

[First Reprint]

## **ASSEMBLY, No. 1038**

# **STATE OF NEW JERSEY**

## **218th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Assemblyman PAUL D. MORIARTY**

**District 4 (Camden and Gloucester)**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Co-Sponsored by:**

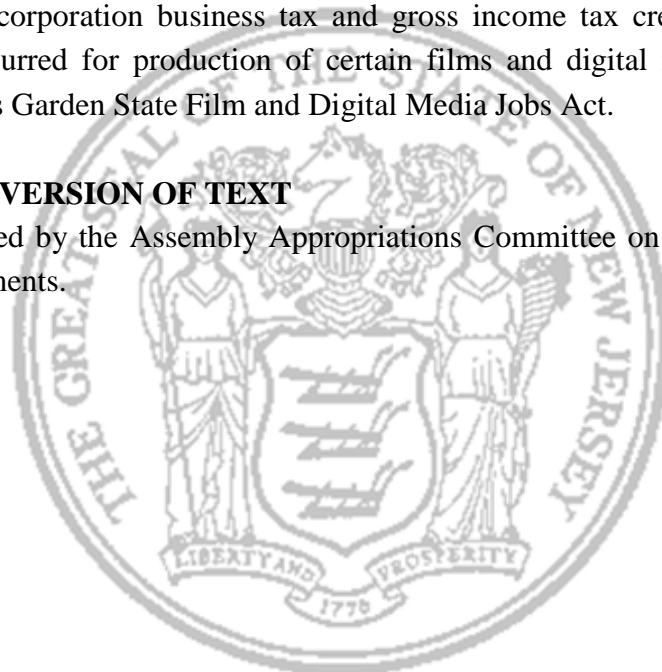
**Assemblymen Calabrese, Giblin, Assemblywomen Vainieri Huttie, Murphy, Assemblymen Andrzejczak, Land, Chiaravalloti and Houghtaling**

### **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 <sup>1</sup>and repealing various parts of  
 7 the statutory law<sup>1</sup>.  
 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 <sup>1</sup>, or an approved logo  
 33 approved by the Commission,<sup>1</sup> 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 <sup>1</sup>**[40**  
 44 percent for the qualified film production expenses of the taxpayer

**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:

<sup>1</sup>Assembly AAP committee amendments adopted April 5, 2018.

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

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 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in  
13 an amount equal to 20 percent of the qualified digital media content  
14 production expenses of the taxpayer during a privilege period  
15 commencing on or after July 1, 2018 but before July 1, 2023,  
16 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 f. 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 g. 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 imposed pursuant to section 5 of  
33 P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to <sup>1</sup>【40  
34 percent for the qualified digital media content production expenses  
35 of the taxpayer during a privilege period that represent expenses of  
36 the taxpayer incurred in an eligible municipality for the production  
37 of digital media content】 25 percent of the qualified digital media  
38 content production expenses of the taxpayer during a privilege  
39 period that are incurred for services performed and tangible  
40 personal property purchased through vendors whose primary place  
41 of business is located in Atlantic, Burlington, Camden, Cape May,  
42 Cumberland, Gloucester, Mercer, or Salem County<sup>1</sup>.

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

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

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

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

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

1 f. A taxpayer shall submit to the authority and the director a  
2 report prepared by an independent certified public accountant  
3 licensed in this State to verify the taxpayer's tax credit claim  
4 following the completion of the production. The report shall be  
5 ~~'[based on a compliance audit conducted]~~ prepared<sup>1</sup> by the  
6 independent certified public accountant pursuant to ~~'[procedures~~  
7 ~~agreed upon by the taxpayer, the independent certified public~~  
8 ~~accountant, and the authority and the director]~~ agreed upon  
9 procedures prescribed by the authority and the director<sup>1</sup>; and shall  
10 include such information and documentation as shall be determined  
11 to be necessary by the authority and the director to substantiate the  
12 qualified film production expenses or the qualified digital media  
13 content production expenses of the taxpayer. Upon receipt of the  
14 report, the authority and the director shall review the findings of the  
15 independent certified public accountant's ~~'[compliance audit]~~  
16 report<sup>1</sup>, and shall make a determination as to the qualified film  
17 production expenses or the qualified digital media content  
18 production expenses of the taxpayer. The determination shall be  
19 provided in writing to the taxpayer, and a copy of the written  
20 determination shall be included in the filing of a return that includes  
21 a claim for a tax credit allowed pursuant to this section.

