

SENATE, No. 2860

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED AUGUST 27, 2020

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Provides CBT and gross income tax credit for certain capital investments in film production facility.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** providing corporation business tax and gross income tax
2 credits for certain capital investments in a film production
3 facility, supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and
4 Title 54A of the New Jersey Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. a. A taxpayer, upon approval of an application to the
10 authority and the director, shall be allowed a credit against the tax
11 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
12 an amount equal to 30 percent of the taxpayer's capital investment
13 in a qualified production facility made during a privilege period
14 commencing on or after July 1, 2020 but before July 1, 2028.

15 b. No tax credit shall be allowed pursuant to this section for
16 any costs or expenses included in the calculation of any other tax
17 credit or exemption granted pursuant to a claim made on a tax
18 return filed with the director, or included in the calculation of an
19 award of business assistance or incentive, for a period of time that
20 coincides with the privilege period for which a tax credit authorized
21 pursuant to this section is allowed.

22 c. The order of priority in which the tax credit allowed
23 pursuant to this section and any other tax credits allowed by law
24 may be taken shall be as prescribed by the director. The amount of
25 the tax credit applied under this section against the tax imposed
26 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a
27 privilege period, when taken together with any other payments,
28 credits, deductions, and adjustments allowed by law shall not
29 reduce the tax liability of the taxpayer to an amount less than the
30 statutory minimum provided in subsection (e) of section 5 of
31 P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit
32 otherwise allowable under this section which cannot be applied for
33 the privilege period due to the limitations of this subsection or
34 under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may
35 be carried forward, if necessary, to the seven privilege periods
36 following the privilege period for which the tax credit was allowed.

37 d. A taxpayer, with an application for a tax credit provided for
38 in this section, may apply to the authority and the director for a tax
39 credit transfer certificate in lieu of the taxpayer being allowed any
40 amount of the tax credit against the tax liability of the taxpayer. The
41 tax credit transfer certificate, upon receipt thereof by the taxpayer
42 from the authority and the director, may be sold or assigned, in full
43 or in part, to any other taxpayer that may have a tax liability under
44 the "Corporation Business Tax Act (1945)," P.L.1945, c.162
45 (C.54:10A-1 et seq.), or the "New Jersey Gross Income Tax Act,"
46 N.J.S.54A:1-1 et seq., in exchange for private financial assistance to
47 be provided by the purchaser or assignee to the taxpayer that has
48 applied for and been granted the tax credit.

1 The tax credit transfer certificate provided to the taxpayer shall
2 include a statement waiving the taxpayer's right to claim that
3 amount of the tax credit against the tax imposed pursuant to section
4 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to
5 sell or assign. The sale or assignment of any amount of a tax credit
6 transfer certificate allowed under this section shall not be
7 exchanged for consideration received by the taxpayer of less than
8 75 percent of the transferred tax credit amount. Any amount of a tax
9 credit transfer certificate used by a purchaser or assignee against a
10 tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) shall be
11 subject to the same limitations and conditions that apply to the use
12 of a tax credit pursuant to this section. Any amount of a tax credit
13 transfer certificate obtained by a purchaser or assignee under this
14 section may be applied against the purchaser's or assignee's tax
15 liability under N.J.S.54A:1-1 et seq. and shall be subject to the
16 same limitations and conditions that apply to the use of a credit
17 pursuant to section 2 of P.L. , c. (C.)(pending before the
18 Legislature as this bill).

19 e. The value of tax credits, including tax credits allowed
20 through the granting of tax credit transfer certificates, approved by
21 the director and the authority pursuant to this section and pursuant
22 to section 2 of P.L. , c. (C.)(pending before the Legislature as
23 this bill) shall not exceed a cumulative total of \$100,000,000 in any
24 fiscal year to apply against the tax imposed pursuant to section 5 of
25 P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the
26 “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.

27 If the cumulative total amount of tax credits, and tax credit
28 transfer certificates, allowed to taxpayers for privilege periods or
29 taxable years commencing during a single fiscal year under this
30 section and section 2 of P.L. , c. (C.)(pending before the
31 Legislature as this bill) exceeds the amount of tax credits available
32 in that fiscal year, then taxpayers who have first applied for and
33 have not been allowed a tax credit or tax credit transfer certificate
34 amount for that reason shall be allowed, in the order in which they
35 have submitted an application, the amount of tax credit or tax credit
36 transfer certificate on the first day of the next succeeding fiscal year
37 in which tax credits and tax credit transfer certificates under this
38 section and section 2 of P.L. , c. (C.)(pending before the
39 Legislature as this bill) are not in excess of the amount of credits
40 available.

