

ASSEMBLY, No. 5580

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JUNE 13, 2019

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:

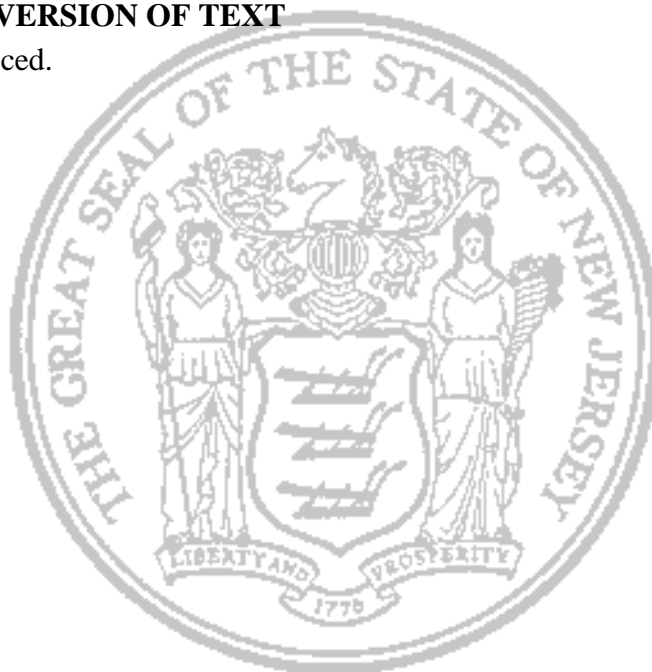
Assemblyman Karabinchak

SYNOPSIS

Extends, by five years, period for which corporation business tax and gross income tax credit for certain expenses incurred for production of certain films and digital media content.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 8/26/2019)

1 AN ACT extending the period of time for which certain films and
2 digital media content tax credits may be applied, and amending
3 P.L.2018, c.56.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 1 of P.L.2018, c.56 (C.54:10A-5.39b) is amended to
9 read as follows:

10 1. a. (1) A taxpayer, upon approval of an application to the
11 authority and the director, shall be allowed a credit against the tax
12 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
13 an amount equal to 30 percent of the qualified film production
14 expenses of the taxpayer during a privilege period commencing on
15 or after July 1, 2018 but before July 1, **[2023]** 2028, provided that:

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

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

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

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

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

38 (2) Notwithstanding the provisions of paragraph (1) of this
39 subsection a. to the contrary, the tax credit allowed pursuant to this
40 subsection against the tax imposed pursuant to section 5 of
41 P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 35
42 percent of the qualified film production expenses of the taxpayer
43 during a privilege period that are incurred for services performed
44 and tangible personal property purchased through vendors whose
45 primary place of business is located in Atlantic, Burlington,

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

Matter underlined thus is new matter.

1 Camden, Cape May, Cumberland, Gloucester, Mercer or Salem
2 County.

3 b. (1) A taxpayer, upon approval of an application to the
4 authority and the director, shall be allowed a credit against the tax
5 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
6 an amount equal to 20 percent of the qualified digital media content
7 production expenses of the taxpayer during a privilege period
8 commencing on or after July 1, 2018 but before July 1, **[2023]**
9 2028, provided that:

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

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

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

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

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

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

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

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

38 e. (1) The value of tax credits, including tax credits allowed
39 through the granting of tax credit transfer certificates, approved by
40 the director and the authority pursuant to subsection a. of this
41 section and pursuant to subsection a. of section 2 of P.L.2018, c.56
42 (C.54A:4-12b) shall not exceed a cumulative total of \$75,000,000 in
43 fiscal year 2019 and in each fiscal year thereafter prior to fiscal year
44 2024 to apply against the tax imposed pursuant to section 5 of
45 P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the
46 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the
47 cumulative total amount of tax credits, and tax credit transfer
48 certificates, allowed to taxpayers for privilege periods or taxable

1 years commencing during a single fiscal year under subsection a. of
2 this section and subsection a. of section 2 of P.L.2018, c.56
3 (C.54A:4-12b) exceeds the amount of tax credits available in that
4 fiscal year, then taxpayers who have first applied for and have not
5 been allowed a tax credit or tax credit transfer certificate amount for
6 that reason shall be allowed, in the order in which they have
7 submitted an application, the amount of tax credit or tax credit
8 transfer certificate on the first day of the next succeeding fiscal year
9 in which tax credits and tax credit transfer certificates under
10 subsection a. of this section and subsection a. of section 2 of
11 P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of
12 credits available.

