

SENATE, No. 4094

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED NOVEMBER 12, 2021

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS

Makes changes to film and digital media content production tax credit program.

CURRENT VERSION OF TEXT

As introduced.



S4094 WEINBERG

2

1 AN ACT concerning gross income and corporation business tax
2 credits for qualified film and digital media content production
3 expenses and amending P.L.2018, c.56.

4

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

7

8 1. Section 1 of P.L.2018, c.56 (C.54:10A-5.39b) is amended to
9 read as follows:

10 1. a. (1) A taxpayer, upon approval of an application to the
11 authority and the director, shall be allowed a credit against the tax
12 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
13 an amount equal to 35 percent of the qualified film production
14 expenses of the taxpayer during a privilege period commencing on
15 or after July 1, 2018 but before July 1, 2034, provided that:

16 (a) at least 60 percent of the total film production expenses,
17 exclusive of post-production costs, of the taxpayer are incurred for
18 services performed, and goods purchased through vendors
19 authorized to do business, in New Jersey, or the qualified film
20 production expenses of the taxpayer during the privilege period for
21 services performed, and goods purchased, through vendors
22 authorized to do business in New Jersey, exceed \$1,000,000 per
23 production;

24 (b) principal photography of the film commences within 180
25 days from the date of the original application for the tax credit;

26 (c) the film includes, when determined to be appropriate by the
27 commission, at no cost to the State, marketing materials promoting
28 this State as a film and entertainment production destination, which
29 materials shall include placement of a "Filmed in New Jersey" or
30 "Produced in New Jersey" statement, or an approved logo approved
31 by the commission, in the end credits of the film;

32 (d) the taxpayer submits a tax credit verification report prepared
33 by an independent certified public accountant licensed in this State
34 in accordance with subsection f. of this section; and

35 (e) the taxpayer complies with the withholding requirements
36 provided for payments to loan out companies and independent
37 contractors in accordance with subsection g. of this section.

38 (2) Notwithstanding the provisions of paragraph (1) of
39 subsection a. of this section to the contrary, the tax credit allowed
40 pursuant to this subsection against the tax imposed pursuant to
41 section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount
42 equal to 30 percent of the qualified film production expenses of the
43 taxpayer during a privilege period that are incurred for services
44 performed and tangible personal property purchased for use at a
45 sound stage or other location that is located in the State within a 30-

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 mile radius of the intersection of Eighth Avenue/Central Park West,
2 Broadway, and West 59th Street/Central Park South, New York,
3 New York.

4 b. (1) A taxpayer, upon approval of an application to the
5 authority and the director, shall be allowed a credit against the tax
6 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
7 an amount equal to: **【20】** 30 percent of the qualified digital media
8 content production expenses of the taxpayer during a privilege
9 period commencing on or after July 1, 2018 but before July 1, 2034,
10 provided that:

11 (a) at least \$2,000,000 of the total digital media content
12 production expenses of the taxpayer are incurred for services
13 performed, and goods purchased through vendors authorized to do
14 business, in New Jersey;

15 (b) at least 50 percent of the qualified digital media content
16 production expenses of the taxpayer are for wages and salaries paid
17 to full-time or full-time equivalent employees in New Jersey;

18 (c) the taxpayer submits a tax credit verification report prepared
19 by an independent certified public accountant licensed in this State
20 in accordance with subsection f. of this section; and

21 (d) the taxpayer complies with the withholding requirements
22 provided for payments to loan out companies and independent
23 contractors in accordance with subsection g. of this section.

24 (2) Notwithstanding the provisions of paragraph (1) of
25 subsection b. of this section to the contrary, the tax credit allowed
26 pursuant to this subsection against the tax imposed pursuant to
27 section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount
28 equal to **【25】** 35 percent of the qualified digital media content
29 production expenses of the taxpayer during a privilege period that
30 are incurred for services performed and tangible personal property
31 purchased through vendors whose primary place of business is
32 located in Atlantic, Burlington, Camden, Cape May, Cumberland,
33 Gloucester, Mercer, or Salem County.

34 c. No tax credit shall be allowed pursuant to this section for
35 any costs or expenses included in the calculation of any other tax
36 credit or exemption granted pursuant to a claim made on a tax
37 return filed with the director, or included in the calculation of an
38 award of business assistance or incentive, for a period of time that
39 coincides with the privilege period for which a tax credit authorized
40 pursuant to this section is allowed. The order of priority in which
41 the tax credit allowed pursuant to this section and any other tax
42 credits allowed by law may be taken shall be as prescribed by the
43 director. The amount of the tax credit applied under this section
44 against the tax imposed pursuant to section 5 of P.L.1945, c.162
45 (C.54:10A-5), for a privilege period, when taken together with any
46 other payments, credits, deductions, and adjustments allowed by
47 law shall not reduce the tax liability of the taxpayer to an amount

1 less than the statutory minimum provided in subsection (e) of
2 section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax
3 credit otherwise allowable under this section which cannot be
4 applied for the privilege period due to the limitations of this
5 subsection or under other provisions of P.L.1945, c.162 (C.54:10A-
6 1 et seq.) may be carried forward, if necessary, to the seven
7 privilege periods following the privilege period for which the tax
8 credit was allowed.

9 d. A taxpayer, with an application for a tax credit provided for
10 in subsection a. or subsection b. of this section, may apply to the
11 authority and the director for a tax credit transfer certificate in lieu
12 of the taxpayer being allowed any amount of the tax credit against
13 the tax liability of the taxpayer. The tax credit transfer certificate,
14 upon receipt thereof by the taxpayer from the authority and the
15 director, may be sold or assigned, in full or in part, to any other
16 taxpayer that may have a tax liability under the "Corporation
17 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or
18 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in
19 exchange for private financial assistance to be provided by the
20 purchaser or assignee to the taxpayer that has applied for and been
21 granted the tax credit. The tax credit transfer certificate provided to
22 the taxpayer shall include a statement waiving the taxpayer's right
23 to claim that amount of the tax credit against the tax imposed
24 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the
25 taxpayer has elected to sell or assign. The sale or assignment of any
26 amount of a tax credit transfer certificate allowed under this section
27 shall not be exchanged for consideration received by the taxpayer of
28 less than 75 percent of the transferred tax credit amount. Any
29 amount of a tax credit transfer certificate used by a purchaser or
30 assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1
31 et seq.) shall be subject to the same limitations and conditions that
32 apply to the use of a tax credit pursuant to subsection c. of this
33 section. Any amount of a tax credit transfer certificate obtained by
34 a purchaser or assignee under subsection a. or subsection b. of this
35 section may be applied against the purchaser's or assignee's tax
36 liability under N.J.S.54A:1-1 et seq. and shall be subject to the
37 same limitations and conditions that apply to the use of a credit
38 pursuant to subsections c. and d. of section 2 of P.L.2018, c.56
39 (C.54A:4-12b).

40 e. (1) The value of tax credits, including tax credits allowed
41 through the granting of tax credit transfer certificates, approved by
42 the director and the authority pursuant to subsection a. of this
43 section and pursuant to subsection a. of section 2 of P.L.2018, c.56
44 (C.54A:4-12b) to taxpayers, other than New Jersey studio partners
45 and New Jersey film-lease partners, shall not exceed a cumulative
46 total of \$100,000,000 in fiscal year 2019 and in each fiscal year
47 thereafter prior to fiscal year 2035 to apply against the tax imposed