41 f. A business that is not a “taxpayer” as defined and used in the
42 “Corporation Business Tax Act (1945)” P.L.1945, c.162 (C.54:10A-
43 1 et seq.) and therefore is not directly allowed a credit under this
44 section, but is a business entity that is classified as a partnership for
45 federal income tax purposes and is ultimately owned by a business
46 entity that is a “corporation” as defined in subsection (c) of section
47 4 of P.L.1945, c.162 (C.54:10A-4), or a limited liability company
48 formed under the “Revised Uniform Limited Liability Company

1 Act,” P.L.2012, c.50 (C.42:2C-1 et seq.), or qualified to do business
2 in this State as a foreign limited liability company, with one
3 member, and is wholly owned by the business entity that is a
4 “corporation” as defined in subsection (c) of section 4 of P.L.1945,
5 c.162 (C.54:10A-4), but otherwise meets all other requirements of
6 this section, shall be considered an eligible applicant and “taxpayer”
7 as that term is used in this section.

8 g. As used in this section:

9 “Authority” means the New Jersey Economic Development
10 Authority;

11 “Capital investment” means expenses of at least \$30,000,000
12 incurred for acquisition and development of real estate, materials,
13 and start-up;

14 “Qualified production facility” means a film production facility
15 within the State of no less than 50,000 square feet of real property
16 and which contains at least one sound stage.

17
18 2. a. A taxpayer, upon approval of an application to the
19 authority and the director, shall be allowed a credit against the tax
20 otherwise due for the taxable year under the “New Jersey Gross
21 Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to 30
22 percent of the taxpayer’s capital investment in a qualified
23 production facility made during a taxable year commencing on or
24 after July 1, 2020 but before July 1, 2028.

25 b. No tax credit shall be allowed pursuant to this section for
26 any costs or expenses included in the calculation of any other tax
27 credit or exemption granted pursuant to a claim made on a tax
28 return filed with the director, or included in the calculation of an
29 award of business assistance or incentive, for a period of time that
30 coincides with the taxable year for which a tax credit authorized
31 pursuant to this section is allowed.

32 c. The order of priority in which the tax credit allowed
33 pursuant to this section and any other tax credits allowed by law
34 may be taken shall be as prescribed by the director. The amount of
35 the tax credit applied under this section against the tax imposed
36 pursuant to “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et
37 seq. for a taxable year, when taken together with any other
38 payments, credits, deductions, and adjustments allowed by law shall
39 not reduce the tax liability of the taxpayer to an amount less than
40 zero. The amount of the tax credit otherwise allowable under this
41 section which cannot be applied for the taxable year due to the
42 limitations of this section or other provisions of N.J.S.54A:1-1 et
43 seq. may be carried forward, if necessary, to the seven taxable years
44 following the taxable year for which the tax credit was allowed.

45 d. (1) A business entity that is classified as a partnership for
46 federal income tax purposes shall not be allowed a tax credit
47 pursuant to this section directly, but the amount of tax credit of a
48 taxpayer in respect of a distributive share of entity income, shall be

1 determined by allocating to the taxpayer that proportion of the tax
2 credit acquired by the entity that is equal to the taxpayer's share,
3 whether or not distributed, of the total distributive income or gain
4 of the entity for its taxable year ending within or with the taxpayer's
5 taxable year.

6 (2) A New Jersey S Corporation shall not be allowed a tax credit
7 pursuant to this section directly, but the amount of tax credit of a
8 taxpayer in respect of a pro rata share of S Corporation income,
9 shall be determined by allocating to the taxpayer that proportion of
10 the tax credit acquired by the New Jersey S Corporation that is
11 equal to the taxpayer's share, whether or not distributed, of the total
12 pro rata share of S Corporation income of the New Jersey S
13 Corporation for its privilege period ending within or with the
14 taxpayer's taxable year.

15 (3) A business entity that is not a gross income "taxpayer" as
16 defined and used in the "New Jersey Gross Income Tax Act,"
17 N.J.S.54A:1-1 et seq., and therefore is not directly allowed a credit
18 under this section, but otherwise meets all the other requirements of
19 this section, shall be considered an eligible applicant and "taxpayer"
20 as that term is used in this section, and the application of an
21 otherwise allowed credit amount shall be distributed to appropriate
22 gross income taxpayers pursuant to the other requirements of this
23 subsection.

24 e. A taxpayer, with an application for a tax credit provided for
25 in this section, may apply to the authority and the director for a tax
26 credit transfer certificate in lieu of the taxpayer being allowed any
27 amount of the tax credit against the tax liability of the taxpayer. The
28 tax credit transfer certificate, upon receipt thereof by the taxpayer
29 from the authority and the director, may be sold or assigned, in full
30 or in part, to any other taxpayer that may have a tax liability under
31 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or
32 the "Corporation Business Tax Act (1945)," P.L.1945, c.162
33 (C.54:10A-1 et seq.), in exchange for private financial assistance to
34 be provided by the purchaser or assignee to the taxpayer that has
35 applied for and been granted the tax credit.

