

[First Reprint]

SENATE, No. 3842

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 3, 2019

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Co-Sponsored by:

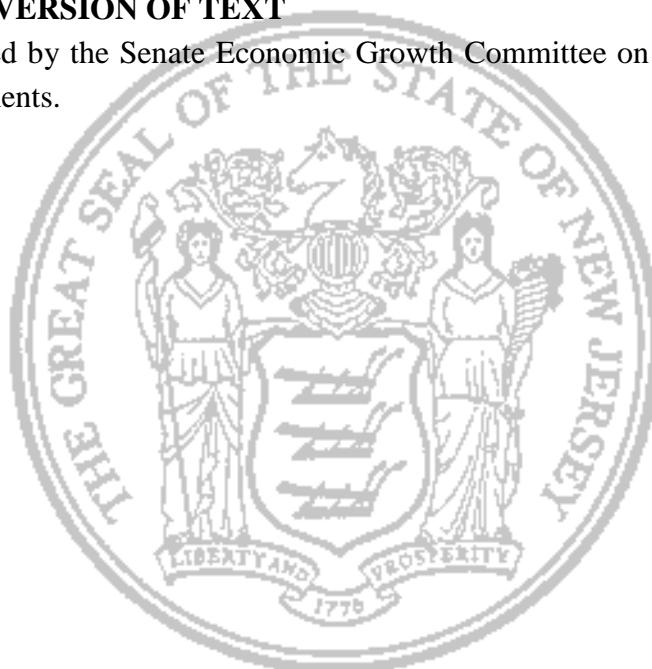
Senators Lagana and Brown

SYNOPSIS

Extends, by five years, the availability period and cap for corporation business tax and gross income tax credits for certain expenses incurred for production of certain films and digital media content.

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee on June 17, 2019, with amendments.



(Sponsorship Updated As Of: 12/17/2019)

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 an
13 amount equal to 30 percent of the qualified film production expenses
14 of the taxpayer during a privilege period commencing on or after July
15 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 authorized
19 to do business, in New Jersey, or the qualified film production
20 expenses of the taxpayer during the privilege period exceed
21 \$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 tax
24 credit, or 150 days from the date of approval of the application for the
25 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 this
28 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 by
31 the ¹**[Commission]** commission¹, 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 in
34 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 ¹**[this]**¹
39 subsection a. ¹of this section¹ to the contrary, the tax credit allowed
40 pursuant to this subsection against the tax imposed pursuant to section
41 5 of 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 and
44 tangible personal property purchased through vendors whose primary

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEG committee amendments adopted June 17, 2019.

1 place of business is located in Atlantic, Burlington, Camden, Cape
2 May, Cumberland, Gloucester, Mercer or Salem 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 an
6 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~~ 2028,
9 provided that:

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

17 (c) the taxpayer submits a tax credit verification report prepared by
18 an independent certified public accountant licensed in this State in
19 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 ~~1~~ **1** ~~["this"]~~¹
24 subsection b. of this section¹ to the contrary, the tax credit allowed
25 pursuant to this subsection against the tax imposed pursuant to section
26 5 of 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 of
28 the taxpayer during a privilege period that are incurred for services
29 performed and tangible personal property purchased through vendors
30 whose primary place of business is located in Atlantic, Burlington,
31 Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem
32 County.

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

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

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

35 e. (1) The value of tax credits, including tax credits allowed
36 through the granting of tax credit transfer certificates, approved by the
37 director and the authority pursuant to subsection a. of this section and
38 pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b)
39 shall not exceed a cumulative total of \$75,000,000 in fiscal year 2019
40 and in each fiscal year thereafter prior to fiscal year ¹~~2024~~ 2029¹ to
41 apply against the tax imposed pursuant to section 5 of P.L.1945, c.162
42 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross
43 Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative total
44 amount of tax credits, and tax credit transfer certificates, allowed to
45 taxpayers for privilege periods or taxable years commencing during a
46 single fiscal year under subsection a. of this section and subsection a.
47 of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of
48 tax credits available in that fiscal year, then taxpayers who have first

