

[Second Reprint]

SENATE, No. 122

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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Assemblymen Calabrese, Giblin, Assemblywomen Vainieri Huttle,
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SYNOPSIS

Provides corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content; designated as Garden State Film and Digital Media Jobs Act.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on April 5, 2018, with amendments.

(Sponsorship Updated As Of: 4/13/2018)

1 AN ACT providing a credit against the corporation business tax and
2 the gross income tax for certain expenses incurred for the
3 production of certain films and digital media content and
4 designated as the Garden State Film and Digital Media Jobs Act,
5 supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title
6 54A of the New Jersey Statutes ¹and repealing various parts of
7 the statutory law¹.

8
9 **BE IT ENACTED** by the Senate and General Assembly of the State
10 of New Jersey:

11
12 1. a. (1) A taxpayer, upon approval of an application to the
13 authority and the director, shall be allowed a credit against the tax
14 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
15 an amount equal to 30 percent of the qualified film production
16 expenses of the taxpayer during a privilege period commencing on
17 or after July 1, 2018 but before July 1, 2023, provided that:

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

24 (b) principal photography of the film commences within the
25 earlier of 180 days from the date of the original application for the
26 tax credit, or 150 days from the date of approval of the application
27 for the tax credit;

28 (c) the film includes, when determined to be appropriate by the
29 commission, at no cost to the State, marketing materials promoting
30 this State as a film and entertainment production destination, which
31 materials shall include placement of a “Filmed in New Jersey” or
32 “Produced in New Jersey” statement ¹, or an approved logo
33 approved by the Commission,¹ in the end credits of the film;

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

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

40 (2) Notwithstanding the provisions of paragraph (1) of this
41 subsection a. to the contrary, the tax credit allowed pursuant to this
42 subsection against the tax imposed pursuant to section 5 of
43 P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to ¹[40

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted March 13, 2018.

²Assembly AAP committee amendments adopted April 5, 2018.

1 percent for the qualified film production expenses of the taxpayer
2 during a privilege period that represent expenses of the taxpayer
3 incurred in an eligible municipality for the production of a film,
4 including post-production costs of the taxpayer incurred in an
5 eligible municipality] 35 percent of the qualified film production
6 expenses of the taxpayer during a privilege period that are incurred
7 for services performed and tangible personal property purchased
8 through vendors whose primary place of business is located in
9 Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester,
10 Mercer or Salem County¹.

11 b. (1) A taxpayer, upon approval of an application to the
12 authority and the director, shall be allowed a credit against the tax
13 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
14 an amount equal to 20 percent of the qualified digital media content
15 production expenses of the taxpayer during a privilege period
16 commencing on or after July 1, 2018 but before July 1, 2023,
17 provided that:

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

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

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

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

31 (2) Notwithstanding the provisions of paragraph (1) of this
32 subsection b. to the contrary, the tax credit allowed pursuant to this
33 subsection against the tax imposed pursuant to section 5 of
34 P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to ¹[40
35 percent for the qualified digital media content production expenses
36 of the taxpayer during a privilege period that represent expenses of
37 the taxpayer incurred in an eligible municipality for the production
38 of digital media content] 25 percent of the qualified digital media
39 content production expenses of the taxpayer during a privilege
40 period that are incurred for services performed and tangible
41 personal property purchased through vendors whose primary place
42 of business is located in Atlantic, Burlington, Camden, Cape May,
43 Cumberland, Gloucester, Mercer, or Salem County¹.

44 c. No tax credit shall be allowed pursuant to this section for
45 any costs or expenses included in the calculation of any other tax
46 credit or exemption granted pursuant to a claim made on a tax
47 return filed with the director, or included in the calculation of an

1 award of business assistance or incentive, for a period of time that
2 coincides with the privilege period for which a tax credit authorized
3 pursuant to this section is allowed. The order of priority ¹of the
4 application of in which¹ the tax credit allowed pursuant to this
5 section and any other tax credits allowed by law ¹may be taken¹
6 shall be as prescribed by the director. The amount of the tax credit
7 applied under this section against the tax imposed pursuant to
8 section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period,
9 when taken together with any other payments, credits, deductions,
10 and adjustments allowed by law shall not reduce the tax liability of
11 the taxpayer to an amount less than the statutory minimum provided
12 in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The
13 amount of the tax credit otherwise allowable under this section
14 which cannot be applied for the privilege period due to the
15 limitations of this subsection or under other provisions of P.L.1945,
16 c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to
17 the seven privilege periods following the privilege period for which
18 the tax credit was allowed.

