

# ASSEMBLY, No. 5393

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 8, 2023

**Sponsored by:**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblywoman ELIANA PINTOR MARIN**

**District 29 (Essex)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**SYNOPSIS**

Revises provisions of film and digital media content production tax credit program.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 5/18/2023)

1 AN ACT concerning corporation business and gross income tax  
2 credits for qualified film and digital media content production  
3 expenses and amending P.L.2018, c.56.

4

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

7

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

10 1. a. (1) A taxpayer, upon approval of an application to the  
11 authority and the director, shall be allowed a credit against the tax  
12 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in  
13 an amount equal to 35 percent of the qualified film production  
14 expenses of the taxpayer during a privilege period commencing on  
15 or after July 1, 2018 but before July 1, 2034, provided that:

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

24 (b) principal photography of the film commences within 180  
25 days from the date of the original application for the tax credit;

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

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

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

38 (2) Notwithstanding the provisions of paragraph (1) of  
39 subsection a. of this section to the contrary, the tax credit allowed  
40 pursuant to this subsection against the tax imposed pursuant to  
41 section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount  
42 equal to 30 percent of the qualified film production expenses of the  
43 taxpayer during a privilege period that are incurred for services  
44 performed and tangible personal property purchased for use at a  
45 sound stage or other location that is located in the State within a 30-  
46 mile radius of the intersection of Eighth Avenue/Central Park West,

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

Matter underlined thus is new matter.

1 Broadway, and West 59th Street/Central Park South, New York,  
2 New York.

3 b. (1) A taxpayer, upon approval of an application to the  
4 authority and the director, shall be allowed a credit against the tax  
5 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in  
6 an amount equal to: 30 percent of the qualified digital media  
7 content production expenses of the taxpayer during a privilege  
8 period commencing on or after July 1, 2018 but before July 1, 2034,  
9 provided that:

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

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

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

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

23 (2) Notwithstanding the provisions of paragraph (1) of  
24 subsection b. of this section to the contrary, the tax credit allowed  
25 pursuant to this subsection against the tax imposed pursuant to  
26 section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount  
27 equal to 35 percent of the qualified digital media content  
28 production expenses of the taxpayer during a privilege period that  
29 are incurred for services performed and tangible personal property  
30 purchased through vendors whose primary place of business is  
31 located in Atlantic, Burlington, Camden, Cape May, Cumberland,  
32 Gloucester, Mercer, or Salem County.

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

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

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

38 e. (1) The value of tax credits, including tax credits allowed  
39 through the granting of tax credit transfer certificates, approved by  
40 the director and the authority pursuant to subsection a. of this  
41 section and pursuant to subsection a. of section 2 of P.L.2018, c.56  
42 (C.54A:4-12b) to taxpayers, other than New Jersey studio partners  
43 and New Jersey film-lease partners, shall not exceed a cumulative  
44 total of \$100,000,000 in fiscal year 2019 and in each fiscal year  
45 thereafter prior to fiscal year 2035 to apply against the tax imposed  
46 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax  
47 imposed pursuant to the "New Jersey Gross Income Tax Act,"  
48 N.J.S.54A:1-1 et seq. In addition to the \$100,000,000 limitation on

1 the value of tax credits approved by the director for New Jersey  
2 film-lease partners and the \$100,000,000 limitation on the value of  
3 tax credits approved by the director for other taxpayers imposed by  
4 this paragraph, the value of tax credits, including tax credits  
5 allowed through the granting of tax credit transfer certificates,  
6 approved by the director and the authority pursuant to subsection a.  
7 of this section and pursuant to subsection a. of section 2 of  
8 P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall  
9 not exceed a cumulative total of \$100,000,000 in fiscal year 2021  
10 and in each fiscal year thereafter prior to fiscal year 2034 to apply  
11 against the tax imposed pursuant to section 5 of P.L.1945, c.162  
12 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey  
13 Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal  
14 year 2025, in addition to the \$100,000,000 made available for New  
15 Jersey studio partners pursuant to this paragraph, up to an additional  
16 \$350,000,000 may be made available annually, in the discretion of  
17 the authority, to New Jersey studio partners for the award of tax  
18 credits, including tax credits allowed through the granting of tax  
19 credit transfer certificates, pursuant to subsection a. of this section  
20 and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b),  
21 from the funds made available pursuant to subparagraph (i) of  
22 paragraph (1) of subsection b. of section 98 of P.L.2020, c.156  
23 (C.34:1B-362). In addition to the \$100,000,000 limitation on the  
24 value of tax credits approved by the director for New Jersey studio  
25 partners and the \$100,000,000 limitation on the value of tax credits  
26 approved by the director for other taxpayers imposed by this  
27 paragraph, the value of tax credits, including tax credits allowed  
28 through the granting of tax credit transfer certificates, approved by  
29 the director and the authority pursuant to subsection a. of this  
30 section and pursuant to subsection a. of section 2 of P.L.2018, c.56  
31 (C.54A:4-12b) to New Jersey film-lease partners shall not exceed a  
32 cumulative total of \$100,000,000 in fiscal year 2021 and in each  
33 fiscal year thereafter prior to fiscal year 2034 to apply against the  
34 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)  
35 and the tax imposed pursuant to the "New Jersey Gross Income Tax  
36 Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2025, in  
37 addition to the \$100,000,000 made available for New Jersey film-  
38 lease partners pursuant to this paragraph, up to an additional  
39 \$100,000,000 may be made available annually, in the discretion of  
40 the authority, to New Jersey film-lease partners for the award of tax  
41 credits, including tax credits allowed through the granting of tax  
42 credit transfer certificates, pursuant to subsection a. of this section  
43 and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b),  
44 from the funds made available pursuant to subparagraph (i) of  
45 paragraph (1) of subsection b. of section 98 of P.L.2020, c.156  
46 (C.34:1B-362). Approvals made to New Jersey studio partners and  
47 New Jersey film-lease partners shall be subject to award agreements  
48 with the authority detailing obligations of the awardee and