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

9 (2) The value of tax credits, including tax credits allowed through
10 the granting of tax credit transfer certificates, approved by the
11 authority and the director pursuant to subsection b. of this section and
12 pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b)
13 shall not exceed a cumulative total of \$10,000,000 in fiscal year 2019
14 and in each fiscal year thereafter prior to fiscal year ¹~~2024~~ 2029¹ to
15 apply against 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 Gross
17 Income Tax Act," N.J.S.54A:1-1 et seq. If the total amount of tax
18 credits and tax credit transfer certificates allowed to taxpayers for
19 privilege periods or taxable years commencing during a single fiscal
20 year under subsection b. of this section and subsection b. of section 2
21 of P.L.2018, c.56 (C.54A:4-12.b) exceeds the amount of tax credits
22 available in that year, then taxpayers who have first applied for and
23 have not been allowed a tax credit or tax credit transfer certificate
24 amount for that reason shall be allowed, in the order in which they
25 have submitted an application, the amount of tax credit or tax credit
26 transfer certificate on the first day of the next succeeding fiscal year in
27 which tax credits and tax credit transfer certificates under subsection b.
28 of this section and subsection b. of section 2 of P.L.2018, c.56
29 (C.54A:4-12.b) are not in excess of the amount of credits available.

30 f. A taxpayer shall submit to the authority and the director a
31 report prepared by an independent certified public accountant licensed
32 in this State to verify the taxpayer's tax credit claim following the
33 completion of the production. The report shall be prepared by the
34 independent certified public accountant pursuant to agreed upon
35 procedures prescribed by the authority and the director¹~~;~~¹ and shall
36 include such information and documentation as shall be determined to
37 be necessary by the authority and the director to substantiate the
38 qualified film production expenses or the qualified digital media
39 content production expenses of the taxpayer. Upon receipt of the
40 report, the authority and the director shall review the findings of the
41 independent certified public accountant's report, and shall make a
42 determination as to the qualified film production expenses or the
43 qualified digital media content production expenses of the taxpayer.
44 The determination shall be provided in writing to the taxpayer, and a
45 copy of the written determination shall be included in the filing of a
46 return that includes a claim for a tax credit allowed pursuant to this
47 section.

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

20 h. As used in this section:

21 "Authority" means the New Jersey Economic Development
22 Authority.

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

26 "Commission" means the Motion Picture and Television
27 Development Commission.

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

43 "Film" means a feature film, a television series, or a television
44 show of 22 minutes or more in length, intended for a national
45 audience, or a television series or a television show of 22 minutes or
46 more in length intended for a national or regional audience, including,
47 but not limited to, a game show, award show, or other gala event
48 filmed and produced at a nonprofit arts and cultural venue receiving

1 State funding. "Film" shall not include a production featuring news,
2 current events, weather, and market reports or public programming,
3 talk show, or sports event, a production that solicits funds, a
4 production containing obscene material as defined under N.J.S.2C:34-
5 2 and N.J.S.2C:34-3, or a production primarily for private, industrial,
6 corporate, or institutional purposes, or a reality show, except if the
7 production company of the reality show owns, leases, or otherwise
8 occupies a production facility of no less than 20,000 square feet of real
9 property for a minimum term of ¹【twenty-four (24)】 24¹ months, and
10 invests no less than \$3,000,000 in such a facility within a designated
11 enterprise zone established pursuant to the "New Jersey Urban
12 Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a
13 UEZ-impacted business district established pursuant to section 3 of
14 P.L.2001, c.347 (C.52:27H-66.2). "Film" shall not include an award
15 show or other gala event that is not filmed and produced at a nonprofit
16 arts and cultural venue receiving State funding.

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

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

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

43 "Loan out company" means a personal service corporation or other
44 entity that is contracted with by the taxpayer to provide specified
45 individual personnel, such as artists, crew, actors, producers, or
46 directors for the performance of services used directly in a production.
47 "Loan out company" ¹【does】 shall¹ not include entities contracted

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

3 "Partnership" means an entity classified as a partnership for federal
4 income tax purposes.