1 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax
2 imposed pursuant to the "New Jersey Gross Income Tax Act,"
3 N.J.S.54A:1-1 et seq. In addition to the \$100,000,000 limitation on
4 the value of tax credits approved by the director for New Jersey
5 film-lease partners and the \$100,000,000 limitation on the value of
6 tax credits approved by the director for other taxpayers imposed by
7 this paragraph, the value of tax credits, including tax credits
8 allowed through the granting of tax credit transfer certificates,
9 approved by the director and the authority pursuant to subsection a.
10 of this section and pursuant to subsection a. of section 2 of
11 P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall
12 not exceed a cumulative total of \$100,000,000 in fiscal year 2021
13 and in each fiscal year thereafter prior to fiscal year 2034 to apply
14 against the tax imposed pursuant to section 5 of P.L.1945, c.162
15 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey
16 Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal
17 year 2025, in addition to the \$100,000,000 made available for New
18 Jersey studio partners pursuant to this paragraph, up to an additional
19 \$350,000,000 may be made available annually, in the discretion of
20 the authority, to New Jersey studio partners for the award of tax
21 credits, including tax credits allowed through the granting of tax
22 credit transfer certificates, pursuant to subsection a. of this section
23 and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b),
24 from the funds made available pursuant to subparagraph (i) of
25 paragraph (1) of subsection b. of section 98 of P.L.2020, c.156
26 (C.34:1B-362). In addition to the \$100,000,000 limitation on the
27 value of tax credits approved by the director for New Jersey studio
28 partners and the \$100,000,000 limitation on the value of tax credits
29 approved by the director for other taxpayers imposed by this
30 paragraph, the value of tax credits, including tax credits allowed
31 through the granting of tax credit transfer certificates, approved by
32 the director and the authority pursuant to subsection a. of this
33 section and pursuant to subsection a. of section 2 of P.L.2018, c.56
34 (C.54A:4-12b) to New Jersey film-lease partners shall not exceed a
35 cumulative total of \$100,000,000 in fiscal year 2021 and in each
36 fiscal year thereafter prior to fiscal year 2034 to apply against the
37 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)
38 and the tax imposed pursuant to the "New Jersey Gross Income Tax
39 Act," N.J.S.54A:1-1 et seq. Approvals made to New Jersey studio
40 partners and New Jersey film-lease partners shall be subject to
41 award agreements with the authority detailing obligations of the
42 awardee and outcomes relating to events of default, including, but
43 not limited to, recapture, forfeiture, and termination. If in any
44 privilege period, beginning following a date determined by the
45 authority, a New Jersey film-lease partner's annual average of
46 qualified film production expenses falls below \$50,000,000, the
47 authority shall reduce by 20 percent any tax credit award for a film

1 for which final documentation pursuant to N.J.A.C.19:31-21.7(c)
2 has been submitted, until a privilege period when the annual
3 average of qualified film production expenses has been restored to
4 \$50,000,000. The authority shall establish a non-binding,
5 administrative pre-certification process for potentially eligible
6 projects.

7 **【**If the cumulative total amount of tax credits, and tax credit
8 transfer certificates, allowed to taxpayers for privilege periods or
9 taxable years commencing during a single fiscal year under
10 subsection a. of this section and subsection a. of section 2 of
11 P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits
12 available in that fiscal year, then taxpayers who have first applied
13 for and have not been allowed a tax credit or tax credit transfer
14 certificate amount for that reason shall be allowed, in the order in
15 which they have submitted an application, the amount of tax credit
16 or tax credit transfer certificate on the first day of the next
17 succeeding fiscal year in which tax credits and tax credit transfer
18 certificates under subsection a. of this section and subsection a. of
19 section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the
20 amount of credits**】** Notwithstanding the limitations set forth in this
21 paragraph, if in any fiscal year the authority receives applications
22 for tax credits under subsection a. of this section and subsection a.
23 of section 2 of P.L.2018, c.56 (C.54A:4-12.b) in amounts exceeding
24 the total amount of tax credits available for the fiscal year, then the
25 authority may approve applications, in the order in which such
26 applications were submitted, for excess tax credits during the year
27 in which the application was submitted, provided that the amount of
28 excess credits shall be subtracted from the total amounts allowed
29 for the next following fiscal year in which credits are available, and
30 provided further that the taxpayer shall not claim the excess tax
31 credit or tax credit transfer certificate until the first day of the fiscal
32 year from which the credits were made available.

33 Notwithstanding any provision of paragraph (1) of this
34 subsection to the contrary, for any fiscal year in which the amount
35 of tax credits approved pursuant to this paragraph is less than the
36 cumulative total amount of tax credits permitted to be approved in
37 that fiscal year, the authority shall certify the amount of the
38 remaining tax credits available for approval in that fiscal year, and
39 shall increase the cumulative total amount of tax credits permitted
40 to be approved for New Jersey studio partners in the subsequent
41 fiscal year by the certified amount remaining from the prior fiscal
42 year. The authority shall also certify, for each fiscal year, the
43 amount of tax credits that were previously approved, but that the
44 taxpayer is not able to redeem or transfer to another taxpayer under
45 this section, and shall increase the cumulative total amount of tax
46 credits permitted to be approved for New Jersey studio partners in

1 the subsequent fiscal year by the amount of tax credits previously
2 approved, but not subject to redemption or transfer.

3 (2) The value of tax credits, including tax credits allowed
4 through the granting of tax credit transfer certificates, approved by
5 the authority and the director pursuant to subsection b. of this
6 section and pursuant to subsection b. of section 2 of P.L.2018, c.56
7 (C.54A:4-12b) shall not exceed a cumulative total of **[\$10,000,000]**
8 \$30,000,000 in fiscal year 2019 and in each fiscal year thereafter
9 prior to fiscal year 2035 to apply against the tax imposed pursuant
10 to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed
11 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
12 et seq.

13 **【If the total amount of tax credits and tax credit transfer**
14 **certificates allowed to taxpayers for privilege periods or taxable**
15 **years commencing during a single fiscal year under subsection b. of**
16 **this section and subsection b. of section 2 of P.L.2018, c.56**
17 **(C.54A:4-12.b) exceeds the amount of tax credits available in that**
18 **year, then taxpayers who have first applied for and have not been**
19 **allowed a tax credit or tax credit transfer certificate amount for that**
20 **reason shall be allowed, in the order in which they have submitted**
21 **an application, the amount of tax credit or tax credit transfer**
22 **certificate on the first day of the next succeeding fiscal year in**
23 **which tax credits and tax credit transfer certificates under**
24 **subsection b. of this section and subsection b. of section 2 of**
25 **P.L.2018, c.56 (C.54A:4-12.b) are not in excess of the amount of**
26 **credits】** Notwithstanding the limitations set forth in this paragraph,
27 if in any fiscal year the authority receives applications for tax
28 credits under subsection b. of this section and subsection b. of
29 section 2 of P.L.2018, c.56 (C.54A:4-12.b) in amounts exceeding
30 the total amount of tax credits available for the fiscal year, then the
31 authority may approve applications, in the order in which such
32 applications were submitted, for excess tax credits during the year
33 in which the application was submitted, provided that the amount of
34 excess credits shall be subtracted from the total amounts allowed
35 for the next following fiscal year in which credits are available, and
36 provided further that the taxpayer shall not claim the excess tax
37 credit or tax credit transfer certificate until the first day of the fiscal
38 year from which the credits were made available.

39 Notwithstanding any provision of this paragraph to the contrary,
40 for any fiscal year in which the amount of tax credits approved
41 pursuant to this paragraph is less than the cumulative total amount
42 of tax credits permitted to be approved in that fiscal year, the
43 authority shall certify the amount of the remaining tax credits
44 available for approval in that fiscal year, and shall increase the
45 cumulative total amount of tax credits permitted to be approved in
46 the subsequent fiscal year by the certified amount remaining from
47 the prior fiscal year. The authority shall also certify, for each fiscal

1 year, the amount of tax credits that were previously approved, but
2 that the taxpayer is not able to redeem or transfer to another
3 taxpayer under this section, and shall increase the cumulative total
4 amount of tax credits permitted to be approved in the subsequent
5 fiscal year by the amount of tax credits previously approved, but not
6 subject to redemption or transfer.