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

1 pursuant to subsections c. and d. of section 2 of P.L. , c. (C.)
2 (pending before the Legislature as this bill).

3 e. (1) The value of tax credits, including tax credits allowed
4 through the granting of tax credit transfer certificates, approved by
5 the director and the authority pursuant to subsection a. of this
6 section and pursuant to subsection a. of section 2 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill) shall not
8 exceed a cumulative total of \$75,000,000 in fiscal year 2019 and in
9 each fiscal year thereafter prior to fiscal year 2024 to apply against
10 the tax imposed pursuant to section 5 of P.L.1945, c.162
11 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey
12 Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative
13 total amount of tax credits, and tax credit transfer certificates,
14 allowed to taxpayers for privilege periods or taxable years
15 commencing during a single fiscal year under subsection a. of this
16 section and subsection a. of section 2 of P.L. , c. (C.)
17 (pending before the Legislature as this bill) exceeds the amount of
18 tax credits available in that fiscal year, then taxpayers who have
19 first applied for and have not been allowed a tax credit or tax credit
20 transfer certificate amount for that reason shall be allowed, in the
21 order in which they have submitted an application, the amount of
22 tax credit or tax credit transfer certificate on the first day of the next
23 succeeding fiscal year in which tax credits and tax credit transfer
24 certificates under subsection a. of this section and subsection a. of
25 section 2 of P.L. , c. (C.) (pending before the Legislature as
26 this bill) are not in excess of the amount of credits available.

27 (2) The value of tax credits, including tax credits allowed
28 through the granting of tax credit transfer certificates, approved by
29 the authority and the director pursuant to subsection b. of this
30 section and pursuant to subsection b. of section 2 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill) shall not
32 exceed a cumulative total of \$10,000,000 in fiscal year 2019 and in
33 each fiscal year thereafter prior to fiscal year 2024 to apply against
34 the tax imposed pursuant to section 5 of P.L.1945, c.162
35 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey
36 Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the total amount
37 of tax credits and tax credit transfer certificates allowed to
38 taxpayers for privilege periods or taxable years commencing during
39 a single fiscal year under subsection b. of this section and
40 subsection b. of section 2 of P.L. , c. (C.) (pending before
41 the Legislature as this bill) exceeds the amount of tax credits
42 available in that year, then taxpayers who have first applied for and
43 have not been allowed a tax credit or tax credit transfer certificate
44 amount for that reason shall be allowed, in the order in which they
45 have submitted an application, the amount of tax credit or tax credit
46 transfer certificate on the first day of the next succeeding fiscal year
47 in which tax credits and tax credit transfer certificates under
48 subsection b. of this section and subsection b. of section 2 of