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

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

13 "Qualified digital media content production expenses" means an
14 expense incurred in New Jersey for the production of digital media
15 content. "Qualified digital media content production expenses" shall
16 include but ¹~~shall~~¹ not be limited to: wages and salaries of
17 individuals employed in the production of digital media content on
18 which the tax imposed by the "New Jersey Gross Income Tax Act,"
19 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
20 computer software and hardware, data processing, visualization
21 technologies, sound synchronization, editing, and the rental of
22 facilities and equipment. Payment made to a loan out company or to
23 an independent contractor shall not be ¹~~deemed~~¹ a "qualified digital
24 media content production expense" unless the payment is made in
25 connection with a trade, profession, or occupation carried on in this
26 State or for the rendition of personal services performed in this State
27 and the taxpayer has made the withholding required ¹~~by~~¹ pursuant
28 to¹ subsection g. of this section. "Qualified digital media content
29 production expenses" shall not include expenses incurred in marketing,
30 promotion, or advertising digital media or other costs not directly
31 related to the production of digital media content. Costs related to the
32 acquisition or licensing of digital media content by the taxpayer for
33 distribution or incorporation into the taxpayer's digital media content
34 shall not be ¹~~deemed~~¹ "qualified digital media content production
35 expenses."

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

1 contractor shall not be ¹deemed¹ a "qualified film production expense"
2 unless the payment is made in connection with a trade, profession, or
3 occupation carried on in this State or for the rendition of personal
4 services performed in this State and the taxpayer has made the
5 withholding required ¹[by] pursuant to¹ subsection g. of this section.
6 "Qualified film production expenses" shall not include: expenses
7 incurred in marketing or advertising a film; and payment in excess of
8 \$500,000 to a highly compensated individual for costs for a story,
9 script, or scenario used in the production of a film and wages or
10 salaries or other compensation for writers, directors, including music
11 directors, producers, and performers, other than background actors
12 with no scripted lines.

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

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

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

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

35

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

38 2. a. (1) A taxpayer, upon approval of an application to the
39 authority and the director, shall be allowed a credit against the tax
40 otherwise due for the taxable year under the "New Jersey Gross
41 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 30
42 percent of the qualified film production expenses of the taxpayer
43 during a taxable year commencing on or after July 1, 2018 but before
44 July 1, ~~2023~~ **2028**, provided that:

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

1 expenses of the taxpayer during the taxable year exceed \$1,000,000
2 per production;

3 (b) principal photography of the film commences within the earlier
4 of 180 days from the date of the original application for the tax credit,
5 or 150 days from the date of approval of the application for the tax
6 credit;

7 (c) the film includes, when determined to be appropriate by the
8 commission, at no cost to the State, marketing materials promoting this
9 State as a film and entertainment production destination, which
10 materials shall include placement of a "Filmed in New Jersey" or
11 "Produced in New Jersey" statement, or an appropriate logo approved
12 by the ¹**Commission** commission¹, in the end credits of the film;

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

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

19 (2) Notwithstanding the provisions of paragraph (1) of ¹**[this]**¹
20 subsection a. of this section¹ to the contrary, the tax credit allowed
21 pursuant to this subsection against the tax otherwise due for the
22 taxable year under the "New Jersey Gross Income Tax Act,"
23 N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent of the
24 qualified film production expenses of the taxpayer during a taxable
25 year that are incurred for services performed and tangible personal
26 property purchased through vendors whose primary place of business
27 is located in Atlantic, Burlington, Camden, Cape May, Cumberland,
28 Gloucester, Mercer, or Salem County.