7 f. A taxpayer shall submit to the authority and the director a
8 report prepared by an independent certified public accountant
9 licensed in this State to verify the taxpayer's tax credit claim
10 following the completion of the production. The report shall be
11 prepared by the independent certified public accountant pursuant to
12 agreed upon procedures prescribed by the authority and the director,
13 and shall include such information and documentation as shall be
14 determined to be necessary by the authority and the director to
15 substantiate the qualified film production expenses or the qualified
16 digital media content production expenses of the taxpayer. A single
17 report with attachments deemed necessary by the authority shall be
18 submitted electronically. Upon receipt of the report, the authority
19 and the director shall review the findings of the independent
20 certified public accountant's report, and shall make a determination
21 as to the qualified film production expenses or the qualified digital
22 media content production expenses of the taxpayer. The authority's
23 and the director's review shall include, but shall not be limited to: a
24 review of all non-payroll qualified film production expense items
25 and non-payroll digital media content production expense items
26 over \$20,000; a review of 100 randomly selected non-payroll
27 qualified film production expense items and non-payroll digital
28 media content production expense items that are greater than
29 \$2,500, but less than \$20,000; a review of 100 randomly selected
30 non-payroll qualified film production expense items and non-
31 payroll digital media content production expense items that are less
32 than \$2,500; a review of the qualified wages for the 15 employees,
33 independent contractors, or loan-out companies with the highest
34 qualified wages; and a review of the qualified wages for 35
35 randomly selected employees, independent contractors, or loan-out
36 companies with qualified wages other than the 15 employees,
37 independent contractors, or loan-out companies with the highest
38 qualified wages. The taxpayer's qualified film production expenses
39 and digital media content production expenses shall be adjusted
40 based on any discrepancies identified for the reviewed non-payroll
41 qualified film production expense items, non-payroll digital media
42 content production expense items and qualified wages. The
43 taxpayer's qualified film production expenses and digital media
44 content production expenses also shall be adjusted based on the
45 projection of any discrepancies identified based on the review of
46 randomly selected expense items or wages pursuant to this
47 subsection to the extent that the discrepancies exceed one percent of

1 the total reviewed non-payroll qualified film production expense
2 items, non-payroll digital media content production expense items,
3 or qualified wages. The determination shall be provided in writing
4 to the taxpayer, and a copy of the written determination shall be
5 included in the filing of a return that includes a claim for a tax
6 credit allowed pursuant to this section.

7 g. A taxpayer shall withhold from each payment to a loan out
8 company or to an independent contractor an amount equal to 6.37
9 percent of the payment otherwise due. The amounts withheld shall
10 be deemed to be withholding of liability pursuant to the "New
11 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the
12 taxpayer shall be deemed to have the rights, duties, and
13 responsibilities of an employer pursuant to chapter 7 of Title 54A of
14 the New Jersey Statutes. The director shall allocate the amounts
15 withheld for a taxable year to the accounts of the individuals who
16 are employees of a loan out company in proportion to the
17 employee's payment by the loan out company in connection with a
18 trade, profession, or occupation carried on in this State or for the
19 rendition of personal services performed in this State during the
20 taxable year. A loan out company that reports its payments to
21 employees in connection with a trade, profession, or occupation
22 carried on in this State or for the rendition of personal services
23 performed in this State during a taxable year shall be relieved of its
24 duties and responsibilities as an employer pursuant to chapter 7 of
25 Title 54A of the New Jersey Statutes for the taxable year for any
26 payments relating to the payments on which the taxpayer withheld.

27 h. As used in this section:

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

30 "Business assistance or incentive" means "business assistance or
31 incentive" as that term is defined pursuant to section 1 of P.L.2007,
32 c.101 (C.54:50-39).

33 "Commission" means the Motion Picture and Television
34 Development Commission.

35 "Digital media content" means any data or information that is
36 produced in digital form, including data or information created in
37 analog form but reformatted in digital form, text, graphics,
38 photographs, animation, sound, and video content. "Digital media
39 content" shall not mean content offerings generated by the end user
40 (including postings on electronic bulletin boards and chat rooms);
41 content offerings comprised primarily of local news, events,
42 weather, or local market reports; public service content; electronic
43 commerce platforms (such as retail and wholesale websites);
44 websites or content offerings that contain obscene material as
45 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
46 content that are produced or maintained primarily for private,
47 industrial, corporate, or institutional purposes; or digital media

1 content acquired or licensed by the taxpayer for distribution or
2 incorporation into the taxpayer's digital media content.

3 "Film" means a feature film, a television series, or a television
4 show of 22 minutes or more in length, intended for a national
5 audience, or a television series or a television show of 22 minutes
6 or more in length intended for a national or regional audience,
7 including, but not limited to, a game show, award show, or other
8 gala event filmed and produced at a nonprofit arts and cultural
9 venue receiving State funding. "Film" shall not include a
10 production featuring news, current events, weather, and market
11 reports or public programming, talk show, or sports event, a
12 production that solicits funds, a production containing obscene
13 material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a
14 production primarily for private, industrial, corporate, or
15 institutional purposes, or a reality show, except if the production
16 company of the reality show owns, leases, or otherwise occupies a
17 production facility of no less than 20,000 square feet of real
18 property for a minimum term of 24 months, and invests no less than
19 \$3,000,000 in such a facility within a designated enterprise zone
20 established pursuant to the "New Jersey Urban Enterprise Zones
21 Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted
22 business district established pursuant to section 3 of P.L.2001,
23 c.347 (C.52:27H-66.2). "Film" shall not include an award show or
24 other gala event that is not filmed and produced at a nonprofit arts
25 and cultural venue receiving State funding.

26 "Full-time or full-time equivalent employee" means an individual
27 employed by the taxpayer for consideration for at least 35 hours a
28 week, or who renders any other standard of service generally
29 accepted by custom or practice as full-time or full-time equivalent
30 employment, whose wages are subject to withholding as provided in
31 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or
32 who is a partner of a taxpayer, who works for the partnership for at
33 least 35 hours a week, or who renders any other standard of service
34 generally accepted by custom or practice as full-time or full-time
35 equivalent employment, and whose distributive share of income,
36 gain, loss, or deduction, or whose guaranteed payments, or any
37 combination thereof, is subject to the payment of estimated taxes, as
38 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
39 et seq. "Full-time or full-time equivalent employee" shall not
40 include an individual who works as an independent contractor or on
41 a consulting basis for the taxpayer.

42 "Highly compensated individual" means an individual who
43 directly or indirectly receives compensation in excess of \$500,000
44 for the performance of services used directly in a production. An
45 individual receives compensation indirectly when the taxpayer pays
46 a loan out company that, in turn, pays the individual for the
47 performance of services.

1 "Incurred in New Jersey" means, for any application submitted
2 after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.),
3 pursuant to which a tax credit has not been allowed prior to the
4 effective date of P.L.2021, c.160, service performed within New
5 Jersey and tangible personal property used or consumed in New
6 Jersey. A service is performed in New Jersey to the extent that the
7 individual performing the service is physically located in New
8 Jersey while performing the service. Notwithstanding where the
9 property is delivered or acquired, rented tangible property is used or
10 consumed in New Jersey to the extent that the property is located in
11 New Jersey during its use or consumption and is rented from a
12 vendor authorized to do business in New Jersey or the film
13 production company provides to the authority the vendor's
14 information in a form and manner prescribed by the authority.
15 Purchased tangible property is not used and consumed in New
16 Jersey unless it is purchased from a vendor authorized to do
17 business in New Jersey and is delivered to or acquired within New
18 Jersey; provided, however, that if a production is also located in
19 another jurisdiction, the purchased tangible property is used and
20 consumed in New Jersey if the acquisition and delivery of
21 purchased tangible property is located in either New Jersey or
22 another jurisdiction where the production takes place.

23 "Independent contractor" means an individual treated as an
24 independent contractor for federal and State tax purposes who is
25 contracted with by the taxpayer for the performance of services
26 used directly in a production.

27 "Loan out company" means a personal service corporation or
28 other entity that is contracted with by the taxpayer to provide
29 specified individual personnel, such as artists, crew, actors,
30 producers, or directors for the performance of services used directly
31 in a production. "Loan out company" shall not include entities
32 contracted with by the taxpayer to provide goods or ancillary
33 contractor services such as catering, construction, trailers,
34 equipment, or transportation.