1 outcomes relating to events of default, including, but not limited to,  
2 recapture, forfeiture, and termination. If in any privilege period,  
3 beginning following a date determined by the authority, a New  
4 Jersey film-lease partner's annual average of qualified film  
5 production expenses falls below \$50,000,000, the authority shall  
6 reduce by 20 percent any tax credit award for a film for which final  
7 documentation has been submitted, until a privilege period when the  
8 annual average of qualified film production expenses has been  
9 restored to \$50,000,000. The authority shall establish a non-  
10 binding, administrative pre-certification process for potentially  
11 eligible projects.

12 If the cumulative total amount of tax credits, and tax credit  
13 transfer certificates, allowed to taxpayers for privilege periods or  
14 taxable years commencing during a single fiscal year under  
15 subsection a. of this section and subsection a. of section 2 of  
16 P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits  
17 available in that fiscal year, then taxpayers who have first applied  
18 for and have not been allowed a tax credit or tax credit transfer  
19 certificate amount for that reason shall be allowed, in the order in  
20 which they have submitted an application, the amount of tax credit  
21 or tax credit transfer certificate on the first day of the next  
22 succeeding fiscal year in which tax credits and tax credit transfer  
23 certificates under subsection a. of this section and subsection a. of  
24 section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the  
25 amount of credits available.

26 Notwithstanding any provision of this paragraph to the contrary,  
27 for any fiscal year in which the amount of tax credits approved to  
28 New Jersey studio partners, New Jersey film-lease partners, or  
29 taxpayers other than New Jersey studio partners and New Jersey  
30 film-lease partners pursuant to this paragraph is less than the  
31 cumulative total amount of tax credits permitted to be approved to  
32 each such category, in that fiscal year, the authority shall certify the  
33 amount of the remaining tax credits available for approval to each  
34 such category in that fiscal year, and shall increase the cumulative  
35 total amount of tax credits permitted to be approved for New Jersey  
36 studio partners, New Jersey film-lease partners, or taxpayers other  
37 than New Jersey studio partners and New Jersey film-lease partners  
38 in the subsequent fiscal year by the certified amount remaining for  
39 each such category from the prior fiscal year. The authority shall  
40 also certify, for each fiscal year, the amount of tax credits that were  
41 previously approved, but that the taxpayer is not able to redeem or  
42 transfer to another taxpayer under this section, and shall increase  
43 the cumulative total amount of tax credits permitted to be approved  
44 for New Jersey studio partners, New Jersey film-lease partners, or  
45 taxpayers other than New Jersey studio partners and New Jersey  
46 film-lease partners in the subsequent fiscal year by the amount of  
47 tax credits previously approved for each such category, but not  
48 subject to redemption or transfer. In each fiscal year in which tax

1 credits remain unapproved for, or unredeemed or not transferred by,  
2 New Jersey film-lease partners or taxpayers other than New Jersey  
3 studio partners and New Jersey film-lease partners, the authority  
4 may reallocate some or all of such remaining tax credits in the  
5 subsequent fiscal year between the category of New Jersey film-  
6 lease partners and the category of taxpayers other than New Jersey  
7 studio partners and New Jersey film-lease partners in lieu of  
8 increasing the tax credits available for the respective category by  
9 the amount reallocated.

