

SENATE, No. 122

STATE OF NEW JERSEY

218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Co-Sponsored by:

Senators Brown, Addiego, Gopal and Ruiz

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 introduced.



(Sponsorship Updated As Of: 3/14/2018)

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.

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

10

11 1. a. (1) A taxpayer, upon approval of an application to the
12 authority and the director, shall be allowed a credit against the tax
13 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
14 an amount equal to 30 percent of the qualified film production
15 expenses of the taxpayer during a privilege period commencing on
16 or after July 1, 2018 but 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 privilege period
22 exceed \$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 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 40
42 percent for the qualified film production expenses of the taxpayer
43 during a privilege period that represent expenses of the taxpayer
44 incurred in an eligible municipality for the production of a film,
45 including post-production costs of the taxpayer incurred in an
46 eligible municipality.

47 b. (1) A taxpayer, upon approval of an application to the
48 authority and the director, shall be allowed a credit against the tax

1 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in
2 an amount equal to 20 percent of the qualified digital media content
3 production expenses of the taxpayer during a privilege period
4 commencing on or after July 1, 2018 but before July 1, 2023,
5 provided that:

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

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

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

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

19 (2) Notwithstanding the provisions of paragraph (1) of this
20 subsection b. to the contrary, the tax credit allowed pursuant to this
21 subsection against the tax imposed pursuant to section 5 of
22 P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40
23 percent for the qualified digital media content production expenses
24 of the taxpayer during a privilege period that represent expenses of
25 the taxpayer incurred in an eligible municipality for the production
26 of digital media content.

27 c. No tax credit shall be allowed pursuant to this section for any
28 costs or expenses included in the calculation of any other tax credit
29 or exemption granted pursuant to a claim made on a tax return filed
30 with the director, or included in the calculation of an award of
31 business assistance or incentive, for a period of time that coincides
32 with the privilege period for which a tax credit authorized pursuant
33 to this section is allowed. The order of priority of the application of
34 the tax credit allowed pursuant to this section and any other tax
35 credits allowed by law shall be as prescribed by the director. The
36 amount of the tax credit applied under this section against the tax
37 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for
38 a privilege period, when taken together with any other payments,
39 credits, deductions, and adjustments allowed by law shall not
40 reduce the tax liability of the taxpayer to an amount less than the
41 statutory minimum provided in subsection (e) of section 5 of
42 P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit
43 otherwise allowable under this section which cannot be applied for
44 the privilege period due to the limitations of this subsection or
45 under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may
46 be carried forward, if necessary, to the seven privilege periods
47 following the privilege period for which the tax credit was allowed.

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

32 e. (1) The value of tax credits, including tax credits allowed
33 through the granting of tax credit transfer certificates, approved by
34 the director and the authority pursuant to subsection a. of this
35 section and pursuant to subsection a. of section 2 of P.L. ,
36 c. (C.) (pending before the Legislature as this bill) shall not
37 exceed a cumulative total of \$75,000,000 in fiscal year 2019 and in
38 each fiscal year thereafter prior to fiscal year 2024 to apply against
39 the tax imposed pursuant to section 5 of P.L.1945, c.162
40 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey
41 Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative
42 total amount of tax credits, and tax credit transfer certificates,
43 allowed to taxpayers for privilege periods or taxable years
44 commencing during a single fiscal year under subsection a. of this
45 section and subsection a. of section 2 of P.L. , c. (C.)
46 (pending before the Legislature as this bill) exceeds the amount of
47 tax credits available in that fiscal year, then taxpayers who have
48 first applied for and have not been allowed a tax credit or tax credit

1 transfer certificate amount for that reason shall be allowed, in the
2 order in which they have submitted an application, the amount of
3 tax credit or tax credit transfer certificate on the first day of the next
4 succeeding fiscal year in which tax credits and tax credit transfer
5 certificates under subsection a. of this section and subsection a. of
6 section 2 of P.L. , c. (C.) (pending before the Legislature as
7 this bill) are not in excess of the amount of credits available.

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

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

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

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

24 h. As used in this section:

25 “Authority” means the New Jersey Economic Development
26 Authority.

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

30 “Commission” means the Motion Picture and Television
31 Development Commission.