- 1 P.L. , c. (C.) (pending before the Legislature as this bill) are
2 not in excess of the amount of credits available.
- 3 f. A taxpayer shall submit to the authority and the director a
4 report prepared by an independent certified public accountant
5 licensed in this State to verify the taxpayer's tax credit claim
6 following the completion of the production. The report shall be
7 ²~~based on a compliance audit conducted~~ prepared² by the
8 independent certified public accountant pursuant to ²~~procedures~~
9 agreed upon by the taxpayer, the independent certified public
10 accountant, and the authority and the director] agreed upon
11 procedures prescribed by the authority and the director²; and shall
12 include such information and documentation as shall be determined
13 to be necessary by the authority and the director to substantiate the
14 qualified film production expenses or the qualified digital media
15 content production expenses of the taxpayer. Upon receipt of the
16 report, the authority and the director shall review the findings of the
17 independent certified public accountant's ²~~compliance audit~~
18 report², and shall make a determination as to the qualified film
19 production expenses or the qualified digital media content
20 production expenses of the taxpayer. The determination shall be
21 provided in writing to the taxpayer, and a copy of the written
22 determination shall be included in the filing of a return that includes
23 a claim for a tax credit allowed pursuant to this section.
- 24 g. A taxpayer shall withhold from each payment to a loan out
25 company or to an independent contractor an amount equal to 6.37
26 percent of the payment otherwise due. The amounts withheld shall
27 be deemed to be withholding of liability pursuant to the "New
28 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the
29 taxpayer shall be deemed to have the rights, duties, and
30 responsibilities of an employer pursuant to chapter 7 of Title 54A of
31 the New Jersey Statutes. The director shall allocate the amounts
32 withheld for a taxable year to the accounts of the individuals who
33 are employees of a loan out company in proportion to the
34 employee's payment by the loan out company in connection with a
35 trade, profession, or occupation carried on in this State or for the
36 rendition of personal services performed in this State during the
37 taxable year. A loan out company that reports its payments to
38 employees in connection with a trade, profession, or occupation
39 carried on in this State or for the rendition of personal services
40 performed in this State during a taxable year shall be relieved of its
41 duties and responsibilities as an employer pursuant to chapter 7 of
42 Title 54A of the New Jersey Statutes for the taxable year for any
43 payments relating to the payments on which the taxpayer withheld.
- 44 h. As used in this section:
45 "Authority" means the New Jersey Economic Development
46 Authority.

1 “Business assistance or incentive” means “business assistance or
2 incentive” as that term is defined pursuant to section 1 of P.L.2007,
3 c.101 (C.54:50-39).

4 “Commission” means the Motion Picture and Television
5 Development Commission.

6 “Digital media content” means any data or information that is
7 produced in digital form, including data or information created in
8 analog form but reformatted in digital form, text, graphics,
9 photographs, animation, sound ^{1,1} and video content. “Digital media
10 content” does not mean content offerings generated by the end user
11 (including postings on electronic bulletin boards and chat rooms);
12 content offerings comprised primarily of local news, events,
13 weather ^{1,1} or local market reports; public service content;
14 electronic commerce platforms (such as retail and wholesale
15 websites); websites or content offerings that contain obscene
16 material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3;
17 websites or content that are produced or maintained primarily for
18 private, industrial, corporate ^{1,1} or institutional purposes; or digital
19 media content acquired or licensed by the taxpayer for distribution
20 or incorporation into the taxpayer's digital media content.

21 ¹“Eligible municipality” means a municipality in this State that
22 has experienced the closure of at least two casino hotel facilities
23 that had been licensed and operated, within the boundaries of the
24 municipality, in accordance with the laws of this State. ¹

25 “Film” means a feature film, a television series ^{1,1} or a television
26 show of 22 minutes or more in length, intended for a national
27 audience, or a television series or a television show of 22 minutes
28 or more in length intended for a national or regional audience,
29 including, but not limited to, a game show, award show, or other
30 gala event filmed and produced at a nonprofit arts and cultural
31 venue receiving State funding. “Film” shall not include a
32 production featuring news, current events, weather ^{1,1} and market
33 reports or public programming, talk show, sports event, or reality
34 show, a production that solicits funds, a production containing
35 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
36 3, or a production primarily for private, industrial, corporate ^{1,1} or
37 institutional purposes. “Film” shall not include ¹“a game show,
38 an award show ¹“¹ or other gala event that is not filmed and
39 produced at a nonprofit arts and cultural venue receiving State
40 funding.

41 “Full-time or full-time equivalent employee” means an
42 individual employed by the taxpayer for consideration for at least
43 35 hours a week, or who renders any other standard of service
44 generally accepted by custom or practice as full-time or full-time
45 equivalent employment, whose wages are subject to withholding as
46 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
47 et seq., or who is a partner of a taxpayer, who works for the

1 partnership for at least 35 hours a week, or who renders any other
2 standard of service generally accepted by custom or practice as full-
3 time or full-time equivalent employment, and whose distributive
4 share of income, gain, loss, or deduction, or whose guaranteed
5 payments, or any combination thereof, is subject to the payment of
6 estimated taxes, as provided in the “New Jersey Gross Income Tax
7 Act,” N.J.S.54A:1-1 et seq. “Full-time or full-time equivalent
8 employee” shall not include an individual who works as an
9 independent contractor or on a consulting basis for the taxpayer.