36 The tax credit transfer certificate provided to the taxpayer shall
37 include a statement waiving the taxpayer's right to claim that
38 amount of the tax credit against the tax imposed pursuant to
39 N.J.S.54A:1-1 et seq. that the taxpayer has elected to sell or assign.
40 The sale or assignment of any amount of a tax credit transfer
41 certificate allowed under this section shall not be exchanged for
42 consideration received by the taxpayer of less than 75 percent of the
43 transferred tax credit amount. Any amount of a tax credit transfer
44 certificate used by a purchaser or assignee against a tax liability
45 under N.J.S.54A:1-1 et seq. shall be subject to the same limitations
46 and conditions that apply to the use of a tax credit pursuant to this
47 section. Any amount of a tax credit transfer certificate obtained by a
48 purchaser or assignee under this section may be applied against the

1 purchaser's or assignee's tax liability under P.L.1945, c.162
2 (C.54:10A-1 et seq.) and shall be subject to the same limitations
3 and conditions that apply to the use of a credit pursuant to section 1
4 of P.L. , c. (C.)(pending before the Legislature as this bill).

5 f. The value of tax credits, including tax credits allowed
6 through the granting of tax credit transfer certificates, approved by
7 the director and the authority pursuant to this section and pursuant
8 to section 1 of P.L. , c. (C.)(pending before the Legislature as
9 this bill) shall not exceed a cumulative total of \$100,000,000 in any
10 fiscal year to apply against the tax imposed pursuant to the "New
11 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the tax
12 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

13 If the cumulative total amount of tax credits, and tax credit
14 transfer certificates, allowed to taxpayers for privilege periods or
15 taxable years commencing during a single fiscal year under this
16 section and section 1 of P.L. , c. (C.)(pending before the
17 Legislature as this bill) exceeds the amount of tax credits available
18 in that fiscal year, then taxpayers who have first applied for and
19 have not been allowed a tax credit or tax credit transfer certificate
20 amount for that reason shall be allowed, in the order in which they
21 have submitted an application, the amount of tax credit or tax credit
22 transfer certificate on the first day of the next succeeding fiscal year
23 in which tax credits and tax credit transfer certificates under this
24 section and section 1 of P.L. , c. (C.)(pending before the
25 Legislature as this bill) are not in excess of the amount of credits
26 available.

27 g. As used in this section:

28 "Authority" means the New Jersey Economic Development
29 Authority;

30 "Capital investment" means expenses of at least \$30,000,000
31 incurred for acquisition and development of real estate, materials,
32 and start-up;

33 "Qualified production facility" means a film production facility
34 within the State of no less than 50,000 square feet of real property
35 and which contains at least one sound stage.

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37 3. Notwithstanding the provisions of the "Administrative
38 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
39 contrary, the New Jersey Economic Development Authority and the
40 Director of the Division of Taxation in the Department of the
41 Treasury may adopt immediately upon filing with the Office of
42 Administrative Law such rules and regulations as the authority or
43 the director shall determine to be necessary to effectuate the
44 purposes of P.L. , c. (C.)(pending before the Legislature as this
45 bill), which rules and regulations shall be effective for a period not
46 exceeding 360 days following the effective date of P.L. ,
47 c. (C.)(pending before the Legislature as this bill) and may
48 thereafter be amended, adopted, or readopted by the authority or the

1 director in accordance with the requirements of P.L.1968, c.410
2 (C.52:14B-1 et seq.).

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4 4. This act shall take effect immediately.

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STATEMENT

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9 This bill provides a tax credit for capital investment in a film
10 production facility to incentivize the growth of a permanent film
11 industry presence in New Jersey.

12 If a taxpayer makes at least a \$30 million capital investment in a
13 film production facility, the taxpayer will be eligible for a credit
14 against the corporate business tax or gross income tax. The credit
15 will be in the amount of 30 percent of the capital investment, and
16 can be claimed in the year it is earned or the seven subsequent
17 years. The credit can also be transferred to another taxpayer. The
18 bill caps the amount of credits granted per year at \$100 million.

19 To be eligible for the credit, the capital investment must be for a
20 production facility with at least 50,000 square feet of space and
21 which contains at least one sound stage. In addition, the capital
22 investment must be made during the years the Garden State Film
23 and Digital Media Jobs Act (P.L.2018, c.56 as amended by
24 P.L.2019, c.506) remains in effect (through July 1, 2028).