13 (2) The value of tax credits, including tax credits allowed
14 through the granting of tax credit transfer certificates, approved by
15 the authority and the director pursuant to subsection b. of this
16 section and pursuant to subsection b. of section 2 of P.L.2018, c.56
17 (C.54A:4-12b) shall not exceed a cumulative total of \$10,000,000 in
18 fiscal year 2019 and in each fiscal year thereafter prior to fiscal year
19 2024 to apply against the tax imposed pursuant to section 5 of
20 P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the
21 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the
22 total amount of tax credits and tax credit transfer certificates
23 allowed to taxpayers for privilege periods or taxable years
24 commencing during a single fiscal year under subsection b. of this
25 section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-
26 12.b) exceeds the amount of tax credits available in that year, then
27 taxpayers who have first applied for and have not been allowed a
28 tax credit or tax credit transfer certificate amount for that reason
29 shall be allowed, in the order in which they have submitted an
30 application, the amount of tax credit or tax credit transfer certificate
31 on the first day of the next succeeding fiscal year in which tax
32 credits and tax credit transfer certificates under subsection b. of this
33 section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-
34 12.b) are not in excess of the amount of credits available.

35 f. A taxpayer shall submit to the authority and the director a
36 report prepared by an independent certified public accountant
37 licensed in this State to verify the taxpayer's tax credit claim
38 following the completion of the production. The report shall be
39 prepared by the independent certified public accountant pursuant to
40 agreed upon procedures prescribed by the authority and the director;
41 and shall include such information and documentation as shall be
42 determined to be necessary by the authority and the director to
43 substantiate the qualified film production expenses or the qualified
44 digital media content production expenses of the taxpayer. Upon
45 receipt of the report, the authority and the director shall review the
46 findings of the independent certified public accountant's report, and
47 shall make a determination as to the qualified film production
48 expenses or the qualified digital media content production expenses

1 of the taxpayer. The determination shall be provided in writing to
2 the taxpayer, and a copy of the written determination shall be
3 included in the filing of a return that includes a claim for a tax
4 credit allowed pursuant to this section.

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

25 h. As used in this section:

26 "Authority" means the New Jersey Economic Development
27 Authority.

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

31 "Commission" means the Motion Picture and Television
32 Development Commission.

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

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

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

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

46 "Independent contractor" means an individual treated as an
47 independent contractor for federal and State tax purposes who is

1 contracted with by the taxpayer for the performance of services
2 used directly in a production.

3 "Loan out company" means a personal service corporation or
4 other entity that is contracted with by the taxpayer to provide
5 specified individual personnel, such as artists, crew, actors,
6 producers, or directors for the performance of services used directly
7 in a production. "Loan out company" does not include entities
8 contracted with by the taxpayer to provide goods or ancillary
9 contractor services such as catering, construction, trailers,
10 equipment, or transportation.

11 "Partnership" means an entity classified as a partnership for
12 federal income tax purposes.

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

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

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

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

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

21 "Total digital media content production expenses" means costs
22 for services performed and property used or consumed in the
23 production of digital media content.

24 "Total film production expenses" means costs for services
25 performed and tangible personal property used or consumed in the
26 production of a film.

27 i. A business that is not a "taxpayer" as defined and used in the
28 "Corporation Business Tax Act (1945)" P.L.1945, c.162 (C.54:10A-
29 1 et seq.) and therefore is not directly allowed a credit under this
30 section, but is a business entity that is classified as a partnership for
31 federal income tax purposes and is ultimately owned by a business
32 entity that is a "corporation" as defined in subsection (c) of section
33 4 of P.L.1945, c.162 (C.54:10A-4), or a limited liability company
34 formed under the "Revised Uniform Limited Liability Company
35 Act," P.L.2012, c.50 (C.42:2C-1 et seq.), or qualified to do business
36 in this State as a foreign limited liability company, with one
37 member, and is wholly owned by the business entity that is a
38 "corporation" as defined in subsection (c) of section 4 of P.L.1945,
39 c.162 (C.54:10A-4), but otherwise meets all other requirements of
40 this section, shall be considered an eligible applicant and "taxpayer"
41 as that term is used in this section.

42 (cf: P.L.2018, c.56, s.1)

43

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

46 2. a. (1) A taxpayer, upon approval of an application to the
47 authority and the director, shall be allowed a credit against the tax
48 otherwise due for the taxable year under the "New Jersey Gross

1 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 30
2 percent of the qualified film production expenses of the taxpayer
3 during a taxable year commencing on or after July 1, 2018 but
4 before July 1, **【2023】** 2028, provided that:

5 (a) at least 60 percent of the total film production expenses,
6 exclusive of post-production costs, of the taxpayer are incurred for
7 services performed, and goods purchased through vendors
8 authorized to do business, in New Jersey, or the qualified film
9 production expenses of the taxpayer during the taxable year exceed
10 \$1,000,000 per production;

11 (b) principal photography of the film commences within the
12 earlier of 180 days from the date of the original application for the
13 tax credit, or 150 days from the date of approval of the application
14 for the tax credit;

15 (c) the film includes, when determined to be appropriate by the
16 commission, at no cost to the State, marketing materials promoting
17 this State as a film and entertainment production destination, which
18 materials shall include placement of a "Filmed in New Jersey" or
19 "Produced in New Jersey" statement, or an appropriate logo
20 approved by the Commission, in the end credits of the film;

21 (d) 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 (e) 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 a. 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 35 percent of the qualified film
32 production expenses of the taxpayer during a taxable year that are
33 incurred for services performed and tangible personal property
34 purchased through vendors whose primary place of business is
35 located in Atlantic, Burlington, Camden, Cape May, Cumberland,
36 Gloucester, Mercer, or Salem County.