29 b. (1) A taxpayer, upon approval of an application to the authority
30 and the director, shall be allowed a credit against the tax otherwise due
31 for the taxable year under the "New Jersey Gross Income Tax Act,"
32 N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the
33 qualified digital media content production expenses of the taxpayer
34 during a taxable year commencing on or after July 1, 2018 but before
35 July 1, **[2023]** 2028, provided that:

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

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

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

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

1 (2) Notwithstanding the provisions of paragraph (1) of ¹["this"]¹
2 subsection b. of this section¹ to the contrary, the tax credit allowed
3 pursuant to this subsection against the tax otherwise due for the
4 taxable year under the "New Jersey Gross Income Tax Act,"
5 N.J.S.54A:1-1 et seq., shall be in an amount equal to 25 percent for the
6 qualified digital media content production expenses of the taxpayer
7 during a taxable year that are incurred for services performed and
8 tangible personal property purchased through vendors whose primary
9 place of business is located in Atlantic, Burlington, Camden, Cape
10 May, Cumberland, Gloucester, Mercer, or Salem County.

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

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

38 (2) A New Jersey S Corporation shall not be allowed a tax credit
39 pursuant to this section directly, but the amount of tax credit of a
40 taxpayer in respect of a pro rata share of S Corporation income, shall
41 be determined by allocating to the taxpayer that proportion of the tax
42 credit acquired by the New Jersey S Corporation that is equal to the
43 taxpayer's share, whether or not distributed, of the total pro rata share
44 of S Corporation income of the New Jersey S Corporation for its
45 privilege period ending within or with the taxpayer's taxable year.

46 A business entity that is not a gross income "taxpayer" as defined
47 and used in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
48 seq., and therefore is not directly allowed a credit under this section,

1 but otherwise meets all the other requirements of this section, shall be
2 considered an eligible applicant and "taxpayer" as that term is used in
3 this section, and the application of an otherwise allowed credit amount
4 shall be distributed to appropriate gross income taxpayers pursuant to
5 the other requirements of this subsection.

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

35 f. (1) The value of tax credits, including tax credits allowed
36 through the granting of tax credit transfer certificates, approved by the
37 director and the authority pursuant to subsection a. of this section and
38 pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-
39 5.39b) shall not exceed a cumulative total of \$75,000,000 in fiscal year
40 2019 and in each fiscal year thereafter prior to fiscal year **'[2024]'**
41 **'2029'** to apply against the tax imposed pursuant to the "New Jersey
42 Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section
43 5 of P.L.1945, c.162 (C.54:10A-5). If the cumulative total amount of
44 tax credits, and tax credit transfer certificates, allowed to taxpayers for
45 taxable years or privilege periods commencing during a single fiscal
46 year under subsection a. of this section and subsection a. of section 1
47 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits
48 available in that fiscal year, then taxpayers who have first applied for

1 and have not been allowed a tax credit or tax credit transfer certificate
2 amount for that reason shall be allowed, in the order in which they
3 have submitted an application, the amount of tax credit or tax credit
4 transfer certificate on the first day of the next succeeding fiscal year in
5 which tax credits and tax credit transfer certificates under subsection a.
6 of this section and subsection a. of section 1 of P.L.2018, c.56
7 (C.54:10A-5.39b) are not in excess of the amount of credits available.

8 (2) The value of tax credits, including tax credits allowed through
9 the granting of tax credit transfer certificates, approved by the
10 authority and the director pursuant to subsection b. of this section and
11 pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-
12 5.39b) shall not exceed a cumulative total of \$10,000,000 in fiscal year
13 2019 and in each fiscal year thereafter prior to fiscal year ¹**[2024]**
14 2029¹ to apply against the tax imposed pursuant to the "New Jersey
15 Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed
16 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the total
17 amount of tax credits and tax credit transfer certificates allowed to
18 taxpayers for taxable years or privilege periods commencing during a
19 single fiscal year under subsection b. of this section and subsection b.
20 of section ¹**[2 of P.L.2018, c.56 (C.54:4-12b)]** 1 of P.L.2018, c. 56,
21 s.1 (C.54:10A-5.39b)¹ exceeds the amount of tax credits available in
22 that year, then taxpayers who have first applied for and have not been
23 allowed a tax credit or tax credit transfer certificate amount for that
24 reason shall be allowed, in the order in which they have submitted an
25 application, the amount of tax credit or tax credit transfer certificate on
26 the first day of the next succeeding fiscal year in which tax credits and
27 tax credit transfer certificates under subsection b. of this section and
28 subsection b. of section ¹**[2 of P.L.2018, c.56 (C.54:4-12b)]** 1 of
29 P.L.2018, c.56, s.1 (C.54:10A-5.39b)¹ are not in excess of the amount
30 of credits available.