10 “Highly compensated individual” means an individual who
11 directly or indirectly receives compensation in excess of
12 ~~‘[\$1,500,000]~~ \$500,000¹ for the performance of services used
13 directly in a production. An individual receives compensation
14 indirectly when the taxpayer pays a loan out company that, in turn,
15 pays the individual for the performance of services.

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” does 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 “Partnership” means an entity classified as a partnership for
29 federal income tax purposes.

30 “Post-production costs” means the costs of the phase of
31 production of a film that follows principal photography, in which
32 raw footage is cut and assembled into a finished film with sound
33 synchronization and visual effects.

34 “Pre-production costs” means the costs of the phase of
35 production of a film that precedes principal photography, in which a
36 detailed schedule and budget for the production is prepared, the
37 script and location is finalized, and contracts with vendors are
38 negotiated.

39 “Qualified digital media content production expenses” means an
40 expense incurred in New Jersey for the production of digital media
41 content. “Qualified digital media content production expenses”
42 shall include but shall not be limited to ¹;¹ wages and salaries of
43 individuals employed in the production of digital media content on
44 which the tax imposed by the “New Jersey Gross Income Tax Act,”
45 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
46 computer software and hardware, data processing, visualization
47 technologies, sound synchronization, editing, and the rental of
48 facilities and equipment. Payment made to a loan out company or

1 to an independent contractor shall not be a “qualified digital media
2 content production expense” unless the payment is made in
3 connection with a trade, profession, or occupation carried on in this
4 State or for the rendition of personal services performed in this
5 State and the taxpayer has made the withholding required by
6 subsection g. of this section. “Qualified digital media content
7 production expenses” shall not include expenses incurred in
8 marketing, promotion, or advertising digital media or other costs
9 not directly related to the production of digital media content.
10 Costs related to the acquisition or licensing of digital media content
11 by the taxpayer for distribution or incorporation into the taxpayer's
12 digital media content shall not be “qualified digital media content
13 production expenses.”

14 “Qualified film production expenses” means an expense incurred
15 in New Jersey for the production of a film including pre-production
16 costs and post-production costs incurred in New Jersey. “Qualified
17 film production expenses” shall include but shall not be limited to:
18 wages and salaries of individuals employed in the production of a
19 film on which the tax imposed by the “New Jersey Gross Income
20 Tax Act,” N.J.S.54A:1-1 et seq. has been paid or is due; and the
21 costs for tangible personal property used, and services performed,
22 directly and exclusively in the production of a film, such as
23 expenditures for film production facilities, props, makeup,
24 wardrobe, film processing, camera, sound recording, set
25 construction, lighting, shooting, editing, and meals. Payment made
26 to a loan out company or to an independent contractor shall not be a
27 “qualified film production expense” unless the payment is made in
28 connection with a trade, profession, or occupation carried on in this
29 State or for the rendition of personal services performed in this
30 State and the taxpayer has made the withholding required by
31 subsection g. of this section. “Qualified film production expenses”
32 shall not include: expenses incurred in marketing or advertising a
33 film; and payment in excess of ¹[\$1,500,000] \$500,000¹ to a highly
34 compensated individual for costs for a story, script, or scenario used
35 in the production of a film and wages or salaries or other
36 compensation for writers, directors, including music directors,
37 producers, and performers, other than background actors with no
38 scripted lines.

39 “Total digital media content production expenses” means costs
40 for services performed and property used or consumed in the
41 production of digital media content.

42 “Total film production expenses” means costs for services
43 performed and tangible personal property used or consumed in the
44 production of a film.