37 b. (1) A taxpayer, upon approval of an application to the
38 authority and the director, shall be allowed a credit against the tax
39 otherwise due for the taxable year under the "New Jersey Gross
40 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 20
41 percent of the qualified digital media content production expenses
42 of the taxpayer during a taxable year commencing on or after July
43 1, 2018 but before July 1, **【2023】** 2028, provided that:

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

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

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

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

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

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

40 d. (1) A business entity that is classified as a partnership for
41 federal income tax purposes shall not be allowed a tax credit
42 pursuant to this section directly, but the amount of tax credit of a
43 taxpayer in respect of a distributive share of entity income, shall be
44 determined by allocating to the taxpayer that proportion of the tax
45 credit acquired by the entity that is equal to the taxpayer's share,
46 whether or not distributed, of the total distributive income or gain
47 of the entity for its taxable year ending within or with the taxpayer's
48 taxable year.

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

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

19 e. 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 "New Jersey Gross
27 Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation
28 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-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 N.J.S.54A:1-1 et seq. that the taxpayer has elected to
35 sell or assign. The sale or assignment of any amount of a tax credit
36 transfer certificate allowed under this section shall not be
37 exchanged for consideration received by the taxpayer of less than
38 75 percent of the transferred tax credit amount. Any amount of a
39 tax credit transfer certificate used by a purchaser or assignee against
40 a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the
41 same limitations and conditions that apply to the use of a tax credit
42 pursuant to subsections c. and d. of this section. Any amount of a
43 tax credit transfer certificate obtained by a purchaser or assignee
44 under this subsection e. may be applied against the purchaser's or
45 assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.)
46 and shall be subject to the same limitations and conditions that
47 apply to the use of a credit pursuant to subsection c. of section 1 of
48 P.L.2018, c.56 (C.54:10A-5.39b).

1 f. (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 1 of P.L.2018, c.56
5 (C.54:10A-5.39b) shall not exceed a cumulative total of
6 \$75,000,000 in fiscal year 2019 and in each fiscal year thereafter
7 prior to fiscal year 2024 to apply against the tax imposed pursuant
8 to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.,
9 and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the
10 cumulative total amount of tax credits, and tax credit transfer
11 certificates, allowed to taxpayers for taxable years or privilege
12 periods commencing during a single fiscal year under subsection a.
13 of this section and subsection a. of section 1 of P.L.2018, c.56
14 (C.54:10A-5.39b) exceeds the amount of tax credits available in
15 that fiscal year, then taxpayers who have first applied for and have
16 not been allowed a tax credit or tax credit transfer certificate
17 amount for that reason shall be allowed, in the order in which they
18 have submitted an application, the amount of tax credit or tax credit
19 transfer certificate on the first day of the next succeeding fiscal year
20 in which tax credits and tax credit transfer certificates under
21 subsection a. of this section and subsection a. of section 1 of
22 P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of
23 credits available.

24 (2) The value of tax credits, including tax credits allowed
25 through the granting of tax credit transfer certificates, approved by
26 the authority and the director pursuant to subsection b. of this
27 section and pursuant to subsection b. of section 1 of P.L.2018, c.56
28 (C.54:10A-5.39b) shall not exceed a cumulative total of
29 \$10,000,000 in fiscal year 2019 and in each fiscal year thereafter
30 prior to fiscal year 2024 to apply against the tax imposed pursuant
31 to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
32 and the tax imposed pursuant to section 5 of P.L.1945, c.162
33 (C.54:10A-5). If the total amount of tax credits and tax credit
34 transfer certificates allowed to taxpayers for taxable years or
35 privilege periods commencing during a single fiscal year under
36 subsection b. of this section and subsection b. of section 2 of
37 P.L.2018, c.56 (C.54:4-12b) exceeds the amount of tax credits
38 available in that year, then taxpayers who have first applied for and
39 have not been allowed a tax credit or tax credit transfer certificate
40 amount for that reason shall be allowed, in the order in which they
41 have submitted an application, the amount of tax credit or tax credit
42 transfer certificate on the first day of the next succeeding fiscal year
43 in which tax credits and tax credit transfer certificates under
44 subsection b. of this section and subsection b. of section 2 of
45 P.L.2018, c.56 (C.54:4-12b) are not in excess of the amount of
46 credits available.