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

47 “Eligible municipality” means a municipality in this State that
48 has experienced the closure of at least two casino hotel facilities

1 that had been licensed and operated, within the boundaries of the
2 municipality, in accordance with the laws of this State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (a) at least 60 percent of the total film production expenses,
29 exclusive of post-production costs, of the taxpayer are incurred for
30 services performed, and goods purchased through vendors
31 authorized to do business, in New Jersey, or the qualified film
32 production expenses of the taxpayer during the taxable year exceed
33 \$1,000,000 per production;

34 (b) principal photography of the film commences within the
35 earlier of 180 days from the date of the original application for the
36 tax credit, or 150 days from the date of approval of the application
37 for the tax credit;

38 (c) the film includes, when determined to be appropriate by the
39 commission, at no cost to the State, marketing materials promoting
40 this State as a film and entertainment production destination, which
41 materials shall include placement of a “Filmed in New Jersey” or
42 “Produced in New Jersey” statement in the end credits of the film;

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

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

1 (2) Notwithstanding the provisions of paragraph (1) of this
2 subsection a. to the contrary, the tax credit allowed pursuant to this
3 subsection against the tax otherwise due for the taxable year under
4 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
5 shall be in an amount equal to 40 percent for the qualified film
6 production expenses of the taxpayer during a taxable year that
7 represent expenses of the taxpayer incurred in an eligible
8 municipality for the production of a film, including post-production
9 costs of the taxpayer incurred in an eligible municipality.

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

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

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

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

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

30 (2) Notwithstanding the provisions of paragraph (1) of this
31 subsection b. to the contrary, the tax credit allowed pursuant to this
32 subsection against the tax otherwise due for the taxable year under
33 the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
34 shall be in an amount equal to 40 percent for the qualified digital
35 media content production expenses of the taxpayer during a taxable
36 year that represent expenses of the taxpayer incurred in an eligible
37 municipality for the production of digital media content.

38 c. No tax credit shall be allowed pursuant to this section for any
39 costs or expenses included in the calculation of any other tax credit
40 or exemption granted pursuant to a claim made on a tax return filed
41 with the director, or included in the calculation of an award of
42 business assistance or incentive, for a period of time that coincides
43 with the taxable year for which a tax credit authorized pursuant to
44 this section is allowed. The order of priority of the application of
45 the tax credit allowed pursuant to this section and any other tax
46 credits allowed by law shall be as prescribed by the director. The
47 amount of the tax credit applied under this section against the tax
48 otherwise due under the “New Jersey Gross Income Tax Act,”

1 N.J.S.54A:1-1 et seq., for a taxable year, when taken together with
2 any other payments, credits, deductions, and adjustments allowed
3 by law shall not reduce the tax liability of the taxpayer to an amount
4 less than zero. The amount of the tax credit otherwise allowable
5 under this section which cannot be applied for the taxable year due
6 to the limitations of this subsection or under other provisions of
7 N.J.S.54A:1-1 et seq., may be carried forward, if necessary, to the
8 seven taxable years following the taxable year for which the tax
9 credit was allowed.

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

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

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

1 a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the
2 same limitations and conditions that apply to the use of a tax credit
3 pursuant to subsections c. and d. of this section. Any amount of a
4 tax credit transfer certificate obtained by a purchaser or assignee
5 under this subsection e. may be applied against the purchaser's or
6 assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.)
7 and shall be subject to the same limitations and conditions that
8 apply to the use of a credit pursuant to subsection c. of section 1 of
9 P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

1 taxpayers who have first applied for and have not been allowed a
2 tax credit or tax credit transfer certificate amount for that reason
3 shall be allowed, in the order in which they have submitted an
4 application, the amount of tax credit or tax credit transfer certificate
5 on the first day of the next succeeding fiscal year in which tax
6 credits and tax credit transfer certificates under subsection b. of this
7 section and subsection b. of section 2 of P.L. , c. (C.)
8 (pending before the Legislature as this bill) are not in excess of the
9 amount of credits available.

10 g. A taxpayer shall submit to the authority and the director a
11 report prepared by an independent certified public accountant
12 licensed in this State to verify the taxpayer's tax credit claim
13 following the completion of the production. The report shall be
14 based on a compliance audit conducted by the independent certified
15 public accountant pursuant to procedures agreed upon by the
16 taxpayer, the independent certified public accountant, and the
17 authority and the director; and shall include such information and
18 documentation as shall be determined to be necessary by the
19 authority and the director to substantiate the qualified film
20 production expenses or the qualified digital media content
21 production expenses of the taxpayer. Upon receipt of the report, the
22 authority and the director shall review the findings of the
23 independent certified public accountant's compliance audit, and
24 shall make a determination as to the qualified film production
25 expenses or the qualified digital media content production expenses
26 of the taxpayer. The determination shall be provided in writing to
27 the taxpayer, and a copy of the written determination shall be
28 included in the filing of a return that includes a claim for a tax
29 credit allowed pursuant to this section.