45 ²i. A business that is not a “taxpayer” as defined and used in the
46 “Corporation Business Tax Act (1945)” P.L.1945, c.162 (C.54:10A-
47 1 et seq.) and therefore is not directly allowed a credit under this
48 section, but is a business entity that is classified as a partnership for

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

12

13 2. a. (1) A taxpayer, upon approval of an application to the
14 authority and the director, shall be allowed a credit against the tax
15 otherwise due for the taxable year under the “New Jersey Gross
16 Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to 30
17 percent of the qualified film production expenses of the taxpayer
18 during a taxable year commencing on or after July 1, 2018 but
19 before July 1, 2023, provided that:

20 (a) at least 60 percent of the total film production expenses,
21 exclusive of post-production costs, of the taxpayer are incurred for
22 services performed, and goods purchased through vendors
23 authorized to do business, in New Jersey, or the qualified film
24 production expenses of the taxpayer during the taxable year exceed
25 \$1,000,000 per production;

26 (b) principal photography of the film commences within the
27 earlier of 180 days from the date of the original application for the
28 tax credit, or 150 days from the date of approval of the application
29 for the tax credit;

30 (c) the film includes, when determined to be appropriate by the
31 commission, at no cost to the State, marketing materials promoting
32 this State as a film and entertainment production destination, which
33 materials shall include placement of a “Filmed in New Jersey” or
34 “Produced in New Jersey” statement ¹, or an appropriate logo
35 approved by the Commission,¹ in the end credits of the film;

36 (d) the taxpayer submits a tax credit verification report prepared
37 by an independent certified public accountant licensed in this State
38 in accordance with subsection ¹[f.] g.¹ of this section; and

39 (e) the taxpayer complies with the withholding requirements
40 provided for payments to loan out companies and independent
41 contractors in accordance with subsection ¹[g.] h.¹ of this section.

42 (2) Notwithstanding the provisions of paragraph (1) of this
43 subsection a. to the contrary, the tax credit allowed pursuant to this
44 subsection against the tax otherwise due for the taxable year under
45 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
46 shall be in an amount equal to ¹[40 percent for the qualified film
47 production expenses of the taxpayer during a taxable year that

1 represent expenses of the taxpayer incurred in an eligible
2 municipality for the production of a film, including post-production
3 costs of the taxpayer incurred in an eligible municipality】 35
4 percent of the qualified film production expenses of the taxpayer
5 during a taxable year that are incurred for services performed and
6 tangible personal property purchased through vendors whose
7 primary place of business is located in Atlantic, Burlington,
8 Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem
9 County¹.

10 b. (1) A taxpayer, upon approval of an application to the
11 authority and the director, shall be allowed a credit against the tax
12 otherwise due for the taxable year under the “New Jersey Gross
13 Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to 20
14 percent of the qualified digital media content production expenses
15 of the taxpayer during a taxable year commencing on or after July
16 1, 2018 but before July 1, 2023, provided that:

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

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

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

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

30 (2) Notwithstanding the provisions of paragraph (1) of this
31 subsection b. to the contrary, the tax credit allowed pursuant to this
32 subsection against the tax otherwise due for the taxable year under
33 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
34 shall be in an amount equal to ¹【40 percent for the qualified digital
35 media content production expenses of the taxpayer during a taxable
36 year that represent expenses of the taxpayer incurred in an eligible
37 municipality for the production of digital media content】 25 percent
38 for the qualified digital media content production expenses of the
39 taxpayer during a taxable year that are incurred for services
40 performed and tangible personal property purchased through
41 vendors whose primary place of business is located in Atlantic,
42 Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer,
43 or Salem County¹.

44 c. No tax credit shall be allowed pursuant to this section for
45 any costs or expenses included in the calculation of any other tax
46 credit or exemption granted pursuant to a claim made on a tax
47 return filed with the director, or included in the calculation of an

1 award of business assistance or incentive, for a period of time that
2 coincides with the taxable year for which a tax credit authorized
3 pursuant to this section is allowed. The order of priority ¹[of the
4 application of] in which¹ the tax credit allowed pursuant to this
5 section and any other tax credits allowed by law ¹may be taken¹
6 shall be as prescribed by the director. The amount of the tax credit
7 applied under this section against the tax otherwise due under the
8 “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., for a
9 taxable year, when taken together with any other payments, credits,
10 deductions, and adjustments allowed by law shall not reduce the tax
11 liability of the taxpayer to an amount less than zero. The amount of
12 the tax credit otherwise allowable under this section which cannot
13 be applied for the taxable year due to the limitations of this
14 subsection or under other provisions of N.J.S.54A:1-1 et seq., may
15 be carried forward, if necessary, to the seven taxable years
16 following the taxable year for which the tax credit was allowed.