22 g. A taxpayer shall withhold from each payment to a loan out  
23 company or to an independent contractor an amount equal to 6.37  
24 percent of the payment otherwise due. The amounts withheld shall  
25 be deemed to be withholding of liability pursuant to the "New  
26 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the  
27 taxpayer shall be deemed to have the rights, duties, and  
28 responsibilities of an employer pursuant to chapter 7 of Title 54A of  
29 the New Jersey Statutes. The director shall allocate the amounts  
30 withheld for a taxable year to the accounts of the individuals who  
31 are employees of a loan out company in proportion to the  
32 employee's payment by the loan out company in connection with a  
33 trade, profession, or occupation carried on in this State or for the  
34 rendition of personal services performed in this State during the  
35 taxable year. A loan out company that reports its payments to  
36 employees in connection with a trade, profession, or occupation  
37 carried on in this State or for the rendition of personal services  
38 performed in this State during a taxable year shall be relieved of its  
39 duties and responsibilities as an employer pursuant to chapter 7 of  
40 Title 54A of the New Jersey Statutes for the taxable year for any  
41 payments relating to the payments on which the taxpayer withheld.

42 h. As used in this section:

43 "Authority" means the New Jersey Economic Development  
44 Authority.

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

1 “Commission” means the Motion Picture and Television  
2 Development Commission.

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

18 <sup>1</sup>“Eligible municipality” means a municipality in this State that  
19 has experienced the closure of at least two casino hotel facilities  
20 that had been licensed and operated, within the boundaries of the  
21 municipality, in accordance with the laws of this State. <sup>1</sup>

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

38 “Full-time or full-time equivalent employee” means an  
39 individual employed by the taxpayer for consideration for at least  
40 35 hours a week, or who renders any other standard of service  
41 generally accepted by custom or practice as full-time or full-time  
42 equivalent employment, whose wages are subject to withholding as  
43 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1  
44 et seq., or who is a partner of a taxpayer, who works for the  
45 partnership for at least 35 hours a week, or who renders any other  
46 standard of service generally accepted by custom or practice as full-  
47 time or full-time equivalent employment, and whose distributive

1 share of income, gain, loss, or deduction, or whose guaranteed  
2 payments, or any combination thereof, is subject to the payment of  
3 estimated taxes, as provided in the “New Jersey Gross Income Tax  
4 Act,” N.J.S.54A:1-1 et seq. “Full-time or full-time equivalent  
5 employee” shall not include an individual who works as an  
6 independent contractor or on a consulting basis for the taxpayer.

7 “Highly compensated individual” means an individual who  
8 directly or indirectly receives compensation in excess of  
9 <sup>1</sup>[\$1,500,000] ~~\$500,000~~<sup>1</sup> for the performance of services used  
10 directly in a production. An individual receives compensation  
11 indirectly when the taxpayer pays a loan out company that, in turn,  
12 pays the individual for the performance of services.

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

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

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

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

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

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



1 State or for the rendition of personal services performed in this  
2 State and the taxpayer has made the withholding required by  
3 subsection g. of this section. “Qualified digital media content  
4 production expenses” shall not include expenses incurred in  
5 marketing, promotion, or advertising digital media or other costs  
6 not directly related to the production of digital media content.  
7 Costs related to the acquisition or licensing of digital media content  
8 by the taxpayer for distribution or incorporation into the taxpayer's  
9 digital media content shall not be “qualified digital media content  
10 production expenses.”

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

36 “Total digital media content production expenses” means costs  
37 for services performed and property used or consumed in the  
38 production of digital media content.