10 (2) The value of tax credits, including tax credits allowed  
11 through the granting of tax credit transfer certificates, approved by  
12 the authority and the director pursuant to subsection b. of this  
13 section and pursuant to subsection b. of section 2 of P.L.2018, c.56  
14 (C.54A:4-12b) shall not exceed a cumulative total of \$30,000,000 in  
15 fiscal year 2019 and in each fiscal year thereafter prior to fiscal year  
16 2035 to apply against the tax imposed pursuant to section 5 of  
17 P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the  
18 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

19 If the total amount of tax credits and tax credit transfer  
20 certificates allowed to taxpayers for privilege periods or taxable  
21 years commencing during a single fiscal year under subsection b. of  
22 this section and subsection b. of section 2 of P.L.2018, c.56  
23 (C.54A:4-12b) exceeds the amount of tax credits available in that  
24 year, then taxpayers who have first applied for and have not been  
25 allowed a tax credit or tax credit transfer certificate amount for that  
26 reason shall be allowed, in the order in which they have submitted  
27 an application, the amount of tax credit or tax credit transfer  
28 certificate on the first day of the next succeeding fiscal year in  
29 which tax credits and tax credit transfer certificates under  
30 subsection b. of this section and subsection b. of section 2 of  
31 P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of  
32 credits available.

33 Notwithstanding any provision of this paragraph to the contrary,  
34 for any fiscal year in which the amount of tax credits approved  
35 pursuant to this paragraph is less than the cumulative total amount  
36 of tax credits permitted to be approved in that fiscal year, the  
37 authority shall certify the amount of the remaining tax credits  
38 available for approval in that fiscal year, and shall increase the  
39 cumulative total amount of tax credits permitted to be approved in  
40 the subsequent fiscal year by the certified amount remaining from  
41 the prior fiscal year. The authority shall also certify, for each fiscal  
42 year, the amount of tax credits that were previously approved, but  
43 that the taxpayer is not able to redeem or transfer to another  
44 taxpayer under this section, and shall increase the cumulative total  
45 amount of tax credits permitted to be approved in the subsequent  
46 fiscal year by the amount of tax credits previously approved, but not  
47 subject to redemption or transfer.

1 f. A taxpayer shall submit to the authority and the director a  
2 report prepared by an independent certified public accountant  
3 licensed in this State to verify the taxpayer's tax credit claim  
4 following the completion of the production. The report shall be  
5 prepared by the independent certified public accountant pursuant to  
6 agreed-upon procedures prescribed by the authority and the  
7 director, and shall include such information and documentation as  
8 shall be determined to be necessary by the authority and the director  
9 to substantiate the qualified film production expenses or the  
10 qualified digital media content production expenses of the taxpayer.  
11 A single report with attachments deemed necessary by the authority  
12 shall be submitted electronically. Upon receipt of the report, the  
13 authority and the director shall review the findings of the  
14 independent certified public accountant's report, and shall make a  
15 determination as to the qualified film production expenses or the  
16 qualified digital media content production expenses of the taxpayer.  
17 The authority's and the director's review shall include, but shall not  
18 be limited to: a review of all non-payroll qualified film production  
19 expense items and non-payroll digital media content production  
20 expense items over \$20,000; a review of 100 randomly selected  
21 non-payroll qualified film production expense items and non-  
22 payroll digital media content production expense items that are  
23 greater than \$2,500, but less than \$20,000; a review of 100  
24 randomly selected non-payroll qualified film production expense  
25 items and non-payroll digital media content production expense  
26 items that are less than \$2,500; a review of the qualified wages for  
27 the 15 employees, independent contractors, or loan-out companies  
28 with the highest qualified wages; and a review of the qualified  
29 wages for 35 randomly selected employees, independent  
30 contractors, or loan-out companies with qualified wages other than  
31 the 15 employees, independent contractors, or loan-out companies  
32 with the highest qualified wages. The taxpayer's qualified film  
33 production expenses and digital media content production expenses  
34 shall be adjusted based on any discrepancies identified for the  
35 reviewed non-payroll qualified film production expense items, non-  
36 payroll digital media content production expense items and  
37 qualified wages. The taxpayer's qualified film production expenses  
38 and digital media content production expenses also shall be adjusted  
39 based on the projection of any discrepancies identified based on the  
40 review of randomly selected expense items or wages pursuant to  
41 this subsection to the extent that the discrepancies exceed one  
42 percent of the total reviewed non-payroll qualified film production  
43 expense items, non-payroll digital media content production  
44 expense items, or qualified wages. The determination shall be  
45 provided in writing to the taxpayer, and a copy of the written  
46 determination shall be included in the filing of a return that includes  
47 a claim for a tax credit allowed pursuant to this section.



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

21 h. As used in this section:

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

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

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

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

44 "Film" means a feature film, a television series, or a television  
45 show of 22 minutes or more in length, intended for a national  
46 audience, or a television series or a television show of 22 minutes  
47 or more in length intended for a national or regional audience,  
48 including, but not limited to, a game show, award show, or other

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

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

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

41 "Incurred in New Jersey" means, for any application submitted  
42 after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.),  
43 pursuant to which a tax credit has not been allowed prior to the  
44 effective date of P.L.2021, c.160, service performed within New  
45 Jersey and tangible personal property used or consumed in New  
46 Jersey. A service is performed in New Jersey to the extent that the  
47 individual performing the service is physically located in New  
48 Jersey while performing the service. Notwithstanding where the