17 d. (1) A business entity that is classified as a partnership for
18 federal income tax purposes shall not be allowed a tax credit
19 pursuant to this section directly, but the amount of tax credit of a
20 taxpayer in respect of a distributive share of entity income, shall be
21 determined by allocating to the taxpayer that proportion of the tax
22 credit acquired by the entity that is equal to the taxpayer's share,
23 whether or not distributed, of the total distributive income or gain
24 of the entity for its taxable year ending within or with the taxpayer's
25 taxable year.

26 (2) A New Jersey S Corporation shall not be allowed a tax credit
27 pursuant to this section directly, but the amount of tax credit of a
28 taxpayer in respect of a pro rata share of S Corporation income,
29 shall be determined by allocating to the taxpayer that proportion of
30 the tax credit acquired by the New Jersey S Corporation that is
31 equal to the taxpayer's share, whether or not distributed, of the total
32 pro rata share of S Corporation income of the New Jersey S
33 Corporation for its privilege period ending within or with the
34 taxpayer's taxable year.

35 ²A business entity that is not a gross income “taxpayer” as
36 defined and used in the “New Jersey Gross Income Tax Act,”
37 N.J.S.54A:1-1 et seq., and therefore is not directly allowed a credit
38 under this section, but otherwise meets all the other requirements of
39 this section, shall be considered an eligible applicant and “taxpayer”
40 as that term is used in this section, and the application of an
41 otherwise allowed credit amount shall be distributed to appropriate
42 gross income taxpayers pursuant to the other requirements of this
43 subsection.²

44 e. A taxpayer, with an application for a tax credit provided for
45 in subsection a. or subsection b. of this section, may apply to the
46 authority and the director for a tax credit transfer certificate in lieu
47 of the taxpayer being allowed any amount of the tax credit against

1 the tax liability of the taxpayer. The tax credit transfer certificate,
2 upon receipt thereof by the taxpayer from the authority and the
3 director, may be sold or assigned, in full or in part, to any other
4 taxpayer that may have a tax liability under the “New Jersey Gross
5 Income Tax Act,” N.J.S.54A:1-1 et seq., or the “Corporation
6 Business Tax Act (1945),” P.L.1945, c.162 (C.54:10A-1 et seq.), in
7 exchange for private financial assistance to be provided by the
8 purchaser or assignee to the taxpayer that has applied for and been
9 granted the tax credit. The tax credit transfer certificate provided to
10 the taxpayer shall include a statement waiving the taxpayer's right
11 to claim that amount of the tax credit against the tax imposed
12 pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to
13 sell or assign. The sale or assignment of any amount of a tax credit
14 transfer certificate allowed under this section shall not be
15 exchanged for consideration received by the taxpayer of less than
16 75 percent of the transferred tax credit amount. Any amount of a
17 tax credit transfer certificate used by a purchaser or assignee against
18 a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the
19 same limitations and conditions that apply to the use of a tax credit
20 pursuant to subsections c. and d. of this section. Any amount of a
21 tax credit transfer certificate obtained by a purchaser or assignee
22 under this subsection e. may be applied against the purchaser's or
23 assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.)
24 and shall be subject to the same limitations and conditions that
25 apply to the use of a credit pursuant to subsection c. of section 1 of
26 P.L. , c. (C.) (pending before the Legislature as this bill).

27 f. (1) The value of tax credits, including tax credits allowed
28 through the granting of tax credit transfer certificates, approved by
29 the director and the authority pursuant to subsection a. of this
30 section and pursuant to subsection a. of section 1 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill) shall not
32 exceed a cumulative total of \$75,000,000 in fiscal year 2019 and in
33 each fiscal year thereafter prior to fiscal year 2024 to apply against
34 the tax imposed pursuant to the “New Jersey Gross Income Tax
35 Act,” N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945,
36 c.162 (C.54:10A-5). If the cumulative total amount of tax credits,
37 and tax credit transfer certificates, allowed to taxpayers for taxable
38 years or privilege periods commencing during a single fiscal year
39 under subsection a. of this section and subsection a. of section 1 of
40 P.L. , c. (C.) (pending before the Legislature as this bill)
41 exceeds the amount of tax credits available in that fiscal year, then
42 taxpayers who have first applied for and have not been allowed a
43 tax credit or tax credit transfer certificate amount for that reason
44 shall be allowed, in the order in which they have submitted an
45 application, the amount of tax credit or tax credit transfer certificate
46 on the first day of the next succeeding fiscal year in which tax
47 credits and tax credit transfer certificates under subsection a. of this
48 section and subsection a. of section 1 of P.L. , c. (C.)

