tax credits allowed to New Jersey studio partners and New Jersey film-lease production companies. This bill amends the law so that tax credits are also to be made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies that are awarded tax credits under the program, which value is not to exceed \$300 million in fiscal year 2025.

Additionally, this bill provides that, of this \$300 million, up to \$100 million per year may be made available to taxpayers that are New Jersey studio partners and New Jersey film-lease production companies, at the discretion of the New Jersey Economic Development Authority (authority).

Under the bill, taxpayers that have applied for and have not been allowed a tax credit under the program, because the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for the tax period exceeds the amount of tax credits available in that year, are to have their applications approved by the authority, provided the applications otherwise satisfy program requirements. This modifies the requirement under current law that the authority allow tax credits, under

these circumstances, in the order in which the taxpayers submitted applications.

### *Eligibility Modifications*

Among other requirements under current law: (1) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are to be incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey; or (2) the qualified film production expenses of the taxpayer during the tax period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, are to exceed \$1 million per production. The bill requires that both conditions be met for reality shows.

In addition, the bill provides that for the purposes of calculating a taxpayer's total digital media content production expenses in New Jersey, for any application submitted on or after the effective date of this bill, qualified wage and salary payments made to full-time employees working on digital media are not to be deemed an expense incurred for services performed. Under certain conditions, a taxpayer may be allowed a tax credit in an amount equal to: (1) 40 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner; or (2) 35 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed by a qualified independent post-production company.

### *State Income Tax Reciprocity*

Under the program, the authority awards corporation business tax credits and gross income tax credits to eligible taxpayers based on the qualified film production expenses or qualified digital media content production expenses incurred for use within certain parts of the State. In addition to certain other eligibility requirements, at least 50 percent of the qualified digital media content production expenses incurred by a taxpayer are required to be for wages and salaries paid to full-time or full-time equivalent employees in New Jersey in order to qualify for the digital media content production tax credit.

Under current law, the terms "qualified film production expenses" and "qualified digital media content production expenses" are defined to include, among other expenses, the wages and salaries paid to individuals who are employed for the purposes of the production and who are subject to the tax imposed by the "New Jersey Gross Income Tax Act." Current law also defines the term "full-time or full-time equivalent employee" to include persons working not less than 35 hours per week, or any other standard of service accepted by custom or

practice as full-time or full-time equivalent employment, and whose wages and salaries are subject to withholding as provided in the “New Jersey Gross Income Tax Act.”

This bill expands the scope of qualified film production expenses and qualified digital media content production expenses to include wages and salaries that are paid to individuals who are employed for the purposes of the production and who are not subject to tax under the “New Jersey Gross Income Tax Act” due to the provisions of a tax reciprocity agreement with another state. The bill also provides that these expenses include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are subject to withholding but not subject to tax under the “New Jersey Gross Income Tax Act” due to the provisions of a tax reciprocity agreement with another state.

Additionally, the bill amends the definition of “full-time or full-time equivalent employee” to include otherwise eligible persons whose wages and salaries are not subject to tax under the “New Jersey Gross Income Tax Act” due to the provisions of a tax reciprocity agreement with another state.

Currently, the State has entered into a reciprocal income tax agreement with the Commonwealth of Pennsylvania. Under the terms of this agreement, compensation paid to Pennsylvania residents who are employed in New Jersey is not subject to tax under the “New Jersey Gross Income Tax Act.” Accordingly, the bill provides that wages and salaries paid to certain Pennsylvania residents may be included as qualified film production expenses and qualified digital media content production expenses, provided that these persons are employed in New Jersey for the purposes of the film or digital media content production.

#### *Modification of Definitions*

The bill amends the definition of “digital media content” to mean the following digitally formatted and distributed content, which content includes data or information created in analog form but reformatted in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; content containing text, graphics, or photographs; sound; and video.

The bill amends the definition of “film” to include certain reality shows if the production company has obtained a minimum six episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service. Under current law, a reality show is included in the definition of “film” if the production company of the reality show leases or otherwise occupies a production facility of a certain size for a certain period of time and invests a certain amount of money in the facility within a designated enterprise zone or UEZ-impacted business district.

The bill amends the definition of “highly compensated individual” to mean: (1) for New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of \$500,000 for the performance of services used directly in a production; and (2) for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of \$750,000 for the performance of services used directly in a production.

The bill amends the definition of “incurred in New Jersey” to provide that, under certain conditions, if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey, to the extent that the property is located in New Jersey during its use or consumption.

The bill amends the definition of “loan out company” to require, for applications submitted on or after the bill’s effective date, the personal service corporation or entity operating as a “loan out company” to be authorized to do business in New Jersey. The bill adds that for applications submitted prior to the bill’s effective date, a “loan out company” means a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production.