1 property is delivered or acquired, rented tangible property is used or  
2 consumed in New Jersey to the extent that the property is located in  
3 New Jersey during its use or consumption and is rented from a  
4 vendor authorized to do business in New Jersey or the film  
5 production company provides to the authority the vendor's  
6 information in a form and manner prescribed by the authority.  
7 Purchased tangible property is not used and consumed in New  
8 Jersey unless it is purchased from a vendor authorized to do  
9 business in New Jersey and is delivered to or acquired within New  
10 Jersey; provided, however, that if a production is also located in  
11 another jurisdiction, the purchased tangible property is used and  
12 consumed in New Jersey if the acquisition and delivery of  
13 purchased tangible property is located in either New Jersey or  
14 another jurisdiction where the production takes place.

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

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

27 "New Jersey film-lease partner" means a taxpayer, including any  
28 taxpayer that is a member of a combined group under section 23 of  
29 P.L.2018, c.48 (C.54:10A-4.11), that has made a commitment to  
30 lease or acquire all or part of a New Jersey production facility,  
31 which leased or acquired space shall have an aggregate square  
32 footage of at least 50,000 square feet, including a sound stage and  
33 production support space, such as production offices or a backlot,  
34 for a period of five or more successive years and commits to spend,  
35 on a separate-entity basis or in the aggregate with other members of  
36 the taxpayer's combined group, an annual average of \$50,000,000 of  
37 qualified film production expenses over the period of at least five  
38 but not to exceed 10 years.

39 "New Jersey studio partner" means a film production company  
40 that has made a commitment to produce films or commercial  
41 audiovisual products in New Jersey and has developed, purchased,  
42 or executed a 10-year contract to lease a production facility of  
43 250,000 square feet or more, or has executed a purchase contract  
44 with a governmental entity for the purpose of developing a  
45 production facility of 250,000 square feet or more within 60 months  
46 after being designated as a New Jersey studio partner. A film  
47 production company designated as a New Jersey studio partner, that  
48 receives approval of an application to the authority and the director,

1 shall be allowed a credit against the tax imposed pursuant to section  
2 5 of P.L.1945, c.162 (C.54:10A-5) as provided in this section. No  
3 more than three film production companies may be designated as a  
4 New Jersey studio partner.

5 "Partnership" means an entity classified as a partnership for  
6 federal income tax purposes.

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

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

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

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

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

16 (1) for a New Jersey studio partner that incurs more than  
17 \$15,000,000, but less than \$50,000,000, in qualified film production  
18 expenses in the State, an amount, not to exceed \$15,000,000, of the  
19 wages or salaries or other compensation for writers, directors,  
20 including music directors, producers, and performers, other than  
21 background actors with no scripted lines, shall constitute qualified  
22 film production expenses;

23 (2) for a New Jersey studio partner that incurs \$50,000,000 or  
24 more, but less than \$100,000,000, in qualified film production  
25 expenses in the State, an amount, not to exceed \$25,000,000, of the  
26 wages or salaries or other compensation for writers, directors,  
27 including music directors, producers, and performers, other than  
28 background actors with no scripted lines, shall constitute qualified  
29 film production expenses;

30 (3) for a New Jersey studio partner that incurs \$100,000,000 or  
31 more, but less than \$150,000,000, in qualified film production  
32 expenses in the State, an amount, not to exceed \$40,000,000, of the  
33 wages or salaries or other compensation for writers, directors,  
34 including music directors, producers, and performers, other than  
35 background actors with no scripted lines, shall constitute qualified  
36 film production expenses; and

37 (4) for a New Jersey studio partner that incurs \$150,000,000 or  
38 more in qualified film production expenses in the State, an amount,  
39 not to exceed \$60,000,000, of the wages or salaries or other  
40 compensation for writers, directors, including music directors,  
41 producers, and performers, other than background actors with no  
42 scripted lines, shall constitute qualified film production expenses.

43 "Total digital media content production expenses" means costs  
44 for services performed and property used or consumed in the  
45 production of digital media content.

46 "Total film production expenses" means costs for services  
47 performed and tangible personal property used or consumed in the  
48 production of a film.

1       i. A business that is not a "taxpayer" as defined and used in the  
2 "Corporation Business Tax Act (1945)," P.L.1945, c.162  
3 (C.54:10A-1 et seq.) and therefore is not directly allowed a credit  
4 under this section, but is a business entity that is classified as a  
5 partnership for federal income tax purposes and is ultimately owned  
6 by a business entity that is a "corporation" as defined in subsection  
7 (c) of section 4 of P.L.1945, c.162 (C.54:10A-4), or a limited  
8 liability company formed under the "Revised Uniform Limited  
9 Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.), or  
10 qualified to do business in this State as a foreign limited liability  
11 company, with one member, and is wholly owned by the business  
12 entity that is a "corporation" as defined in subsection (c) of section  
13 4 of P.L.1945, c.162 (C.54:10A-4), but otherwise meets all other  
14 requirements of this section, shall be considered an eligible  
15 applicant and "taxpayer" as that term is used in this section.  
16 (cf: P.L.2021, c.367, s.1)