35 "New Jersey film-lease partner" means a taxpayer, including any
36 taxpayer that is a member of a combined group under P.L.2018,
37 c.131 (C.54:10A-4.11), that has made a commitment to lease or
38 acquire all or part of a New Jersey production facility **【with】** ,
39 which leased or acquired space shall have an aggregate square
40 footage of at least 50,000 square feet, **【which includes】** including a
41 sound stage and production support space, such as production
42 offices or a backlot, for a period of five or more successive years
43 and commits to spend, on a separate-entity basis or in the aggregate
44 with other members of the taxpayer's combined group, an annual
45 average of \$50,000,000 of qualified film production expenses over
46 the period of at least five but not to exceed 10 years.

1 "New Jersey studio partner" means a film production company
2 that has made a commitment to produce films or commercial
3 audiovisual products in New Jersey and has developed, purchased,
4 or executed a 10-year contract to lease a production facility of
5 250,000 square feet or more as a "transformative project" pursuant
6 to section 65 of P.L.2020, c.156 (C.34:1B-333). No more than
7 three film production companies may be designated as a New Jersey
8 studio partner.

9 "Partnership" means an entity classified as a partnership for
10 federal income tax purposes.

11 "Post-production costs" means the costs of the phase of
12 production of a film that follows principal photography, in which
13 raw footage is cut and assembled into a finished film with sound
14 synchronization and visual effects.

15 "Pre-production costs" means the costs of the phase of
16 production of a film that precedes principal photography, in which a
17 detailed schedule and budget for the production is prepared, the
18 script and location is finalized, and contracts with vendors are
19 negotiated.

20 "Qualified digital media content production expenses" means an
21 expense incurred in New Jersey for the production of digital media
22 content. "Qualified digital media content production expenses"
23 shall include but not be limited to: wages and salaries of individuals
24 employed in the production of digital media content on which the
25 tax imposed by the "New Jersey Gross Income Tax Act,"
26 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
27 computer software and hardware, data processing, visualization
28 technologies, sound synchronization, editing, and the rental of
29 facilities and equipment. Payment made to a loan out company or
30 to an independent contractor shall not be deemed a "qualified digital
31 media content production expense" unless the payment is made in
32 connection with a trade, profession, or occupation carried on in this
33 State or for the rendition of personal services performed in this
34 State and the taxpayer has made the withholding required pursuant
35 to subsection g. of this section. "Qualified digital media content
36 production expenses" shall not include expenses incurred in
37 marketing, promotion, or advertising digital media or other costs
38 not directly related to the production of digital media content.
39 Costs related to the acquisition or licensing of digital media content
40 by the taxpayer for distribution or incorporation into the taxpayer's
41 digital media content shall not be deemed "qualified digital media
42 content production expenses."

43 "Qualified film production expenses" means an expense incurred
44 in New Jersey for the production of a film including pre-production
45 costs and post-production costs incurred in New Jersey. "Qualified
46 film production expenses" shall include but not be limited to:
47 wages and salaries of individuals employed in the production of a

1 film on which the tax imposed by the "New Jersey Gross Income
2 Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the
3 costs for tangible personal property used, and services performed,
4 directly and exclusively in the production of a film, such as
5 expenditures for film production facilities, props, makeup,
6 wardrobe, film processing, camera, sound recording, set
7 construction, lighting, shooting, editing, and meals. Payment made
8 to a loan out company or to an independent contractor shall not be
9 deemed a "qualified film production expense" unless the payment is
10 made in connection with a trade, profession, or occupation carried
11 on in this State or for the rendition of personal services performed
12 in this State and the taxpayer has made the withholding required
13 pursuant to subsection g. of this section. "Qualified film production
14 expenses" shall not include: expenses incurred in marketing or
15 advertising a film; and payment in excess of \$500,000 to a highly
16 compensated individual for costs for a story, script, or scenario used
17 in the production of a film and wages or salaries or other
18 compensation for writers, directors, including music directors,
19 producers, and performers, other than background actors with no
20 scripted lines, except as follows:

21 (1) for a New Jersey studio partner that incurs more than
22 \$15,000,000, but less than \$50,000,000, in qualified film production
23 expenses in the State, an amount, not to exceed \$15,000,000, of the
24 wages or salaries or other compensation for writers, directors,
25 including music directors, producers, and performers, other than
26 background actors with no scripted lines, shall constitute qualified
27 film production expenses;

28 (2) for a New Jersey studio partner that incurs \$50,000,000 or
29 more, but less than \$100,000,000, in qualified film production
30 expenses in the State, an amount, not to exceed \$25,000,000, of the
31 wages or salaries or other compensation for writers, directors,
32 including music directors, producers, and performers, other than
33 background actors with no scripted lines, shall constitute qualified
34 film production expenses;

35 (3) for a New Jersey studio partner that incurs \$100,000,000 or
36 more, but less than \$150,000,000, in qualified film production
37 expenses in the State, an amount, not to exceed \$40,000,000, of the
38 wages or salaries or other compensation for writers, directors,
39 including music directors, producers, and performers, other than
40 background actors with no scripted lines, shall constitute qualified
41 film production expenses; **[and]**

42 (4) for a New Jersey studio partner that incurs \$150,000,000 or
43 more in qualified film production expenses in the State, an amount,
44 not to exceed \$60,000,000, of the wages or salaries or other
45 compensation for writers, directors, including music directors,
46 producers, and performers, other than background actors with no

1 scripted lines, shall constitute qualified film production expenses;
2 and

3 (5) for a New Jersey film-lease partner, an amount, not to
4 exceed \$15,000,000, of the payments in excess of \$500,000 to each
5 highly compensated individual for costs for a story, script, or
6 scenario used in the production of a film and wages or salaries or
7 other compensation for writers, directors, including music directors,
8 producers, and performers, other than background actors with no
9 scripted lines, shall constitute qualified film production expenses.

10 "Total digital media content production expenses" means costs
11 for services performed and property used or consumed in the
12 production of digital media content.

13 "Total film production expenses" means costs for services
14 performed and tangible personal property used or consumed in the
15 production of a film.

16 i. A business that is not a "taxpayer" as defined and used in the
17 "Corporation Business Tax Act (1945)," P.L.1945, c.162
18 (C.54:10A-1 et seq.) and therefore is not directly allowed a credit
19 under this section, but is a business entity that is classified as a
20 partnership for federal income tax purposes and is ultimately owned
21 by a business entity that is a "corporation" as defined in subsection
22 (c) of section 4 of P.L.1945, c.162 (C.54:10A-4), or a limited
23 liability company formed under the "Revised Uniform Limited
24 Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.), or
25 qualified to do business in this State as a foreign limited liability
26 company, with one member, and is wholly owned by the business
27 entity that is a "corporation" as defined in subsection (c) of section
28 4 of P.L.1945, c.162 (C.54:10A-4), but otherwise meets all other
29 requirements of this section, shall be considered an eligible
30 applicant and "taxpayer" as that term is used in this section.
31 (cf: P.L.2021, c.160, s.58)

32
33 2. Section 2 of P.L.2018, c.56 (C.54A:4-12b) is amended to
34 read as follows:

35 2. a. (1) A taxpayer, upon approval of an application to the
36 authority and the director, shall be allowed a credit against the tax
37 otherwise due for the taxable year under the "New Jersey Gross
38 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 35
39 percent of the qualified film production expenses of the taxpayer
40 during a taxable year commencing on or after July 1, 2018 but
41 before July 1, 2034, provided that:

42 (a) at least 60 percent of the total film production expenses,
43 exclusive of post-production costs, of the taxpayer are incurred for
44 services performed, and goods purchased through vendors
45 authorized to do business, in New Jersey, or the qualified film
46 production expenses of the taxpayer during the taxable year for
47 services performed, and goods purchased, through vendors

1 authorized to do business in New Jersey, exceed \$1,000,000 per
2 production;

3 (b) principal photography of the film commences within 180
4 days from the date of the original application for the tax credit;

5 (c) the film includes, when determined to be appropriate by the
6 commission, at no cost to the State, marketing materials promoting
7 this State as a film and entertainment production destination, which
8 materials shall include placement of a "Filmed in New Jersey" or
9 "Produced in New Jersey" statement, or an appropriate logo
10 approved by the commission, in the end credits of the film;

11 (d) the taxpayer submits a tax credit verification report prepared
12 by an independent certified public accountant licensed in this State
13 in accordance with subsection g. of this section; and

14 (e) the taxpayer complies with the withholding requirements
15 provided for payments to loan out companies and independent
16 contractors in accordance with subsection h. of this section.