31 g. A taxpayer shall submit to the authority and the director a
32 report prepared by an independent certified public accountant licensed
33 in this State to verify the taxpayer's tax credit claim following the
34 completion of the production. The report shall be prepared by the
35 independent certified public accountant pursuant to agreed upon
36 procedures prescribed by the authority and the director ¹**[;]** ¹ and
37 shall include such information and documentation as shall be
38 determined to be necessary by the authority and the director to
39 substantiate the qualified film production expenses or the qualified
40 digital media content production expenses of the taxpayer. Upon
41 receipt of the report, the authority and the director shall review the
42 findings of the independent certified public accountant's report, and
43 shall make a determination as to the qualified film production
44 expenses or the qualified digital media content production expenses of
45 the taxpayer. The determination shall be provided in writing to the
46 taxpayer, and a copy of the written determination shall be included in

1 the filing of a return that includes a claim for a tax credit allowed
2 pursuant to this section.

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

22 i. As used in this section:

23 "Authority" means the New Jersey Economic Development
24 Authority.

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

28 "Commission" means the Motion Picture and Television
29 Development Commission.

30 "Digital media content" means any data or information that is
31 produced in digital form, including data or information created in
32 analog form but reformatted in digital form, text, graphics,
33 photographs, animation, sound, and video content. "Digital media
34 content" ¹**【does】 shall¹** not mean content offerings generated by the
35 end user (including postings on electronic bulletin boards and chat
36 rooms); content offerings comprised primarily of local news, events,
37 weather or local market reports; public service content; electronic
38 commerce platforms (such as retail and wholesale websites); websites
39 or content offerings that contain obscene material as defined pursuant
40 to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are
41 produced or maintained primarily for private, industrial, corporate, or
42 institutional purposes; or digital media content acquired or licensed by
43 the taxpayer for distribution or incorporation into the taxpayer's digital
44 media content.

45 "Film" means a feature film, a television series, or a television
46 show of 22 minutes or more in length, intended for a national
47 audience, or a television series or a television show of 22 minutes or
48 more in length intended for a national or regional audience, including,

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

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

28 "Highly compensated individual" means an individual who directly
29 or indirectly receives compensation in excess of \$500,000 for the
30 performance of services used directly in a production. An individual
31 receives compensation indirectly when the taxpayer pays a loan out
32 company that, in turn, pays the individual for the performance of
33 services.

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

38 "Loan out company" means a personal service corporation or other
39 entity that is contracted with by the taxpayer to provide specified
40 individual personnel, such as artists, crew, actors, producers, or
41 directors for the performance of services used directly in a production.
42 "Loan out company" ¹**【does】** shall¹ not include entities contracted
43 with by the taxpayer to provide goods or ancillary contractor services
44 such as catering, construction, trailers, equipment, or transportation.

45 "Partnership" means an entity classified as a partnership for federal
46 income tax purposes.

47 "Post-production costs" means the costs of the phase of production
48 of a film that follows principal photography, in which raw footage is

1 cut and assembled into a finished film with sound synchronization and
2 visual effects.

3 "Pre-production costs" means the costs of the phase of production
4 of a film that precedes principal photography, in which a detailed
5 schedule and budget for the production is prepared, the script and
6 location is finalized, and contracts with vendors are negotiated.