47 g. A taxpayer shall submit to the authority and the director a
48 report prepared by an independent certified public accountant

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

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

37 i. As used in this section:

38 "Authority" means the New Jersey Economic Development
39 Authority.

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

43 "Commission" means the Motion Picture and Television
44 Development Commission.

45 "Digital media content" means any data or information that is
46 produced in digital form, including data or information created in
47 analog form but reformatted in digital form, text, graphics,
48 photographs, animation, sound, and video content. "Digital media

1 content" does not mean content offerings generated by the end user
2 (including postings on electronic bulletin boards and chat rooms);
3 content offerings comprised primarily of local news, events,
4 weather or local market reports; public service content; electronic
5 commerce platforms (such as retail and wholesale websites);
6 websites or content offerings that contain obscene material as
7 defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or
8 content that are produced or maintained primarily for private,
9 industrial, corporate, or institutional purposes; or digital media
10 content acquired or licensed by the taxpayer for distribution or
11 incorporation into the taxpayer's digital media content.

12 "Film" means a feature film, a television series, or a television
13 show of 22 minutes or more in length, intended for a national
14 audience, or a television series or a television show of 22 minutes
15 or more in length intended for a national or regional audience,
16 including, but not limited to, a game show, award show, or other
17 gala event filmed and produced at a nonprofit arts and cultural
18 venue receiving State funding. "Film" shall not include a
19 production featuring news, current events, weather, and market
20 reports or public programming, talk show, sports event, or reality
21 show, a production that solicits funds, a production containing
22 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
23 3, or a production primarily for private, industrial, corporate, or
24 institutional purposes. "Film" shall not include an award show or
25 other gala event that is not filmed and produced at a nonprofit arts
26 and cultural venue receiving State funding.

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

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

1 "Independent contractor" means an individual treated as an
2 independent contractor for federal and State tax purposes who is
3 contracted with by the taxpayer for the performance of services
4 used directly in a production.

5 "Loan out company" means a personal service corporation or
6 other entity that is contracted with by the taxpayer to provide
7 specified individual personnel, such as artists, crew, actors,
8 producers, or directors for the performance of services used directly
9 in a production. "Loan out company" does not include entities
10 contracted with by the taxpayer to provide goods or ancillary
11 contractor services such as catering, construction, trailers,
12 equipment, or transportation.

13 "Partnership" means an entity classified as a partnership for
14 federal income tax purposes.

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

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

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

47 "Qualified film production expenses" means an expense incurred
48 in New Jersey for the production of a film including pre-production

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

23 "Total digital media content production expenses" means costs
24 for services performed and property used or consumed in the
25 production of digital media content.

26 "Total film production expenses" means costs for services
27 performed and tangible personal property used or consumed in the
28 production of a film.

29 (cf: P.L.2018, c.56, s.2)

30

31 3. Section 4 of P.L.2018, c.56 is amended to read as follows:

32 4. **【a.】** A taxpayer, upon approval of an application to the
33 authority and the director, shall be allowed a credit against the tax
34 imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) in
35 an amount equal to 2 percent of the qualified film or digital media
36 content production expenses of the taxpayer during a privilege
37 period commencing on or after July 1, 2018 but before July 1,
38 **【2023】 2028**, provided that:

39 **【(a)】 a.** the application is accompanied by a diversity plan
40 outlining specific goals, which may include advertising and
41 recruitment actions, for hiring minority persons and women;

42 **【(b)】 b.** the director and the authority have approved the plan
43 as meeting the requirements established by the director and the
44 authority; and

45 **【(c)】 c.** the director and the authority have verified that the
46 applicant has met or made good-faith efforts in achieving those
47 goals.

1 The director and the authority shall adopt any rules necessary to
2 implement this provision.

3 The application shall indicate whether the applicant intends to
4 participate in training, education, and recruitment programs that are
5 organized in cooperation with State colleges and universities, labor
6 organizations, and the motion picture industry and are designed to
7 promote and encourage the training and hiring of New Jersey
8 residents who represent the diversity of the State population.

9
10 4. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill extends, by five years, the availability period for
16 corporation business tax and gross income tax credits for certain
17 expenses incurred for the production of certain films and digital
18 media content. Under existing law, these tax credits are available to
19 a taxpayer with qualifying production expenses during a privilege
20 period or taxable year that commences on or after July 1, 2018, but
21 before July, 1, 2023. The bill provides that the tax credits are to be
22 available to a taxpayer with qualifying production expenses during
23 a privilege period or taxable year commencing on or after July 1,
24 2018, but before from July, 1, 2028.