17 (2) Notwithstanding the provisions of paragraph (1) of
18 subsection a. of this section to the contrary, the tax credit allowed
19 pursuant to this subsection against the tax otherwise due for the
20 taxable year under the "New Jersey Gross Income Tax Act,"
21 N.J.S.54A:1-1 et seq., shall be in an amount equal to 30 percent of
22 the qualified film production expenses of the taxpayer during a
23 taxable year that are incurred for services performed and tangible
24 personal property purchased for use at a sound stage or other
25 location that is located in the State within a 30-mile radius of the
26 intersection of Eighth Avenue/Central Park West, Broadway, and
27 West 59th Street/Central Park South, New York, New York.

28 b. (1) A taxpayer, upon approval of an application to the
29 authority and the director, shall be allowed a credit against the tax
30 otherwise due for the taxable year under the "New Jersey Gross
31 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to:
32 **[20]** 30 percent of the qualified digital media content production
33 expenses of the taxpayer during a taxable year commencing on or
34 after July 1, 2018 but before July 1, 2034, provided that:

35 (a) at least \$2,000,000 of the total digital media content
36 production expenses of the taxpayer are incurred for services
37 performed, and goods purchased through vendors authorized to do
38 business, in New Jersey;

39 (b) at least 50 percent of the qualified digital media content
40 production expenses of the taxpayer are for wages and salaries paid
41 to full-time or full-time equivalent employees in New Jersey;

42 (c) the taxpayer submits a tax credit verification report prepared
43 by an independent certified public accountant licensed in this State
44 in accordance with subsection g. of this section; and

45 (d) the taxpayer complies with the withholding requirements
46 provided for payments to loan out companies and independent
47 contractors in accordance with subsection h. of this section.

1 (2) Notwithstanding the provisions of paragraph (1) of
2 subsection b. of this section to the contrary, the tax credit allowed
3 pursuant to this subsection against the tax otherwise due for the
4 taxable year under the "New Jersey Gross Income Tax Act,"
5 N.J.S.54A:1-1 et seq., shall be in an amount equal to **[25]** 35
6 percent for the qualified digital media content production expenses
7 of the taxpayer during a taxable year that are incurred for services
8 performed and tangible personal property purchased through
9 vendors whose primary place of business is located in Atlantic,
10 Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer,
11 or Salem County.

12 c. No tax credit shall be allowed pursuant to this section for
13 any costs or expenses included in the calculation of any other tax
14 credit or exemption granted pursuant to a claim made on a tax
15 return filed with the director, or included in the calculation of an
16 award of business assistance or incentive, for a period of time that
17 coincides with the taxable year for which a tax credit authorized
18 pursuant to this section is allowed. The order of priority in which
19 the tax credit allowed pursuant to this section and any other tax
20 credits allowed by law may be taken shall be as prescribed by the
21 director. The amount of the tax credit applied under this section
22 against the tax otherwise due under the "New Jersey Gross Income
23 Tax Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken
24 together with any other payments, credits, deductions, and
25 adjustments allowed by law shall not reduce the tax liability of the
26 taxpayer to an amount less than zero. The amount of the tax credit
27 otherwise allowable under this section which cannot be applied for
28 the taxable year due to the limitations of this subsection or under
29 other provisions of N.J.S.54A:1-1 et seq., may be carried forward, if
30 necessary, to the seven taxable years following the taxable year for
31 which the tax credit was allowed.

32 d. (1) A business entity that is classified as a partnership for
33 federal income tax purposes shall not be allowed a tax credit
34 pursuant to this section directly, but the amount of tax credit of a
35 taxpayer in respect of a distributive share of entity income, shall be
36 determined by allocating to the taxpayer that proportion of the tax
37 credit acquired by the entity that is equal to the taxpayer's share,
38 whether or not distributed, of the total distributive income or gain
39 of the entity for its taxable year ending within or with the taxpayer's
40 taxable year.

41 (2) A New Jersey S Corporation shall not be allowed a tax credit
42 pursuant to this section directly, but the amount of tax credit of a
43 taxpayer in respect of a pro rata share of S Corporation income,
44 shall be determined by allocating to the taxpayer that proportion of
45 the tax credit acquired by the New Jersey S Corporation that is
46 equal to the taxpayer's share, whether or not distributed, of the total
47 pro rata share of S Corporation income of the New Jersey S

1 Corporation for its privilege period ending within or with the
2 taxpayer's taxable year.

3 A business entity that is not a gross income "taxpayer" as defined
4 and used in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
5 et seq., and therefore is not directly allowed a credit under this
6 section, but otherwise meets all the other requirements of this
7 section, shall be considered an eligible applicant and "taxpayer" as
8 that term is used in this section, and the application of an otherwise
9 allowed credit amount shall be distributed to appropriate gross
10 income taxpayers pursuant to the other requirements of this
11 subsection.

12 e. A taxpayer, with an application for a tax credit provided for
13 in subsection a. or subsection b. of this section, may apply to the
14 authority and the director for a tax credit transfer certificate in lieu
15 of the taxpayer being allowed any amount of the tax credit against
16 the tax liability of the taxpayer. The tax credit transfer certificate,
17 upon receipt thereof by the taxpayer from the authority and the
18 director, may be sold or assigned, in full or in part, to any other
19 taxpayer that may have a tax liability under the "New Jersey Gross
20 Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation
21 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), in
22 exchange for private financial assistance to be provided by the
23 purchaser or assignee to the taxpayer that has applied for and been
24 granted the tax credit. The tax credit transfer certificate provided to
25 the taxpayer shall include a statement waiving the taxpayer's right
26 to claim that amount of the tax credit against the tax imposed
27 pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to
28 sell or assign. The sale or assignment of any amount of a tax credit
29 transfer certificate allowed under this section shall not be
30 exchanged for consideration received by the taxpayer of less than
31 75 percent of the transferred tax credit amount. Any amount of a
32 tax credit transfer certificate used by a purchaser or assignee against
33 a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the
34 same limitations and conditions that apply to the use of a tax credit
35 pursuant to subsections c. and d. of this section. Any amount of a
36 tax credit transfer certificate obtained by a purchaser or assignee
37 under subsection e. of this section may be applied against the
38 purchaser's or assignee's tax liability under P.L.1945, c.162
39 (C.54:10A-1 et seq.) and shall be subject to the same limitations
40 and conditions that apply to the use of a credit pursuant to
41 subsection c. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b).

42 f. (1) The value of tax credits, including tax credits allowed
43 through the granting of tax credit transfer certificates, approved by
44 the director and the authority pursuant to subsection a. of this
45 section and pursuant to subsection a. of section 1 of P.L.2018, c.56
46 (C.54:10A-5.39b) to taxpayers, other than New Jersey studio
47 partners and New Jersey film-lease partners, shall not exceed a