7 "Qualified digital media content production expenses" means an
8 expense incurred in New Jersey for the production of digital media
9 content. "Qualified digital media content production expenses" shall
10 include but ¹**[shall]**¹ not be limited to: wages and salaries of
11 individuals employed in the production of digital media content on
12 which the tax imposed by the "New Jersey Gross Income Tax Act,"
13 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of
14 computer software and hardware, data processing, visualization
15 technologies, sound synchronization, editing, and the rental of
16 facilities and equipment. Payment made to a loan out company or to
17 an independent contractor shall not be ¹deemed¹ a "qualified digital
18 media content production expense" unless the payment is made in
19 connection with a trade, profession, or occupation carried on in this
20 State or for the rendition of personal services performed in this State
21 and the taxpayer has made the withholding required ¹**[by]** pursuant
22 to¹ subsection h. of this section. "Qualified digital media content
23 production expenses" shall not include expenses incurred in marketing,
24 promotion, or advertising digital media or other costs not directly
25 related to the production of digital media content. Costs related to the
26 acquisition or licensing of digital media content by the taxpayer for
27 distribution or incorporation into the taxpayer's digital media content
28 shall not be ¹deemed¹ "qualified digital media content production
29 expenses."

30 "Qualified film production expenses" means an expense incurred
31 in New Jersey for the production of a film including pre-production
32 costs and post-production costs incurred in New Jersey. "Qualified
33 film production expenses" shall include but ¹**[shall]**¹ not be limited to:
34 wages and salaries of individuals employed in the production of a film
35 on which the tax imposed by the "New Jersey Gross Income Tax Act,"
36 N.J.S.54A:1-1 et seq. has been paid or is due; and the costs for
37 tangible personal property used, and services performed, directly and
38 exclusively in the production of a film, such as expenditures for film
39 production facilities, props, makeup, wardrobe, film processing,
40 camera, sound recording, set construction, lighting, shooting, editing,
41 and meals. Payment made to a loan out company or to an independent
42 contractor shall not be ¹deemed¹ a "qualified film production expense"
43 unless the payment is made in connection with a trade, profession, or
44 occupation carried on in this State or for the rendition of personal
45 services performed in this State and the taxpayer has made the
46 withholding required by subsection h. of this section. "Qualified film
47 production expenses" shall not include: expenses incurred in

1 marketing or advertising a film; and payment in excess of \$500,000 to
2 a highly compensated individual for costs for a story, script, or
3 scenario used in the production of a film and wages or salaries or other
4 compensation for writers, directors, including music directors,
5 producers, and performers, other than background actors with no
6 scripted lines.

7 "Total digital media content production expenses" means costs for
8 services performed and property used or consumed in the production
9 of digital media content.

10 "Total film production expenses" means costs for services
11 performed and tangible personal property used or consumed in the
12 production of a film.

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

14

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

16 4. **[a.]** A taxpayer, upon approval of an application to the
17 authority and the director, shall be allowed a credit against the tax
18 imposed pursuant to section 5 of P.L.1945, c. 162 (C.54:10A-5) in
19 an amount equal to 2 percent of the qualified film or digital media
20 content production expenses of the taxpayer during a privilege
21 period commencing on or after July 1, 2018 but before July 1,
22 **[2023] 2028**, provided that:

23 **[(a)] a.** the application is accompanied by a diversity plan
24 outlining specific goals, which may include advertising and
25 recruitment actions, for hiring minority persons and women;

26 **[(b)] b.** the director and the authority have approved the plan
27 as meeting the requirements established by the director and the
28 authority; and

29 **[(c)] c.** the director and the authority have verified that the
30 applicant has met or made good-faith efforts in achieving those
31 goals.

32 The director and the authority shall adopt any rules necessary to
33 implement this provision.

34 The application shall indicate whether the applicant intends to
35 participate in training, education, and recruitment programs that are
36 organized in cooperation with State colleges and universities, labor
37 organizations, and the motion picture industry and are designed to
38 promote and encourage the training and hiring of New Jersey
39 residents who represent the diversity of the State population.

40

41 4. This act shall take effect immediately.