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

1 Title 54A of the New Jersey Statutes for the taxable year for any
2 payments relating to the payments on which the taxpayer withheld.

3 i. As used in this section:

4 “Authority” means the New Jersey Economic Development
5 Authority.

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

9 “Commission” means the Motion Picture and Television
10 Development Commission.

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

26 “Eligible municipality” means a municipality in this State that
27 has experienced the closure of at least two casino hotel facilities
28 that had been licensed and operated, within the boundaries of the
29 municipality, in accordance with the laws of this State.

30 “Film” means a feature film, a television series or a television
31 show of 22 minutes or more in length, intended for a national
32 audience, or a television series or a television show of 22 minutes
33 or more in length intended for a national or regional audience,
34 including, but not limited to, a game show, award show, or other
35 gala event filmed and produced at a nonprofit arts and cultural
36 venue receiving State funding. “Film” shall not include a
37 production featuring news, current events, weather and market
38 reports or public programming, talk show, sports event, or reality
39 show, a production that solicits funds, a production containing
40 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
41 3, or a production primarily for private, industrial, corporate or
42 institutional purposes. “Film” shall not include a game show,
43 award show, or other gala event that is not filmed and produced at a
44 nonprofit arts and cultural venue receiving State funding.

45 “Full-time or full-time equivalent employee” means an
46 individual employed by the taxpayer for consideration for at least
47 35 hours a week, or who renders any other standard of service
48 generally accepted by custom or practice as full-time or full-time

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

13 “Highly compensated individual” means an individual who
14 directly or indirectly receives compensation in excess of \$1,500,000
15 for the performance of services used directly in a production. An
16 individual receives compensation indirectly when the taxpayer pays
17 a loan out company that, in turn, pays the individual for the
18 performance of services.

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

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

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

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

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

42 “Qualified digital media content production expenses” means an
43 expense incurred in New Jersey for the production of digital media
44 content. “Qualified digital media content production expenses”
45 shall include but shall not be limited to wages and salaries of
46 individuals employed in the production of digital media content on
47 which the tax imposed by the “New Jersey Gross Income Tax Act,”
48 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of

1 computer software and hardware, data processing, visualization
2 technologies, sound synchronization, editing, and the rental of
3 facilities and equipment. Payment made to a loan out company or
4 to an independent contractor shall not be a “qualified digital media
5 content production expense” unless the payment is made in
6 connection with a trade, profession, or occupation carried on in this
7 State or for the rendition of personal services performed in this
8 State and the taxpayer has made the withholding required by
9 subsection h. of this section. “Qualified digital media content
10 production expenses” shall not include expenses incurred in
11 marketing, promotion, or advertising digital media or other costs
12 not directly related to the production of digital media content.
13 Costs related to the acquisition or licensing of digital media content
14 by the taxpayer for distribution or incorporation into the taxpayer's
15 digital media content shall not be “qualified digital media content
16 production expenses.”

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

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

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

1 -- principal photography of the film commences within the
2 earlier of 180 days from the date of the original application for the
3 tax credit, or 150 days from the date of approval of the application
4 for the tax credit;

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

10 -- the taxpayer submits a tax credit verification report prepared
11 by an independent certified public accountant licensed in this State;
12 and

13 -- the taxpayer complies with the withholding requirements
14 provided for payments to loan out companies and independent
15 contractors.

16 In order to claim the tax credit for qualified digital media
17 content production expenses, the bill provides that the following
18 conditions must be met:

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

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

26 -- the taxpayer submits a tax credit verification report prepared
27 by an independent certified public accountant licensed in this State;
28 and

29 -- the taxpayer complies with the withholding requirements
30 provided for payments to loan out companies and independent
31 contractors.

32 The bill imposes per year limits on the total cumulative amount
33 of tax credits that are allowed during the five-year period in which
34 the tax credits are operative. The bill provides that no more than
35 \$75 million of tax credits are allowed to be granted to taxpayers for
36 qualified film production expenses in fiscal year 2019 and in each
37 fiscal year thereafter prior to fiscal year 2024, and no more than \$10
38 million of tax credits are allowed to be granted to taxpayers for
39 qualified digital media content production expenses in fiscal year
40 2019 and in each fiscal year thereafter prior to fiscal year 2024.

41 The bill permits the authority and the director to adopt rules and
42 regulations necessary to effectuate the purposes of the bill, and
43 permits the immediate filing of those rules and regulations with the
44 Office of Administrative Law, effective for a period not to exceed
45 360 days following the effective date of the bill.

46 The bill is scheduled to take effect immediately upon enactment.