1 cumulative total of \$100,000,000 in fiscal year 2019 and in each
2 fiscal year thereafter prior to fiscal year 2035 to apply against the
3 tax imposed pursuant to the "New Jersey Gross Income Tax Act,"
4 N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162
5 (C.54:10A-5). In addition to the \$100,000,000 limitation on the
6 value of tax credits approved by the director for New Jersey film-
7 lease partners and the \$100,000,000 limitation on the value of tax
8 credits approved by the director for other taxpayers imposed by this
9 paragraph, the value of tax credits, including tax credits allowed
10 through the granting of tax credit transfer certificates, approved by
11 the director and the authority pursuant to subsection a. of this
12 section and pursuant to subsection a. of section 1 of P.L.2018, c.56
13 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a
14 cumulative total of \$100,000,000 in fiscal year 2021 and in each
15 fiscal year thereafter prior to fiscal year 2034 to apply against the
16 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)
17 and the tax imposed pursuant to the "New Jersey Gross Income Tax
18 Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2025, in
19 addition to the \$100,000,000 made available for New Jersey studio
20 partners pursuant to this paragraph, up to an additional
21 \$350,000,000 may be made available annually, in the discretion of
22 the authority, to New Jersey studio partners for the award of tax
23 credits, including tax credits allowed through the granting of tax
24 credit transfer certificates, pursuant to subsection a. of this section
25 and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b),
26 from the funds made available pursuant to subparagraph (i) of
27 paragraph (1) of subsection b. of section 98 of P.L.2020, c.156
28 (C.34:1B-362). In addition to the \$100,000,000 limitation on the
29 value of tax credits approved by the director for New Jersey studio
30 partners and the \$100,000,000 limitation on the value of tax credits
31 approved by the director for other taxpayers imposed by this
32 paragraph, the value of tax credits, including tax credits allowed
33 through the granting of tax credit transfer certificates, approved by
34 the director and the authority pursuant to subsection a. of this
35 section and pursuant to subsection a. of section 1 of P.L.2018, c.56
36 (C.54:10A-5.39b) to New Jersey film-lease partners shall not
37 exceed a cumulative total of \$100,000,000 in fiscal year 2021 and
38 in each fiscal year thereafter prior to fiscal year 2034 to apply
39 against the tax imposed pursuant to section 5 of P.L.1945, c.162
40 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey
41 Gross Income Tax Act," N.J.S.54A:1-1 et seq. Approvals made to
42 New Jersey studio partners and New Jersey film-lease partners shall
43 be subject to award agreements with the authority detailing
44 obligations of the awardee and outcomes relating to events of
45 default, including, but not limited to, recapture, forfeiture, and
46 termination. If in any taxable year, beginning following a date
47 determined by the authority, a New Jersey film-lease partner's

1 annual average of qualified film production expenses falls below
2 \$50,000,000, the authority shall reduce by 20 percent any tax credit
3 award for a film for which final documentation pursuant to
4 N.J.A.C.19:31-21.7(c) has been submitted, until a taxable year
5 when the annual average of qualified film production expenses has
6 been restored to \$50,000,000. The authority shall establish a non-
7 binding, administrative pre-certification process for potentially
8 eligible projects.

9 **【**If the cumulative total amount of tax credits, and tax credit
10 transfer certificates, allowed to taxpayers for taxable years or
11 privilege periods commencing during a single fiscal year under
12 subsection a. of this section and subsection a. of section 1 of
13 P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits
14 available in that fiscal year, then taxpayers who have first applied
15 for and have not been allowed a tax credit or tax credit transfer
16 certificate amount for that reason shall be allowed, in the order in
17 which they have submitted an application, the amount of tax credit
18 or tax credit transfer certificate on the first day of the next
19 succeeding fiscal year in which tax credits and tax credit transfer
20 certificates under subsection a. of this section and subsection a. of
21 section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of
22 the amount of credits**】** Notwithstanding the limitations set forth in
23 this paragraph, if in any fiscal year the authority receives
24 applications for tax credits under subsection a. of this section and
25 subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) in
26 amounts exceeding the total amount of tax credits available for the
27 fiscal year, then the authority may approve applications, in the order
28 in which such applications were submitted, for excess tax credits
29 during the year in which the application was submitted, provided
30 that the amount of excess credits shall be subtracted from the total
31 amounts allowed for the next following fiscal year in which credits
32 are available, and provided further that the taxpayer shall not claim
33 the excess tax credit or tax credit transfer certificate until the first
34 day of the fiscal year from which the credits were made available.

35 Notwithstanding any provision of paragraph (1) of this
36 subsection to the contrary, for any fiscal year in which the amount
37 of tax credits approved pursuant to this paragraph is less than the
38 cumulative total amount of tax credits permitted to be approved in
39 that fiscal year, the authority shall certify the amount of the
40 remaining tax credits available for approval in that fiscal year, and
41 shall increase the cumulative total amount of tax credits permitted
42 to be approved for New Jersey studio partners in the subsequent
43 fiscal year by the certified amount remaining from the prior fiscal
44 year. The authority shall also certify, for each fiscal year, the
45 amount of tax credits that were previously approved, but that the
46 taxpayer is not able to redeem or transfer to another taxpayer under
47 this section, and shall increase the cumulative total amount of tax

1 credits permitted to be approved for New Jersey studio partners in
2 the subsequent fiscal year by the amount of tax credits previously
3 approved, but not subject to redemption or transfer.

4 (2) The value of tax credits, including tax credits allowed
5 through the granting of tax credit transfer certificates, approved by
6 the authority and the director pursuant to subsection b. of this
7 section and pursuant to subsection b. of section 1 of P.L.2018, c.56
8 (C.54:10A-5.39b) shall not exceed a cumulative total of
9 **【\$10,000,000】** \$30,000,000 in fiscal year 2019 and in each fiscal
10 year thereafter prior to fiscal year 2035 to apply against the tax
11 imposed pursuant to the "New Jersey Gross Income Tax Act,"
12 N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of
13 P.L.1945, c.162 (C.54:10A-5).

14 **【If the total amount of tax credits and tax credit transfer**
15 **certificates allowed to taxpayers for taxable years or privilege**
16 **periods commencing during a single fiscal year under subsection b.**
17 **of this section and subsection b. of section 1 of P.L.2018, c.56**
18 **(C.54:10A-5.39b) exceeds the amount of tax credits available in**
19 **that year, then taxpayers who have first applied for and have not**
20 **been allowed a tax credit or tax credit transfer certificate amount for**
21 **that reason shall be allowed, in the order in which they have**
22 **submitted an application, the amount of tax credit or tax credit**
23 **transfer certificate on the first day of the next succeeding fiscal year**
24 **in which tax credits and tax credit transfer certificates under**
25 **subsection b. of this section and subsection b. of section 1 of**
26 **P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of**
27 **credits】** Notwithstanding the limitations set forth in this paragraph,
28 if in any fiscal year the authority receives applications for tax
29 credits under subsection b. of this section and subsection b. of
30 section 1 of P.L.2018, c.56 (C.54:10A-5.39b) in amounts exceeding
31 the total amount of tax credits available for the fiscal year, then the
32 authority may approve applications, in the order in which such
33 applications were submitted, for excess tax credits during the year
34 in which the application was submitted, provided that the amount of
35 excess credits shall be subtracted from the total amounts allowed
36 for the next following fiscal year in which credits are available, and
37 provided further that the taxpayer shall not claim the excess tax
38 credit or tax credit transfer certificate until the first day of the fiscal
39 year from which the credits were made available.

40 Notwithstanding any provision of this paragraph to the contrary,
41 for any fiscal year in which the amount of tax credits approved
42 pursuant to this paragraph is less than the cumulative total amount
43 of tax credits permitted to be approved in that fiscal year, the
44 authority shall certify the amount of the remaining tax credits
45 available for approval in that fiscal year, and shall increase the
46 cumulative total amount of tax credits permitted to be approved in
47 the subsequent fiscal year by the certified amount remaining from

1 the prior fiscal year. The authority shall also certify, for each fiscal
2 year, the amount of tax credits that were previously approved, but
3 that the taxpayer is not able to redeem or transfer to another
4 taxpayer under this section, and shall increase the cumulative total
5 amount of tax credits permitted to be approved in the subsequent
6 fiscal year by the amount of tax credits previously approved, but not
7 subject to redemption or transfer.