1 (pending before the Legislature as this bill) are not in excess of the
2 amount of credits available.

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 1 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill) shall not
8 exceed a cumulative total of \$10,000,000 in fiscal year 2019 and in
9 each fiscal year thereafter prior to fiscal year 2024 to apply against
10 the tax imposed pursuant to the “New Jersey Gross Income Tax
11 Act,” N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section
12 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of tax credits
13 and tax credit transfer certificates allowed to taxpayers for taxable
14 years or privilege periods commencing during a single fiscal year
15 under subsection b. of this section and subsection b. of section 2 of
16 P.L. , c. (C.) (pending before the Legislature as this bill)
17 exceeds the amount of tax credits available in that year, then
18 taxpayers who have first applied for and have not been allowed a
19 tax credit or tax credit transfer certificate amount for that reason
20 shall be allowed, in the order in which they have submitted an
21 application, the amount of tax credit or tax credit transfer certificate
22 on the first day of the next succeeding fiscal year in which tax
23 credits and tax credit transfer certificates under subsection b. of this
24 section and subsection b. of section 2 of P.L. , c. (C.)
25 (pending before the Legislature as this bill) are not in excess of the
26 amount of credits available.

27 g. A taxpayer shall submit to the authority and the director a
28 report prepared by an independent certified public accountant
29 licensed in this State to verify the taxpayer’s tax credit claim
30 following the completion of the production. The report shall be
31 ²based on a compliance audit conducted ²prepared by the
32 independent certified public accountant pursuant to ²procedures
33 agreed upon by the taxpayer, the independent certified public
34 accountant, and the authority and the director ²agreed upon
35 procedures prescribed by the authority and the director²; and shall
36 include such information and documentation as shall be determined
37 to be necessary by the authority and the director to substantiate the
38 qualified film production expenses or the qualified digital media
39 content production expenses of the taxpayer. Upon receipt of the
40 report, the authority and the director shall review the findings of the
41 independent certified public accountant’s ²compliance audit
42 report², and shall make a determination as to the qualified film
43 production expenses or the qualified digital media content
44 production expenses of the taxpayer. The determination shall be
45 provided in writing to the taxpayer, and a copy of the written
46 determination shall be included in the filing of a return that includes
47 a claim for a tax credit allowed pursuant to this section.

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

21 i. As used in this section:

22 “Authority” means the New Jersey Economic Development
23 Authority.

24 “Business assistance or incentive” means “business assistance or
25 incentive” as that term is defined pursuant to section 1 of P.L.2007,
26 c.101 (C.54:50-39).

27 “Commission” means the Motion Picture and Television
28 Development Commission.

29 “Digital media content” means any data or information that is
30 produced in digital form, including data or information created in
31 analog form but reformatted in digital form, text, graphics,
32 photographs, animation, sound ^{1,1} and video content. “Digital media
33 content” does not mean content offerings generated by the end user
34 (including postings on electronic bulletin boards and chat rooms);
35 content offerings comprised primarily of local news, events,
36 weather or local market reports; public service content; electronic
37 commerce platforms (such as retail and wholesale websites);
38 websites or content offerings that contain obscene material as
39 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
40 content that are produced or maintained primarily for private,
41 industrial, corporate ^{1,1} or institutional purposes; or digital media
42 content acquired or licensed by the taxpayer for distribution or
43 incorporation into the taxpayer’s digital media content.