17  
18       2. Section 2 of P.L.2018, c.56 (C.54A:4-12b) is amended to  
19 read as follows:

20       2. a. (1) A taxpayer, upon approval of an application to the  
21 authority and the director, shall be allowed a credit against the tax  
22 otherwise due for the taxable year under the "New Jersey Gross  
23 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 35  
24 percent of the qualified film production expenses of the taxpayer  
25 during a taxable year commencing on or after July 1, 2018 but  
26 before July 1, 2034, provided that:

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

35       (b) principal photography of the film commences within 180  
36 days from the date of the original application for the tax credit;

37       (c) the film includes, when determined to be appropriate by the  
38 commission, at no cost to the State, marketing materials promoting  
39 this State as a film and entertainment production destination, which  
40 materials shall include placement of a "Filmed in New Jersey" or  
41 "Produced in New Jersey" statement, or an appropriate logo  
42 approved by the commission, 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 g. 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 h. of this section.

1 (2) Notwithstanding the provisions of paragraph (1) of  
2 subsection a. of this section 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 30 percent of  
6 the qualified film production expenses of the taxpayer during a  
7 taxable year that are incurred for services performed and tangible  
8 personal property purchased for use at a sound stage or other  
9 location that is located in the State within a 30-mile radius of the  
10 intersection of Eighth Avenue/Central Park West, Broadway, and  
11 West 59th Street/Central Park South, New York, New York.

12 b. (1) A taxpayer, upon approval of an application to the  
13 authority and the director, shall be allowed a credit against the tax  
14 otherwise due for the taxable year under the "New Jersey Gross  
15 Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to: 30  
16 percent of the qualified digital media content production expenses  
17 of the taxpayer during a taxable year commencing on or after July  
18 1, 2018 but before July 1, 2034, provided that:

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

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

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

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

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

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

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

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

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



1 taxpayer that may have a tax liability under the "New Jersey Gross  
2 Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation  
3 Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), in  
4 exchange for private financial assistance to be provided by the  
5 purchaser or assignee to the taxpayer that has applied for and been  
6 granted the tax credit. The tax credit transfer certificate provided to  
7 the taxpayer shall include a statement waiving the taxpayer's right  
8 to claim that amount of the tax credit against the tax imposed  
9 pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to  
10 sell or assign. The sale or assignment of any amount of a tax credit  
11 transfer certificate allowed under this section shall not be  
12 exchanged for consideration received by the taxpayer of less than  
13 75 percent of the transferred tax credit amount. Any amount of a  
14 tax credit transfer certificate used by a purchaser or assignee against  
15 a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the  
16 same limitations and conditions that apply to the use of a tax credit  
17 pursuant to subsections c. and d. of this section. Any amount of a  
18 tax credit transfer certificate obtained by a purchaser or assignee  
19 under subsection e. of this section may be applied against the  
20 purchaser's or assignee's tax liability under P.L.1945, c.162  
21 (C.54:10A-1 et seq.) and shall be subject to the same limitations  
22 and conditions that apply to the use of a credit pursuant to  
23 subsection c. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b).

24 f. (1) The value of tax credits, including tax credits allowed  
25 through the granting of tax credit transfer certificates, approved by  
26 the director and the authority pursuant to subsection a. of this  
27 section and pursuant to subsection a. of section 1 of P.L.2018, c.56  
28 (C.54:10A-5.39b) to taxpayers, other than New Jersey studio  
29 partners and New Jersey film-lease partners, shall not exceed a  
30 cumulative total of \$100,000,000 in fiscal year 2019 and in each  
31 fiscal year thereafter prior to fiscal year 2035 to apply against the  
32 tax imposed pursuant to the "New Jersey Gross Income Tax Act,"  
33 N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162  
34 (C.54:10A-5). In addition to the \$100,000,000 limitation on the  
35 value of tax credits approved by the director for New Jersey film-  
36 lease partners and the \$100,000,000 limitation on the value of tax  
37 credits approved by the director for other taxpayers imposed by this  
38 paragraph, the value of tax credits, including tax credits allowed  
39 through the granting of tax credit transfer certificates, approved by  
40 the director and the authority pursuant to subsection a. of this  
41 section and pursuant to subsection a. of section 1 of P.L.2018, c.56  
42 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a  
43 cumulative total of \$100,000,000 in fiscal year 2021 and in each  
44 fiscal year thereafter prior to fiscal year 2034 to apply against the  
45 tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5)  
46 and the tax imposed pursuant to the "New Jersey Gross Income Tax  
47 Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2025, in  
48 addition to the \$100,000,000 made available for New Jersey studio