39 “Total film production expenses” means costs for services  
40 performed and tangible personal property used or consumed in the  
41 production of a film.

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

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

9  
10 2. 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 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 30  
14 percent of the qualified film production expenses of the taxpayer  
15 during a taxable year commencing on or after July 1, 2018 but  
16 before July 1, 2023, provided that:

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

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

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

33 (d) the taxpayer submits a tax credit verification report prepared  
34 by an independent certified public accountant licensed in this State  
35 in accordance with subsection <sup>1</sup>[f.] g.<sup>1</sup> of this section; and

36 (e) the taxpayer complies with the withholding requirements  
37 provided for payments to loan out companies and independent  
38 contractors in accordance with subsection <sup>1</sup>[g.] h.<sup>1</sup> of this section.

39 (2) Notwithstanding the provisions of paragraph (1) of this  
40 subsection a. to the contrary, the tax credit allowed pursuant to this  
41 subsection against the tax otherwise due for the taxable year under  
42 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,  
43 shall be in an amount equal to <sup>1</sup>[40 percent for the qualified film  
44 production expenses of the taxpayer during a taxable year that  
45 represent expenses of the taxpayer incurred in an eligible  
46 municipality for the production of a film, including post-production  
47 costs of the taxpayer incurred in an eligible municipality] 35

1 percent of the qualified film production expenses of the taxpayer  
2 during a taxable year that are incurred for services performed and  
3 tangible personal property purchased through vendors whose  
4 primary place of business is located in Atlantic, Burlington,  
5 Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem  
6 County<sup>1</sup>.

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

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

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

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

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

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

41 c. No tax credit shall be allowed pursuant to this section for  
42 any costs or expenses included in the calculation of any other tax  
43 credit or exemption granted pursuant to a claim made on a tax  
44 return filed with the director, or included in the calculation of an  
45 award of business assistance or incentive, for a period of time that  
46 coincides with the taxable year for which a tax credit authorized  
47 pursuant to this section is allowed. The order of priority <sup>1</sup>~~of~~ the

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

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

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

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

41 e. A taxpayer, with an application for a tax credit provided for  
42 in subsection a. or subsection b. of this section, may apply to the  
43 authority and the director for a tax credit transfer certificate in lieu  
44 of the taxpayer being allowed any amount of the tax credit against  
45 the tax liability of the taxpayer. The tax credit transfer certificate,  
46 upon receipt thereof by the taxpayer from the authority and the  
47 director, may be sold or assigned, in full or in part, to any other  
48 taxpayer that may have a tax liability under the “New Jersey Gross

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

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

47 (2) The value of tax credits, including tax credits allowed  
48 through the granting of tax credit transfer certificates, approved by

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

23 g. A taxpayer shall submit to the authority and the director a  
24 report prepared by an independent certified public accountant  
25 licensed in this State to verify the taxpayer’s tax credit claim  
26 following the completion of the production. The report shall be  
27 **‘[based on a compliance audit conducted] prepared’** by the  
28 independent certified public accountant pursuant to **‘[procedures**  
29 **agreed upon by the taxpayer, the independent certified public**  
30 **accountant, and the authority and the director] agreed upon**  
31 **procedures prescribed by the authority and the director**<sup>1</sup>; and shall  
32 include such information and documentation as shall be determined  
33 to be necessary by the authority and the director to substantiate the  
34 qualified film production expenses or the qualified digital media  
35 content production expenses of the taxpayer. Upon receipt of the  
36 report, the authority and the director shall review the findings of the  
37 independent certified public accountant’s **‘[compliance audit]**  
38 **report**<sup>1</sup>, and shall make a determination as to the qualified film  
39 production expenses or the qualified digital media content  
40 production expenses of the taxpayer. The determination shall be  
41 provided in writing to the taxpayer, and a copy of the written  
42 determination shall be included in the filing of a return that includes  
43 a claim for a tax credit allowed pursuant to this section.