44 ¹“Eligible municipality” means a municipality in this State that
45 has experienced the closure of at least two casino hotel facilities
46 that had been licensed and operated, within the boundaries of the
47 municipality, in accordance with the laws of this State. ¹

1 “Film” means a feature film, a television series ¹₂¹ or a television
2 show of 22 minutes or more in length, intended for a national
3 audience, or a television series or a television show of 22 minutes
4 or more in length intended for a national or regional audience,
5 including, but not limited to, a game show, award show, or other
6 gala event filmed and produced at a nonprofit arts and cultural
7 venue receiving State funding. “Film” shall not include a
8 production featuring news, current events, weather ¹₂¹ and market
9 reports or public programming, talk show, sports event, or reality
10 show, a production that solicits funds, a production containing
11 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
12 3, or a production primarily for private, industrial, corporate ¹₂¹
13 or institutional purposes. “Film” shall not include ¹[a game show,]
14 an¹ award show ¹[,]¹ or other gala event that is not filmed and
15 produced at a nonprofit arts and cultural venue receiving State
16 funding.

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

33 “Highly compensated individual” means an individual who
34 directly or indirectly receives compensation in excess of
35 ¹[\$1,500,000] \$500,000¹ for the performance of services used
36 directly in a production. An individual receives compensation
37 indirectly when the taxpayer pays a loan out company that, in turn,
38 pays the individual for the performance of services.

39 “Independent contractor” means an individual treated as an
40 independent contractor for federal and State tax purposes who is
41 contracted with by the taxpayer for the performance of services
42 used directly in a production.

43 “Loan out company” means a personal service corporation or
44 other entity that is contracted with by the taxpayer to provide
45 specified individual personnel, such as artists, crew, actors,
46 producers, or directors for the performance of services used directly
47 in a production. “Loan out company” does not include entities

1 contracted with by the taxpayer to provide goods or ancillary
2 contractor services such as catering, construction, trailers,
3 equipment, or transportation.

4 “Partnership” means an entity classified as a partnership for
5 federal income tax purposes.

6 “Post-production costs” means the costs of the phase of
7 production of a film that follows principal photography, in which
8 raw footage is cut and assembled into a finished film with sound
9 synchronization and visual effects.

10 “Pre-production costs” means the costs of the phase of
11 production of a film that precedes principal photography, in which a
12 detailed schedule and budget for the production is prepared, the
13 script and location is finalized, and contracts with vendors are
14 negotiated.

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

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

1 construction, lighting, shooting, editing, and meals. Payment made
 2 to a loan out company or to an independent contractor shall not be a
 3 “qualified film production expense” unless the payment is made in
 4 connection with a trade, profession, or occupation carried on in this
 5 State or for the rendition of personal services performed in this
 6 State and the taxpayer has made the withholding required by
 7 subsection h. of this section. “Qualified film production expenses”
 8 shall not include: expenses incurred in marketing or advertising a
 9 film; and payment in excess of ¹ ~~[\$1,500,000]~~ \$500,000¹ to a highly
 10 compensated individual for costs for a story, script, or scenario used
 11 in the production of a film and wages or salaries or other
 12 compensation for writers, directors, including music directors,
 13 producers, and performers, other than background actors with no
 14 scripted lines.

15 “Total digital media content production expenses” means costs
 16 for services performed and property used or consumed in the
 17 production of digital media content.

18 “Total film production expenses” means costs for services
 19 performed and tangible personal property used or consumed in the
 20 production of a film.

21

22 3. Notwithstanding the provisions of the "Administrative
 23 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
 24 contrary, the New Jersey Economic Development Authority and the
 25 Director of the Division of Taxation in the Department of the
 26 Treasury may adopt immediately upon filing with the Office of
 27 Administrative Law such rules and regulations as the authority or
 28 the director shall determine to be necessary to effectuate the
 29 purposes of P.L. , c. (C.) (pending before the Legislature as
 30 this bill), which rules and regulation shall be effective for a period
 31 not exceeding 360 days following the effective date of
 32 P.L. , c. (C.) (pending before the Legislature as this bill)
 33 and may thereafter be amended, adopted, or readopted by the
 34 authority or the director in accordance with the requirements of
 35 P.L.1968, 1 c.410 (C.52:14B-1 et seq.).

36

37 ¹4. The following sections are repealed:

38 Sections 1 and 2 of P.L.2005, c.345 (C.54:10A-5.39 and
 39 C.54A:4-12); and

40 Sections 2 and 3 of P.L.2010, c.20 (C.54:10A-5.39a and
 41 C.54A:4-12a).¹

42

43 ¹**[4.]** 5.¹ This act shall take effect immediately.