1 partners pursuant to this paragraph, up to an additional  
2 \$350,000,000 may be made available annually, in the discretion of  
3 the authority, to New Jersey studio partners for the award of tax  
4 credits, including tax credits allowed through the granting of tax  
5 credit transfer certificates, pursuant to subsection a. of this section  
6 and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b),  
7 from the funds made available pursuant to subparagraph (i) of  
8 paragraph (1) of subsection b. of section 98 of P.L.2020, c.156  
9 (C.34:1B-362). In addition to the \$100,000,000 limitation on the  
10 value of tax credits approved by the director for New Jersey studio  
11 partners and the \$100,000,000 limitation on the value of tax credits  
12 approved by the director for other taxpayers imposed by this  
13 paragraph, the value of tax credits, including tax credits allowed  
14 through the granting of tax credit transfer certificates, approved by  
15 the director and the authority pursuant to subsection a. of this  
16 section and pursuant to subsection a. of section 1 of P.L.2018, c.56  
17 (C.54:10A-5.39b) to New Jersey film-lease partners shall not  
18 exceed a cumulative total of \$100,000,000 in fiscal year 2021 and  
19 in each fiscal year thereafter prior to fiscal year 2034 to apply  
20 against the tax imposed pursuant to section 5 of P.L.1945, c.162  
21 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey  
22 Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal  
23 year 2025, in addition to the \$100,000,000 made available for New  
24 Jersey film-lease partners pursuant to this paragraph, up to an  
25 additional \$100,000,000 may be made available annually, in the  
26 discretion of the authority, to New Jersey film-lease partners for the  
27 award of tax credits, including tax credits allowed through the  
28 granting of tax credit transfer certificates, pursuant to subsection a.  
29 of this section and subsection a. of section 1 of P.L.2018, c.56  
30 (C.54:10A-5.39b), from the funds made available pursuant to  
31 subparagraph (i) of paragraph (1) of subsection b. of section 98 of  
32 P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey  
33 studio partners and New Jersey film-lease partners shall be subject  
34 to award agreements with the authority detailing obligations of the  
35 awardee and outcomes relating to events of default, including, but  
36 not limited to, recapture, forfeiture, and termination. If in any  
37 taxable year, beginning following a date determined by the  
38 authority, a New Jersey film-lease partner's annual average of  
39 qualified film production expenses falls below \$50,000,000, the  
40 authority shall reduce by 20 percent any tax credit award for a film  
41 for which final documentation has been submitted, until a taxable  
42 year when the annual average of qualified film production expenses  
43 has been restored to \$50,000,000. The authority shall establish a  
44 non-binding, administrative pre-certification process for potentially  
45 eligible projects.

46 If the cumulative total amount of tax credits, and tax credit  
47 transfer certificates, allowed to taxpayers for taxable years or  
48 privilege periods commencing during a single fiscal year under

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

12 Notwithstanding any provision of this paragraph to the contrary,  
13 for any fiscal year in which the amount of tax credits approved to  
14 New Jersey studio partners, New Jersey film-lease partners, or  
15 taxpayers other than New Jersey studio partners and New Jersey  
16 film-lease partners pursuant to this paragraph is less than the  
17 cumulative total amount of tax credits permitted to be approved to  
18 each such category in that fiscal year, the authority shall certify the  
19 amount of the remaining tax credits available for approval to each  
20 such category in that fiscal year, and shall increase the cumulative  
21 total amount of tax credits permitted to be approved for New Jersey  
22 studio partners, New Jersey film-lease partners, or taxpayers other  
23 than New Jersey studio partners and New Jersey film-lease partners  
24 in the subsequent fiscal year by the certified amount remaining  
25 from the prior fiscal year. The authority shall also certify, for each  
26 fiscal year, the amount of tax credits that were previously approved,  
27 but that the taxpayer is not able to redeem or transfer to another  
28 taxpayer under this section, and shall increase the cumulative total  
29 amount of tax credits permitted to be approved for New Jersey  
30 studio partners, New Jersey film-lease partners, or taxpayers other  
31 than New Jersey studio partners and New Jersey film-lease partners  
32 in the subsequent fiscal year by the amount of tax credits previously  
33 approved for each such category, but not subject to redemption or  
34 transfer. In each fiscal year in which tax credits remain unapproved  
35 for, or unredeemed or not transferred by, New Jersey film-lease  
36 partners or taxpayers other than New Jersey studio partners and  
37 New Jersey film-lease partners, the authority may reallocate some  
38 or all of such remaining tax credits in the subsequent fiscal year  
39 between the category of New Jersey film-lease partners and the  
40 category of taxpayers other than New Jersey studio partners and  
41 New Jersey film-lease partners in lieu of increasing the tax credits  
42 available for the respective category by the amount reallocated.