44 h. A taxpayer shall withhold from each payment to a loan out  
45 company or to an independent contractor an amount equal to 6.37  
46 percent of the payment otherwise due. The amounts withheld shall  
47 be deemed to be withholding of liability pursuant to the “New

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

17 i. As used in this section:

18 “Authority” means the New Jersey Economic Development  
19 Authority.

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

23 “Commission” means the Motion Picture and Television  
24 Development Commission.

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

40 <sup>1</sup>【“Eligible municipality” means a municipality in this State that  
41 has experienced the closure of at least two casino hotel facilities  
42 that had been licensed and operated, within the boundaries of the  
43 municipality, in accordance with the laws of this State.】<sup>1</sup>

44 “Film” means a feature film, a television series <sup>1,1</sup> or a television  
45 show of 22 minutes or more in length, intended for a national  
46 audience, or a television series or a television show of 22 minutes  
47 or more in length intended for a national or regional audience,

1 including, but not limited to, a game show, award show, or other  
2 gala event filmed and produced at a nonprofit arts and cultural  
3 venue receiving State funding. “Film” shall not include a  
4 production featuring news, current events, weather <sup>1,1</sup> and market  
5 reports or public programming, talk show, sports event, or reality  
6 show, a production that solicits funds, a production containing  
7 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-  
8 3, or a production primarily for private, industrial, corporate <sup>1,1</sup> or  
9 institutional purposes. “Film” shall not include <sup>1</sup> **[a game show,]**  
10 **an** <sup>1</sup> award show <sup>1</sup> **[.]** <sup>1</sup> or other gala event that is not filmed and  
11 produced at a nonprofit arts and cultural venue receiving State  
12 funding.

13 “Full-time or full-time equivalent employee” means an  
14 individual employed by the taxpayer for consideration for at least  
15 35 hours a week, or who renders any other standard of service  
16 generally accepted by custom or practice as full-time or full-time  
17 equivalent employment, whose wages are subject to withholding as  
18 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1  
19 et seq., or who is a partner of a taxpayer, who works for the  
20 partnership for at least 35 hours a week, or who renders any other  
21 standard of service generally accepted by custom or practice as full-  
22 time or full-time equivalent employment, and whose distributive  
23 share of income, gain, loss, or deduction, or whose guaranteed  
24 payments, or any combination thereof, is subject to the payment of  
25 estimated taxes, as provided in the “New Jersey Gross Income Tax  
26 Act,” N.J.S.54A:1-1 et seq. “Full-time or full-time equivalent  
27 employee” shall not include an individual who works as an  
28 independent contractor or on a consulting basis for the taxpayer.

29 “Highly compensated individual” means an individual who  
30 directly or indirectly receives compensation in excess of  
31 <sup>1</sup> **[\$1,500,000]** \$500,000 <sup>1</sup> for the performance of services used  
32 directly in a production. An individual receives compensation  
33 indirectly when the taxpayer pays a loan out company that, in turn,  
34 pays the individual for the performance of services.

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

39 “Loan out company” means a personal service corporation or  
40 other entity that is contracted with by the taxpayer to provide  
41 specified individual personnel, such as artists, crew, actors,  
42 producers, or directors for the performance of services used directly  
43 in a production. “Loan out company” does not include entities  
44 contracted with by the taxpayer to provide goods or ancillary  
45 contractor services such as catering, construction, trailers,  
46 equipment, or transportation.



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 shall not be limited to <sup>1</sup> wages and salaries of  
16 individuals employed in the production of digital media content on  
17 which the 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 a “qualified digital media  
23 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 by  
27 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 “qualified digital media content  
34 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 shall 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 a  
48 “qualified film production expense” unless the payment is made in

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

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

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

18

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

33

34 <sup>1</sup>4. The following sections are repealed:

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

37 Sections 2 and 3 of P.L.2010, c.20 (C.54:10A-5.39a and  
38 C.54A:4-12a).<sup>1</sup>

39

40 <sup>1</sup>["4."] 5.<sup>1</sup> This act shall take effect immediately.