8 g. A taxpayer shall submit to the authority and the director a
9 report prepared by an independent certified public accountant
10 licensed in this State to verify the taxpayer's tax credit claim
11 following the completion of the production. The report shall be
12 prepared by the independent certified public accountant pursuant to
13 agreed upon procedures prescribed by the authority and the director,
14 and shall include such information and documentation as shall be
15 determined to be necessary by the authority and the director to
16 substantiate the qualified film production expenses or the qualified
17 digital media content production expenses of the taxpayer. A single
18 report with attachments deemed necessary by the authority shall be
19 submitted electronically. Upon receipt of the report, the authority
20 and the director shall review the findings of the independent
21 certified public accountant's report, and shall make a determination
22 as to the qualified film production expenses or the qualified digital
23 media content production expenses of the taxpayer. The authority's
24 and the director's review shall include, but shall not be limited to: a
25 review of all non-payroll qualified film production expense items
26 and non-payroll digital media content production expense items
27 over \$20,000; a review of 100 randomly selected non-payroll
28 qualified film production expense items and non-payroll digital
29 media content production expense items that are greater than
30 \$2,500, but less than \$20,000; a review of 100 randomly selected
31 non-payroll qualified film production expense items and non-
32 payroll digital media content production expense items that are less
33 than \$2,500; a review of the qualified wages for the 15 employees,
34 independent contractors, or loan-out companies with the highest
35 qualified wages; and a review of the qualified wages for 35
36 randomly selected employees, independent contractors, or loan-out
37 companies with qualified wages other than the 15 employees,
38 independent contractors, or loan-out companies with the highest
39 qualified wages. The taxpayer's qualified film production expenses
40 and digital media content production expenses shall be adjusted
41 based on any discrepancies identified for the reviewed non-payroll
42 qualified film production expense items, non-payroll digital media
43 content production expense items and qualified wages. The
44 taxpayer's qualified film production expenses and digital media
45 content production expenses also shall be adjusted based on the
46 projection of any discrepancies identified based on the review of
47 randomly selected expense items or wages pursuant to this

1 subsection to the extent that the discrepancies exceed one percent of
2 the total reviewed non-payroll qualified film production expense
3 items, non-payroll digital media content production expense items,
4 or qualified wages. The determination shall be provided in writing
5 to the taxpayer, and a copy of the written determination shall be
6 included in the filing of a return that includes a claim for a tax
7 credit allowed pursuant to this section.

8 h. A taxpayer shall withhold from each payment to a loan out
9 company or to an independent contractor an amount equal to 6.37
10 percent of the payment otherwise due. The amounts withheld shall
11 be deemed to be withholding of liability pursuant to the "New
12 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the
13 taxpayer shall be deemed to have the rights, duties, and
14 responsibilities of an employer pursuant to chapter 7 of Title 54A of
15 the New Jersey Statutes. The director shall allocate the amounts
16 withheld for a taxable year to the accounts of the individuals who
17 are employees of a loan out company in proportion to the
18 employee's payment by the loan out company in connection with a
19 trade, profession, or occupation carried on in this State or for the
20 rendition of personal services performed in this State during the
21 taxable year. A loan out company that reports its payments to
22 employees in connection with a trade, profession, or occupation
23 carried on in this State or for the rendition of personal services
24 performed in this State during a taxable year shall be relieved of its
25 duties and responsibilities as an employer pursuant to chapter 7 of
26 Title 54A of the New Jersey Statutes for the taxable year for any
27 payments relating to the payments on which the taxpayer withheld.

28 i. As used in this section:

29 "Authority" means the New Jersey Economic Development
30 Authority.

31 "Business assistance or incentive" means "business assistance or
32 incentive" as that term is defined pursuant to section 1 of P.L.2007,
33 c.101 (C.54:50-39).

34 "Commission" means the Motion Picture and Television
35 Development Commission.

36 "Digital media content" means any data or information that is
37 produced in digital form, including data or information created in
38 analog form but reformatted in digital form, text, graphics,
39 photographs, animation, sound, and video content. "Digital media
40 content" shall not mean content offerings generated by the end user
41 (including postings on electronic bulletin boards and chat rooms);
42 content offerings comprised primarily of local news, events,
43 weather or local market reports; public service content; electronic
44 commerce platforms (such as retail and wholesale websites);
45 websites or content offerings that contain obscene material as
46 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
47 content that are produced or maintained primarily for private,

1 industrial, corporate, or institutional purposes; or digital media
2 content acquired or licensed by the taxpayer for distribution or
3 incorporation into the taxpayer's digital media content.

4 "Film" means a feature film, a television series, or a television
5 show of 22 minutes or more in length, intended for a national
6 audience, or a television series or a television show of 22 minutes
7 or more in length intended for a national or regional audience,
8 including, but not limited to, a game show, award show, or other
9 gala event filmed and produced at a nonprofit arts and cultural
10 venue receiving State funding. "Film" shall not include a
11 production featuring news, current events, weather, and market
12 reports or public programming, talk show, sports event, or reality
13 show, a production that solicits funds, a production containing
14 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
15 3, or a production primarily for private, industrial, corporate, or
16 institutional purposes. "Film" shall not include an award show or
17 other gala event that is not filmed and produced at a nonprofit arts
18 and cultural venue receiving State funding.

19 "Full-time or full-time equivalent employee" means an individual
20 employed by the taxpayer for consideration for at least 35 hours a
21 week, or who renders any other standard of service generally
22 accepted by custom or practice as full-time or full-time equivalent
23 employment, whose wages are subject to withholding as provided in
24 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or
25 who is a partner of a taxpayer, who works for the partnership for at
26 least 35 hours a week, or who renders any other standard of service
27 generally accepted by custom or practice as full-time or full-time
28 equivalent employment, and whose distributive share of income,
29 gain, loss, or deduction, or whose guaranteed payments, or any
30 combination thereof, is subject to the payment of estimated taxes, as
31 provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
32 et seq. "Full-time or full-time equivalent employee" shall not
33 include an individual who works as an independent contractor or on
34 a consulting basis for the taxpayer.

35 "Highly compensated individual" means an individual who
36 directly or indirectly receives compensation in excess of \$500,000
37 for the performance of services used directly in a production. An
38 individual receives compensation indirectly when the taxpayer pays
39 a loan out company that, in turn, pays the individual for the
40 performance of services.

41 "Incurred in New Jersey" means, for any application submitted
42 after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.),
43 pursuant to which a tax credit has not been allowed prior to the
44 effective date of P.L.2021, c.160, service performed within New
45 Jersey and tangible personal property used or consumed in New
46 Jersey. A service is performed in New Jersey to the extent that the
47 individual performing the service is physically located in New

1 Jersey while performing the service. Notwithstanding where the
2 property is delivered or acquired, rented tangible property is used or
3 consumed in New Jersey to the extent that the property is located in
4 New Jersey during its use or consumption and is rented from a
5 vendor authorized to do business in New Jersey or the film
6 production company provides to the authority the vendor's
7 information in a form and manner prescribed by the authority.
8 Purchased tangible property is not used and consumed in New
9 Jersey unless it is purchased from a vendor authorized to do
10 business in New Jersey and is delivered to or acquired within New
11 Jersey; provided, however, that if a production is also located in
12 another jurisdiction, the purchased tangible property is used and
13 consumed in New Jersey if the acquisition and delivery of
14 purchased tangible property is located in either New Jersey or
15 another jurisdiction where the production takes place.

16 "Independent contractor" means an individual treated as an
17 independent contractor for federal and State tax purposes who is
18 contracted with by the taxpayer for the performance of services
19 used directly in a production.

20 "Loan out company" means a personal service corporation or
21 other entity that is contracted with by the taxpayer to provide
22 specified individual personnel, such as artists, crew, actors,
23 producers, or directors for the performance of services used directly
24 in a production. "Loan out company" shall not include entities
25 contracted with by the taxpayer to provide goods or ancillary
26 contractor services such as catering, construction, trailers,
27 equipment, or transportation.

28 "New Jersey film-lease partner" means a taxpayer, including any
29 taxpayer that is a member of a combined group under P.L.2018,
30 c.131 (C:54:10A-4.11), that has made a commitment to lease or
31 acquire all or part of a New Jersey production facility **[with]** which leased or acquired space shall have an aggregate square
32 footage of at least 50,000 square feet, **[which includes]** including a
33 sound stage and production support space, such as production
34 offices or a backlot, for a period of five or more successive years
35 and commits to spend, on a separate-entity basis or in the aggregate
36 with other members of the taxpayer's combined group, an annual
37 average of \$50,000,000 of qualified film production expenses over
38 the period of at least five but not to exceed 10 years.

40 "New Jersey studio partner" means a film production company
41 that has made a commitment to produce films or commercial
42 audiovisual products in New Jersey and has developed, purchased,
43 or executed a 10-year contract to lease a production facility of
44 250,000 square feet or more as a "transformative project" pursuant
45 to section 65 of P.L.2020, c.156 (C.34:1B-333). No more than
46 three film production companies may be designated as a New Jersey
47 studio partner.