43 (2) The value of tax credits, including tax credits allowed  
44 through the granting of tax credit transfer certificates, approved by  
45 the authority and the director pursuant to subsection b. of this  
46 section and pursuant to subsection b. of section 1 of P.L.2018, c.56  
47 (C.54:10A-5.39b) shall not exceed a cumulative total of  
48 \$30,000,000 in fiscal year 2019 and in each fiscal year thereafter

1 prior to fiscal year 2035 to apply against the tax imposed pursuant  
2 to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.  
3 and the tax imposed pursuant to section 5 of P.L.1945, c.162  
4 (C.54:10A-5).

5 If the total amount of tax credits and tax credit transfer  
6 certificates allowed to taxpayers for taxable years or privilege  
7 periods commencing during a single fiscal year under subsection b.  
8 of this section and subsection b. of section 1 of P.L.2018, c.56  
9 (C.54:10A-5.39b) exceeds the amount of tax credits available in  
10 that year, then taxpayers who have first applied for and have not  
11 been allowed a tax credit or tax credit transfer certificate amount for  
12 that reason shall be allowed, in the order in which they have  
13 submitted an application, the amount of tax credit or tax credit  
14 transfer certificate on the first day of the next succeeding fiscal year  
15 in which tax credits and tax credit transfer certificates under  
16 subsection b. of this section and subsection b. of section 1 of  
17 P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of  
18 credits available.

19 Notwithstanding any provision of this paragraph to the contrary,  
20 for any fiscal year in which the amount of tax credits approved  
21 pursuant to this paragraph is less than the cumulative total amount  
22 of tax credits permitted to be approved in that fiscal year, the  
23 authority shall certify the amount of the remaining tax credits  
24 available for approval in that fiscal year, and shall increase the  
25 cumulative total amount of tax credits permitted to be approved in  
26 the subsequent fiscal year by the certified amount remaining from  
27 the prior fiscal year. The authority shall also certify, for each fiscal  
28 year, the amount of tax credits that were previously approved, but  
29 that the taxpayer is not able to redeem or transfer to another  
30 taxpayer under this section, and shall increase the cumulative total  
31 amount of tax credits permitted to be approved in the subsequent  
32 fiscal year by the amount of tax credits previously approved, but not  
33 subject to redemption or transfer.

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

1 qualified digital media content production expenses of the taxpayer.  
2 The authority's and the director's review shall include, but shall not  
3 be limited to: a review of all non-payroll qualified film production  
4 expense items and non-payroll digital media content production  
5 expense items over \$20,000; a review of 100 randomly selected  
6 non-payroll qualified film production expense items and non-  
7 payroll digital media content production expense items that are  
8 greater than \$2,500, but less than \$20,000; a review of 100  
9 randomly selected non-payroll qualified film production expense  
10 items and non-payroll digital media content production expense  
11 items that are less than \$2,500; a review of the qualified wages for  
12 the 15 employees, independent contractors, or loan-out companies  
13 with the highest qualified wages; and a review of the qualified  
14 wages for 35 randomly selected employees, independent  
15 contractors, or loan-out companies with qualified wages other than  
16 the 15 employees, independent contractors, or loan-out companies  
17 with the highest qualified wages. The taxpayer's qualified film  
18 production expenses and digital media content production expenses  
19 shall be adjusted based on any discrepancies identified for the  
20 reviewed non-payroll qualified film production expense items, non-  
21 payroll digital media content production expense items and  
22 qualified wages. The taxpayer's qualified film production expenses  
23 and digital media content production expenses also shall be adjusted  
24 based on the projection of any discrepancies identified based on the  
25 review of randomly selected expense items or wages pursuant to  
26 this subsection to the extent that the discrepancies exceed one  
27 percent of the total reviewed non-payroll qualified film production  
28 expense items, non-payroll digital media content production  
29 expense items, or qualified wages. The determination shall be  
30 provided in writing to the taxpayer, and a copy of the written  
31 determination shall be included in the filing of a return that includes  
32 a claim for a tax credit allowed pursuant to this section.

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

1 performed in this State during a taxable year shall be relieved of its  
2 duties and responsibilities as an employer pursuant to chapter 7 of  
3 Title 54A of the New Jersey Statutes for the taxable year for any  
4 payments relating to the payments on which the taxpayer withheld.

5 i. As used in this section:

6 "Authority" means the New Jersey Economic Development  
7 Authority.

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

11 "Commission" means the Motion Picture and Television  
12 Development Commission.

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

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

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

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

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

17 "Incurred in New Jersey" means, for any application submitted  
18 after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.),  
19 pursuant to which a tax credit has not been allowed prior to the  
20 effective date of P.L.2021, c.160, service performed within New  
21 Jersey and tangible personal property used or consumed in New  
22 Jersey. A service is performed in New Jersey to the extent that the  
23 individual performing the service is physically located in New  
24 Jersey while performing the service. Notwithstanding where the  
25 property is delivered or acquired, rented tangible property is used or  
26 consumed in New Jersey to the extent that the property is located in  
27 New Jersey during its use or consumption and is rented from a  
28 vendor authorized to do business in New Jersey or the film  
29 production company provides to the authority the vendor's  
30 information in a form and manner prescribed by the authority.  
31 Purchased tangible property is not used and consumed in New  
32 Jersey unless it is purchased from a vendor authorized to do  
33 business in New Jersey and is delivered to or acquired within New  
34 Jersey; provided, however, that if a production is also located in  
35 another jurisdiction, the purchased tangible property is used and  
36 consumed in New Jersey if the acquisition and delivery of  
37 purchased tangible property is located in either New Jersey or  
38 another jurisdiction where the production takes place.