The bill amends the definition of “New Jersey film-lease production company” to require that, when a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, either: (1) 50 percent of a project’s total principal photography shoot days within New Jersey be shot at the New Jersey film-lease partner facility; or (2) 33 percent of the total qualified film production expenses of the project are incurred at the New Jersey film-lease partner facility. The bill provides additional requirements if a New Jersey film-lease partner facility has not yet received a certificate of occupancy. If the authority determines that an entity has failed to meet the qualifications of a New Jersey film-lease production company or is out of compliance, the bill authorizes the authority to recapture the portion of any tax credit awarded that had only been available by virtue of the entity’s status as a New Jersey film-lease production company.

The bill amends the definition of “New Jersey studio partner” to include an entity that controls distribution rights for a resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred. The bill also removes a requirement under current law that certain entities, in order to be considered New Jersey studio partners, are required to hold the copyright to certain works made for hire.

The bill amends the definition of “qualified digital media content production expenses” to include the costs for post-production,

including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering. The bill adds that the definition also includes wages and salaries paid or due, which are not subject to gross income tax due to reciprocity agreements with other states. In addition, the bill excludes costs included in an application submitted to the authority from this term and provides certain other exclusions based upon whether an application was submitted before or after the bill's effective date.

The bill also amends the definition of "qualified film production expenses" to conform with the provisions of the bill that provide for the treatment of wages and salaries not subject to gross income tax due to tax reciprocity agreements with other states.

Finally, as amended, this bill adds the definition of "independent post-production company" to mean a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films, which entity does not meet certain criteria listed in the bill.

#### *Tax Credit Eligibility and Diversity Plan*

Under current law, a taxpayer whose application is accompanied by a diversity plan may be approved for a tax credit equal to two percent of the qualified film production expenses or the digital media content production expenses of the taxpayer during a tax period commencing on or after July 1, 2018 but before July 1, 2034. This bill extends this period to before July 1, 2039 and increases the allowed tax credit percentage for digital media content production expenses from two percent to four percent.

Current law permits an increase in the percentage of tax credits allowed to four percent of qualified film production expenses or digital media content production expenses, provided that a diversity plan meets certain conditions. Pursuant to the bill, the conditions upon an increase to four percent are relevant only to qualified film production expenses.

To be eligible for such an increase in tax credit, under current law, a taxpayer is to include specific goals within a diversity plan that include hiring persons as performers who are: (1) members of ethnic minority groups that are underrepresented in film or digital media productions; (2) if credited, residents of New Jersey for at least 12 months preceding the beginning of filming or recording and, if uncredited, residents of any municipality in New Jersey in which filming occurs as part of the production for at least 12 months preceding the beginning of filming or recording at that location, or any surrounding municipality; and (3) members of a bona fide labor union representing film and television performers.

This bill amends these categories to include persons who are: (1) women or members of a minority group; (2) residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and

(3) members of a bona fide labor union representing film and television performers.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) remove a provision that would have amended the requirement under current law that at least \$2 million of the total digital media content production expenses of a taxpayer be incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey to be approved for a tax credit in an amount equal to 30 percent of the qualified digital media content production expenses of the taxpayer during a tax period;

(2) provide that for purposes of calculating a taxpayer's total digital media content production expenses in New Jersey, for any application submitted on or after the effective date of this bill, qualified wage and salary payments made to full-time employees working on digital media are not to be deemed an expense incurred for services performed;

(3) provide that certain taxpayers may be allowed a tax credit in an amount equal to 40 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

(4) provide that certain taxpayers may be allowed a tax credit in an amount equal to 35 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed by a qualified independent post-production company;

(5) provide that, beginning in fiscal year 2025, up to an additional \$100 million from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies may be made available from unused tax credits authorized for award under Aspire and Emerge, at the authority's discretion, for tax credits allowed under the program to New Jersey studio partners and New Jersey film-lease production companies;

(6) amend the definitions of the following terms for purposes of the program: "digital media content," "film," "highly compensated individual," "loan out company," "New Jersey film-lease production company," "New Jersey studio partner," and "qualified digital media content production expenses";

(7) add the definition for "independent post-production company";

(8) provide that a taxpayer whose application is accompanied by a diversity plan may be approved for a tax credit equal to two percent of the qualified film production expenses or four percent of the digital media content production expenses of the taxpayer during a tax period commencing on or after July 1, 2018 but before July 1, 2039. The

amendments extend the availability period for this incentive from the current provision ending the period before July 1, 2034. The amendments also increase the allowed tax credit percentage for digital media content production expenses from two percent to four percent, removing the requirement for a diversity plan to meet certain conditions in order for a taxpayer to be allowed a tax credit equal to four percent of the taxpayer's digital media content production expenses;

(9) require that a taxpayer include specific goals in a diversity plan, to qualify for a tax credit equal to four percent of the qualified film production expenses, that include hiring persons as performers who are: (1) women or members of a minority group; (2) residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and (3) members of a bona fide labor union representing film and television performers;

(10) update the title to reflect changes to the bill; and

(11) make technical changes to the bill.

**FISCAL IMPACT:**

Fiscal information for this bill is currently unavailable.