1 "Partnership" means an entity classified as a partnership for
2 federal income tax purposes.

3 "Post-production costs" means the costs of the phase of
4 production of a film that follows principal photography, in which
5 raw footage is cut and assembled into a finished film with sound
6 synchronization and visual effects.

7 "Pre-production costs" means the costs of the phase of
8 production of a film that precedes principal photography, in which a
9 detailed schedule and budget for the production is prepared, the
10 script and location is finalized, and contracts with vendors are
11 negotiated.

12 "Qualified digital media content production expenses" means an
13 expense incurred in New Jersey for the production of digital media
14 content. "Qualified digital media content production expenses"
15 shall include but not be limited to: wages and salaries of individuals
16 employed in the production of digital media content on which the
17 tax imposed by the "New Jersey Gross Income Tax Act,"
18 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
19 computer software and hardware, data processing, visualization
20 technologies, sound synchronization, editing, and the rental of
21 facilities and equipment. Payment made to a loan out company or
22 to an independent contractor shall not be deemed a "qualified digital
23 media content production expense" unless the payment is made in
24 connection with a trade, profession, or occupation carried on in this
25 State or for the rendition of personal services performed in this
26 State and the taxpayer has made the withholding required pursuant
27 to subsection h. of this section. "Qualified digital media content
28 production expenses" shall not include expenses incurred in
29 marketing, promotion, or advertising digital media or other costs
30 not directly related to the production of digital media content.
31 Costs related to the acquisition or licensing of digital media content
32 by the taxpayer for distribution or incorporation into the taxpayer's
33 digital media content shall not be deemed "qualified digital media
34 content production expenses."

35 "Qualified film production expenses" means an expense incurred
36 in New Jersey for the production of a film including pre-production
37 costs and post-production costs incurred in New Jersey. "Qualified
38 film production expenses" shall include but not be limited to:
39 wages and salaries of individuals employed in the production of a
40 film on which the tax imposed by the "New Jersey Gross Income
41 Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the
42 costs for tangible personal property used, and services performed,
43 directly and exclusively in the production of a film, such as
44 expenditures for film production facilities, props, makeup,
45 wardrobe, film processing, camera, sound recording, set
46 construction, lighting, shooting, editing, and meals. Payment made
47 to a loan out company or to an independent contractor shall not be

1 deemed a "qualified film production expense" unless the payment is
2 made in connection with a trade, profession, or occupation carried
3 on in this State or for the rendition of personal services performed
4 in this State and the taxpayer has made the withholding required by
5 subsection h. of this section. "Qualified film production expenses"
6 shall not include: expenses incurred in marketing or advertising a
7 film; and payment in excess of \$500,000 to a highly compensated
8 individual for costs for a story, script, or scenario used in the
9 production of a film and wages or salaries or other compensation
10 for writers, directors, including music directors, producers, and
11 performers, other than background actors with no scripted lines,
12 except as follows:

13 (1) for a New Jersey studio partner that incurs more than
14 \$15,000,000, but less than \$50,000,000, in qualified film production
15 expenses in the State, an amount, not to exceed \$15,000,000, of the
16 wages or salaries or other compensation for writers, directors,
17 including music directors, producers, and performers, other than
18 background actors with no scripted lines, shall constitute qualified
19 film production expenses;

20 (2) for a New Jersey studio partner that incurs \$50,000,000 or
21 more, but less than \$100,000,000, in qualified film production
22 expenses in the State, an amount, not to exceed \$25,000,000, of the
23 wages or salaries or other compensation for writers, directors,
24 including music directors, producers, and performers, other than
25 background actors with no scripted lines, shall constitute qualified
26 film production expenses;

27 (3) for a New Jersey studio partner that incurs \$100,000,000 or
28 more, but less than \$150,000,000, in qualified film production
29 expenses in the State, an amount, not to exceed \$40,000,000, of the
30 wages or salaries or other compensation for writers, directors,
31 including music directors, producers, and performers, other than
32 background actors with no scripted lines, shall constitute qualified
33 film production expenses; **[and]**

34 (4) for a New Jersey studio partner that incurs \$150,000,000 or
35 more in qualified film production expenses in the State, an amount,
36 not to exceed \$60,000,000, of the wages or salaries or other
37 compensation for writers, directors, including music directors,
38 producers, and performers, other than background actors with no
39 scripted lines, shall constitute qualified film production expenses;
40 and

41 (5) for a New Jersey film-lease partner, an amount, not to
42 exceed \$15,000,000, of the payments in excess of \$500,000 to each
43 highly compensated individual for costs for a story, script, or
44 scenario used in the production of a film and wages or salaries or
45 other compensation for writers, directors, including music directors,
46 producers, and performers, other than background actors with no
47 scripted lines, shall constitute qualified film production expenses.

1 "Total digital media content production expenses" means costs
2 for services performed and property used or consumed in the
3 production of digital media content.

4 "Total film production expenses" means costs for services
5 performed and tangible personal property used or consumed in the
6 production of a film.
7 (cf: P.L.2021, c.160, s.59)

8

9 3. This act shall take effect immediately.

10

11

12

STATEMENT

13

14 This bill makes various changes to the film and digital media
15 content production tax credit program, including increasing the
16 amount of the digital media content production tax credit, allowing
17 certain compensation to be included within the computation of
18 qualified film production expenses, and revising the definition of
19 "New Jersey film-lease partner."

20 Under the film and digital media content production tax credit
21 program, the State awards tax credits to eligible taxpayers equal to:
22 (1) 30 percent of the qualified film production expenses incurred for
23 use within certain parts of Northern New Jersey, or 35 percent of
24 the qualified film production expenses incurred for use within all
25 other parts of the State; and (2) 25 percent of the qualified digital
26 media content production expenses purchased through vendors
27 located in certain counties in Southern New Jersey, or 20 percent of
28 all other qualified digital media content production expenses
29 purchased within the State.

30 Under the bill, the amount of the digital media content
31 production portion of the tax credit program would be increased.
32 Specifically, the bill increases the digital media content production
33 tax credit to 35 percent of the qualified digital media content
34 production expenses purchased through vendors located in certain
35 counties in Southern New Jersey, or 30 percent of all other qualified
36 digital media content production expenses purchased within the
37 State. In addition, the bill increases the cumulative annual
38 limitation on digital media content production tax credits from \$10
39 million to \$30 million.

40 The bill also modifies the definition of "qualified film
41 production expenses" to include amounts paid by New Jersey film-
42 lease partners for certain employees. Except for certain allowances
43 for New Jersey studio partners, current law generally prohibits
44 qualified film production expenses from including any payments in
45 excess of \$500,000 for: (1) a highly compensated individual for
46 costs for a story, script, or scenario used in the production of a film;
47 and (2) the wages or salaries or other compensation for writers,

1 directors, including music directors, producers, and performers,
2 other than background actors with no scripted lines. However, this
3 bill would instead allow a New Jersey film-lease partner to include
4 up to \$15 million of these payments, in excess of current
5 allowances, in the computation of qualified film production
6 expenses.

7 The bill also provides that when the New Jersey Economic
8 Development Authority receives applications for more tax credits
9 than are available in any given fiscal year, then the authority may
10 approve applications for excess tax credits during the year in which
11 such applications were submitted, provided that the amount of
12 excess credits would be subtracted from the amounts otherwise
13 available in the next succeeding fiscal years. However, a taxpayer
14 may not claim the excess tax credits or tax credit transfer
15 certificates until the first day of the fiscal year from which the
16 credits were made available.

17 Additionally, the bill revises the definition of “New Jersey film-
18 lease partner.” Under current law, the term includes taxpayers who
19 commit to lease or acquire a New Jersey production facility, with an
20 aggregate square footage of at least 50,000 square feet, for a period
21 of five or more years, and who commit to spending an annual
22 average of \$50 million in qualified film production expenses over a
23 designated period of five to 10 years. The bill revises this
24 definition to allow for a New Jersey film-lease partner to lease or
25 acquire a portion of a New Jersey production facility, provided that
26 the leased or acquired portion has an aggregate square footage of at
27 least 50,000 square feet and otherwise meets the requirements of
28 existing law.