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

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

1 contractor services such as catering, construction, trailers,  
2 equipment, or transportation.

3 "New Jersey film-lease partner" means a taxpayer, including any  
4 taxpayer that is a member of a combined group under section 23 of  
5 P.L.2018, c.131 (C.54:10A-4.11), that has made a commitment to  
6 lease or acquire all or part of a New Jersey production facility ,  
7 which leased or acquired space shall have an aggregate square  
8 footage of at least 50,000 square feet, including a sound stage and  
9 production support space, such as production offices or a backlot,  
10 for a period of five or more successive years and commits to spend,  
11 on a separate-entity basis or in the aggregate with other members of  
12 the taxpayer's combined group, an annual average of \$50,000,000 of  
13 qualified film production expenses over the period of at least five  
14 but not to exceed 10 years.

15 "New Jersey studio partner" means a film production company  
16 that has made a commitment to produce films or commercial  
17 audiovisual products in New Jersey and has developed, purchased,  
18 or executed a 10-year contract to lease a production facility of  
19 250,000 square feet or more, or a film production company that has  
20 made a commitment to produce films or commercial audiovisual  
21 products in New Jersey and has executed a purchase contract with a  
22 governmental entity for the purpose of developing a production  
23 facility of 250,000 square feet or more within 60 months after being  
24 designated as a New Jersey studio partner. A film production  
25 company designated as a New Jersey studio partner, that receives  
26 approval of an application to the authority and the director, shall be  
27 allowed a credit against the tax otherwise due for the taxable year  
28 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et  
29 seq. as provided in this section. No more than three film production  
30 companies may be designated as a New Jersey studio partner.

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 not be limited to: wages and salaries of individuals  
46 employed in the production of digital media content on which the  
47 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 deemed a "qualified digital  
5 media 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 pursuant  
9 to 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 deemed "qualified digital media  
16 content 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 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  
30 deemed a "qualified film production expense" unless the payment is  
31 made in connection with a trade, profession, or occupation carried  
32 on in this State or for the rendition of personal services performed  
33 in this 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 \$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 except as follows:

42 (1) for a New Jersey studio partner that incurs more than  
43 \$15,000,000, but less than \$50,000,000, in qualified film production  
44 expenses in the State, an amount, not to exceed \$15,000,000, of the  
45 wages or salaries or other compensation for writers, directors,  
46 including music directors, producers, and performers, other than  
47 background actors with no scripted lines, shall constitute qualified  
48 film production expenses;

(2) for a New Jersey studio partner that incurs \$50,000,000 or more, but less than \$100,000,000, in qualified film production expenses in the State, an amount, not to exceed \$25,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses;

(3) for a New Jersey studio partner that incurs \$100,000,000 or more, but less than \$150,000,000, in qualified film production expenses in the State, an amount, not to exceed \$40,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(4) for a New Jersey studio partner that incurs \$150,000,000 or more in qualified film production expenses in the State, an amount, not to exceed \$60,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses.

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

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

(cf: P.L.2021, c.367, s.2)

3. This act shall take effect immediately.

## STATEMENT

This bill revises the definition of "New Jersey studio partner" with respect to the film and digital media content production tax credit program.

Under the film and digital media content production tax credit program, the State awards corporation business and gross income tax credits to eligible taxpayers equal to: (1) 30 percent of the qualified film production expenses incurred for use within certain parts of Northern New Jersey, or 35 percent of qualified film production expenses incurred for use within all other parts of the State; and (2) 35 percent of the qualified digital media content production expenses purchased through vendors located in certain counties in Southern New Jersey, or 30 percent of all other qualified digital media content production expenses purchased within the State. Under this program, a New Jersey studio partner may be eligible for corporation business or gross income tax credits with

1    respect to qualified film production expenses incurred by the New  
2    Jersey studio partner. A New Jersey studio partner is required to be  
3    a film production company that has made a commitment to produce  
4    films or audiovisual products in New Jersey and has site control of  
5    a production facility that is at least 250,000 square feet for at least  
6    10 years. No more than three film production companies may be  
7    designated as New Jersey studio partners.

8       This bill expands the definition of “New Jersey studio partner” to  
9    include a film production company that has made a commitment to  
10   produce films or commercial audiovisual products in New Jersey  
11   and has executed a purchase contract with a governmental entity for  
12   the purpose of developing a production facility of 250,000 square  
13   feet or more within 60 months after being designated as a New  
14   Jersey studio partner.